

**BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA**

**IN RE TEST CLAIM ON:**

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010

Filed on March 30, 2011  
By Santa Clarita Valley Sanitation District of Los Angeles County, Claimant.

**Case No.: 10-TC-09**

*Upper Santa Clara River Chloride Requirements*

**ADMINISTRATIVE RECORD**

**(Code Civ. Proc. 1094.5)**

*Administrative Record*

I HEREBY CERTIFY that the documents contained herein are true, correct, and complete copies of the original documents contained in the administrative record of the Commission on State Mandates (Commission) for the decision adopted by the Commission denying the *Upper Santa Clara River Chloride Requirements* test claim (10-TC-09) on January 24, 2014.

Dated:

6/30/14

  
\_\_\_\_\_  
Heather Halsey, Executive Director

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SANTA CLARITA VALLEY SANITATION  
DISTRICT OF LOS ANGELES COUNTY,  
13 a public agency,

14 Petitioner,

15 v.

16 CALIFORNIA COMMISSION ON STATE  
MANDATES,

17 Respondent.

18 CALIFORNIA REGIONAL WATER  
19 QUALITY CONTROL BOARD – LOS  
ANGELES REGION; CALIFORNIA  
20 DEPARTMENT OF FINANCE,

21 Real Parties in Interest.

CASE NO.

ADMINISTRATIVE RECORD

[Gov. Code §17559(b);  
Code Civ. Proc. §1094.5]

22  
23 I HEREBY CERTIFY that each of the following documents is a true and correct copy of the  
24 corresponding documents contained in the administrative record of the Commission on State  
Mandates for the decision adopted by the Commission on the Upper *Santa Clara River Chloride*  
25 *Requirements* test claim (10-TC-09).  
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	<u>Document</u>	<u>Bates Numbers</u>
	<b>ADOPTED STATEMENT OF DECISION, WITH PROOF OF SERVICE</b>	
1.	Adopted Statement of Decision, January 31, 2014	CSD000001-CSD000049
	<b>ITEM 6, JANUARY 24, 2014 COMMISSION HEARING</b>	
2.	CSM Notice and Agenda for January 24, 2014 Meeting, December 20, 2013	CSD000050-CSD000057
3.	Proposed Statement of Decision, January 9, 2014	CSD000058-CSD000121
4.	Exhibits to Item 6 of Agenda: Exhibits Proposed Statement of Decision, January 9, 2014	CSD000122-CSD002342
4.A	Exhibit A—Test Claim, March 30, 2011	CSD000124-CSD000786
4.B	Exhibit B—Los Angeles Regional Quality Control Board Comments, dated July 29, 2011	CSD000787-CSD002080
4.C	Exhibit C—Department of Finance Comments, dated July 29, 2011	CSD002081-CSD002089
4.D	Exhibit D—Claimant Rebuttal Comments, dated September 28, 2011	CSD002090-CSD002135
4.E	Exhibit E—Draft Staff Analysis, dated September 20, 2013	CSD002136-CSD002193
4.F	Exhibit F—Finance Comments, dated October 7, 2013	CSD002194-CSD002201
4.G	Exhibit G—Public Comments, dated October 9, 2013	CSD002202-CSD002209
4.H	Exhibit H—City of Santa Clarita Comments, dated October 18, 2013	CSD002210-CSD002217
4.I	Exhibit I—Los Angeles Regional Quality Control Board Comments, dated November 1, 2013	CSD002218-CSD002227
4.J	Exhibit J—Claimant Comments, dated November 1, 2013	CSD002228-CSD002250
4.X	Exhibit X—Supporting Documentation	CSD002251-CSD002342
5.	Claimant’s Slide Presentation at CSM Hearing, January 24, 2014	CSD002343-CSD002351
6.	City of Santa Clarita Councilmember Boydston Comments submitted at Commission Hearing, January 24, 2014	CSD0025352-CSD002364
7.	Minutes and Transcript from Commission on State Mandates (“CSM”) Meeting January 24, 2014 (as adopted March 28, 2014)	CSD002365-CSD002476
	<b>CORRESPONDENCE</b>	
8.	Notice of Complete Test Claim Filing and Schedule for Comments, April 14, 2011	CSD002477-CSD002478

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9.	E-mail from CSM re documents posted to CSM website, April 14, 2011	CSD002479-CSD002479
10.	Mailing List and Proof of Service, April 14, 2011	CSD002480-CSD002484
11.	E-mail from CSM re documents posted to CSM website, May 4, 2011	CSD002485-CSD002485
12.	Mailing List and Proof of Service, May 4, 2011	CSD002486-CSD002490
13.	E-mail from CSM re documents posted to CSM website, June 24, 2011	CSD002491-CSD002491
14.	Mailing List and Proof of Service, June 24, 2011	CSD002492-CSD002496
15.	E-mail from CSM re documents posted to CSM website, August 1, 2011	CSD002497-CSD002497
16.	Mailing List and Proof of Service, August 1, 2011	CSD002498-CSD002502
17.	E-mail from CSM re documents posted to CSM website, August 22, 2011	CSD002503-CSD002503
18.	Mailing List and Proof of Service, August 22, 2011	CSD002504-CSD002508
19.	E-mail from CSM re documents posted to CSM website, September 29, 2011	CSD002509-CSD002509
20.	Proof of Service, September 29, 2011	CSD002510-CSD002510
21.	Mailing List, September 29, 2011	CSD002511-CSD002514
22.	Notice of Draft Staff Analysis, Schedule for Comments and Notice of Hearing, September 20, 2013	CSD002515-CSD002515
23.	E-mail from CSM re documents posted to CSM website, September 20, 2013	CSD002516-CSD002516
24.	Mailing List and Proof of Service, September 20, 2013	CSD002517-CSD002522
25.	E-mail from CSM re documents posted to CSM website, October 8, 2013	CSD002523-CSD002524
26.	Mailing List and Proof of Service, October 8, 2013	CSD002525-CSD002530
27.	E-mail from CSM re documents posted to CSM website, October 10, 2013	CSD002531-CSD002532
28.	Mailing List and Proof of Service, October 10, 2013	CSD002533-CSD002539
29.	E-mail from CSM re documents posted to CSM website, October 21, 2013	CSD002540-CSD002540
30.	Mailing List and Proof of Service, October 21, 2013	CSD002541-CSD002547
31.	Email from CSM re documents posted to CSM website, November 4, 2013	CSD002548-CSD002548
32.	Mailing List and Proof of Service, November 4, 2013	CSD002549-CSD002555
33.	Mailing List, January 7, 2014	CSD002556-CSD002561
34.	E-mail from CSM re documents posted to CSM website, January 9, 2014	CSD002562-CSD002562



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35.	Mailing List, January 22, 2014	CSD002563-CSD002568
36.	E-mail from CSM re documents posted to CSM website, January 31, 2014	CSD002569-CSD002569
37.	Public Records Act Request from Santa Clarita Valley Sanitation District to CSM, March 27, 2014	CSD002570-CSD002571
38.	Email from CSM to P. Beck re Public Records Act Request, April 13, 2014	CSD002572-CSD002573

## COMMISSION ON STATE MANDATES

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January 31, 2014

Ms. Claire Hervey Collins  
Lewis Brisbois Bisgaard & Smith LLP  
221 N. Figueroa Street, Suite 1200  
Los Angeles, CA 90012

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

Re: **Adopted Statement of Decision**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

Dear Ms. Collins:

On January 24, 2014, the Commission on State Mandates adopted the statement of decision to deny the test claim on the above-entitled matter.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010

Filed on March 30, 2011

By Santa Clarita Valley Sanitation District of Los Angeles County, Claimant.

Case No.: 10-TC-09

*Upper Santa Clara River Chloride Requirements*

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

(Adopted January 24, 2014)

(Served January 31, 2014)

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 24, 2014. Claire Hervey Collins and Phillip Friess appeared for the claimant. Jennifer Fordyce and Michael Lauffer appeared for the Regional Water Quality Control Board for the Los Angeles Region. Michael Byrne and Susan Geanacou appeared for the Department of Finance. Public comment was provided by City of Santa Clarita Councilmember TimBen Boydston and Mayor Laurene Weste, and California Assembly member Scott Wilk.

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 the proposed statement of decision to deny the test claim at the hearing by a vote of 6 to 0, with one member abstaining.

**Summary of the Findings**

This test claim alleges a reimbursable state mandate resulting from Resolution R4-2008-012, adopted December 11, 2008 by the Regional Water Quality Control Board for the Los Angeles region (Regional Board). To assist the reader, there is a glossary of frequently used water quality related terms and acronyms at the end of this document. The Resolution amended the prior Basin Plan, which imposed a maximum chloride concentration limit, or "total maximum daily load" (TMDL) of 100 mg/L for the Santa Clara River and chloride concentration discharge limits, or "waste load allocations" (WLAs) of 100 mg/L for the District's two Water Reclamation Plants (WRPs). The Resolution includes a revised, less stringent, TMDL and WLAs, providing greater flexibility to the District with regard to chloride discharges into the river and significantly reducing the costs for the District to comply with the TMDL and WLAs for the Upper Santa Clara River. The revised TMDL calls for the implementation of an Alternative Water Resources Management program (AWRM), in order to meet conditional site-

specific objectives (SSOs) for water quality in Reaches 4B, 5, and 6 of the river, and conditional WLAs of 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B for the District's two WRPs.

The District alleges that meeting the SSOs and WLAs will require significant advanced treatment and other technological upgrades, and a number of water supply control measures to control chloride concentrations in the Santa Clara River, especially during periods of higher concentration in the water supply and groundwater (*i.e.*, during periods of lower precipitation). The District alleges that these upgrades and control measures result in increased costs of approximately \$250.7 million. R4-2008-012 also includes a number of Implementation Tasks, primarily consisting of requirements to perform technical and scientific studies of the surface and groundwater and evaluation of appropriate chloride thresholds, which the District alleges impose increased costs of approximately \$6.6 million.

The Commission finds that Resolution R4-2008-012 does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new and cannot impose a *new* program or higher level of service; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program is not a new program or higher level of service, but a lower level of service, and results in reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

Because this test claim is denied on the grounds stated above, the Commission declines to make findings on whether claimant is practically compelled to implement the Alternative Water Resources Management activities or whether the Alternative Water Resources Management activities, TMDLs or WLAs are mandated by federal law.

## COMMISSION FINDINGS

### I. Chronology

- |            |                                                                                                                                                                                                                                  |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/30/2011 | Claimant, Santa Clarita Valley Sanitation District of Los Angeles County, filed the test claim, <i>Upper Santa Clara River Chloride Requirements</i> , 10-TC-09, with the Commission on State Mandates (Commission) <sup>1</sup> |
| 04/14/2011 | Commission staff issued a notice of complete filing and request for comments from state agencies.                                                                                                                                |
| 05/02/2011 | The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) filed a request for an extension of time to submit comments on the test claim.                                                          |
| 05/04/2011 | Commission staff granted the Regional Board's request for an extension of time to comment to July 15, 2011.                                                                                                                      |

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<sup>1</sup> Exhibit A, Test Claim.

06/23/2011 The Regional Board filed a request for an extension of time to comment on the test claim, which was granted for good cause.

07/ 29/2011 The Regional Board filed comments on test claim.<sup>2</sup>

08/01/2011 The Department of Finance (Finance) filed comments on the test claim.<sup>3</sup>

08/19/2011 Claimant filed a request for an extension of time to submit rebuttal comments to September 28, 2011, which was granted for good cause.

09/28/2011 Claimant filed rebuttal comments.<sup>4</sup>

09/20/2013 Commission staff issued the draft staff analysis and proposed statement of decision.<sup>5</sup>

10/07/2013 Finance submitted comments on the draft staff analysis.<sup>6</sup>

10/07/2013 Claimant requested an extension of time to October 25, 2013 to file comments on the draft staff analysis, which was granted for good cause.

10/09/2013 Ms. Lynda Cook of Santa Clarita submitted comments on the draft staff analysis.<sup>7</sup>

10/09/2013 The Regional Board requested an extension of time to file comments to November 1, 2013 and postponement of hearing to January 24, 2014.

10/10/2013 Commission staff granted the Regional Board's request for extension and postponement.

10/18/2013 City of Santa Clarita filed comments on the draft staff analysis.<sup>8</sup>

11/01/2013 The Regional Board filed comments on the draft staff analysis.<sup>9</sup>

11/01/2013 Claimant filed comments on the draft staff analysis.<sup>10</sup>

## **II. Introduction**

### **A. History and Framework of Federal Water Pollution Control**

Regulation of water pollution in the United States finds its beginnings in the Rivers and Harbors Appropriation Act of 1899, which made it unlawful to throw or discharge “any refuse matter of any kind or description. . . into any navigable water of the United States, or into any tributary of

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<sup>2</sup> Exhibit B, LA Regional Board Comments.

<sup>3</sup> Exhibit C, Department of Finance Comments.

<sup>4</sup> Exhibit D, Claimant's Rebuttal Comments.

<sup>5</sup> Exhibit E, Draft Staff Analysis.

<sup>6</sup> Exhibit F, Department of Finance Comments on Draft Staff Analysis.

<sup>7</sup> Exhibit G, Public Comments on Draft Staff Analysis.

<sup>8</sup> Exhibit H, City of Santa Clarita Comments on Draft Staff Analysis.

<sup>9</sup> Exhibit I, LA Regional Board Comments on Draft Staff Analysis.

<sup>10</sup> Exhibit J, Claimant Comments on Draft Staff Analysis.

any navigable water.”<sup>11</sup> This provision survives in the current United States Code, qualified by more recent provisions that outline a regime of discharge permits issued by the U.S. EPA or by states on behalf of the EPA.<sup>12</sup>

In 1948, the Federal Water Pollution Control Act “adopted principles of state and federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance.”<sup>13</sup> Pursuant to further amendments to the Act made in 1965, “States were directed to develop water quality standards establishing water quality goals for interstate waters.” However, “[d]ue to enforcement complexities and other problems, an approach based solely on water quality standards was deemed insufficiently effective.”<sup>14</sup> The Federal Water Pollution Control Act was therefore significantly expanded in 1972 to regulate individual point source dischargers. Later, major amendments to the Federal Water Pollution Control Act were enacted in the Clean Water Act of 1977, and the federal act is now commonly referred to as the Clean Water Act (CWA). The CWA states:

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title.<sup>15</sup>

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

The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” (33 U.S.C. § 1251(a).) Toward this end, the Act provides for two sets of water quality measures. “Effluent limitations” are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. (See §§ 1311, 1314.) “[W]ater quality standards” are, in general, promulgated by the States and establish the desired condition of a waterway. (See § 1313.) These standards supplement effluent limitations “so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable

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<sup>11</sup> United States Code, title 33, section 407 (Mar. 3, 1899, c. 425, § 13, 30 Stat. 1152).

<sup>12</sup> See United States Code, title 33, sections 401; 1311-1342.

<sup>13</sup> Exhibit X, Statutory History of Water Quality Standards: available at <http://water.epa.gov/scitech/swguidance/standards/history.cfm>. (Accessed November 26, 2013.)

<sup>14</sup> *Ibid.*

<sup>15</sup> United States Code, title 33, section 1251(b).

levels.” (*EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).)<sup>16</sup>

The CWA thus employs two primary mechanisms for controlling water pollution: identification and standard-setting for bodies of water, and identification and regulation of dischargers.

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

Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.<sup>17</sup>

And with respect to regulating dischargers, section 1311 requires that point source dischargers be identified and effluent limitations be set, “sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water.”<sup>18</sup> Section 1312 provides that effluent limitations must promote the attainment of water quality objectives, while section 131.10 of the applicable regulations requires also taking into consideration the water quality standards of downstream waters.<sup>19</sup>

Section 303(d) of the CWA, codified at section 1313(d) of title 33 of the United States Code, requires that each state “identify those waters within its boundaries for which the effluent limitations... are not stringent enough to implement any water quality standard applicable to such waters.” Waters for which the effluent limitations are not sufficient to meet water quality standards are called “impaired,” and the list of “impaired” waters is also known as the “303(d)

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<sup>16</sup> *Arkansas v. Oklahoma* (1992) 503 U.S. 91, at pp. 101-102.

<sup>17</sup> United States Code, title 33, section 1313(c)(2).

<sup>18</sup> United States Code, title 33, section 1311.

<sup>19</sup> United States Code, title 33, section 1312; Code of Federal Regulations, title 40, section 131.10(b) (57 FR 60910) [“In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”].

List.” The state is required by the Act to “establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.”

After the waters are ranked, the state “shall establish for the waters identified... and in accordance with the priority ranking, the total maximum daily load [known as a TMDL], for those pollutants which the Administrator identifies... as suitable for such calculation.” The TMDL “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” A TMDL is defined as the sum of the amount of a pollutant allocated to *all point sources* (i.e., the sum of all waste load allocations, or WLAs), plus the amount of a pollutant allocated for nonpoint sources and natural background. A TMDL should be set for each pollutant identified by the Administrator, and is essentially a plan setting forth the amount of a pollutant allowable that will attain the water quality standard necessary for beneficial uses.<sup>20</sup> TMDLs are required to be submitted to the Administrator “from time to time,” and the Administrator “shall either approve or disapprove such identification and load not later than thirty days after the date of submission.” If the Administrator disapproves the 303(d) List or a TMDL, the Administrator “shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement [water quality standards].” Finally, the identification of waters and setting of standards and TMDLs is required as a part of a state’s “continuing planning process approved [by the Administrator] which is consistent with this chapter.”<sup>21</sup>

Section 1342 provides for the National Pollutant Discharge Elimination System (NPDES). NPDES is the final piece of the regulatory framework under which discharges of pollutants are regulated and permitted, and applies whether or not a TMDL has been established. Section 1342 states that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title.”<sup>22</sup> Section 1342 further provides that states may submit a plan to administer the NPDES permit program, and that upon review of the state’s submitted program “[t]he Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State.”<sup>23</sup> Whether issued by the Administrator or by a state permitting program, all NPDES permits must ensure compliance with the requirements of sections 1311, 1312, 1316, 1317, and 1343; must be for fixed terms not exceeding five years; can be terminated or modified for cause, including violation of any condition of the permit; and must control the disposal of pollutants into wells.<sup>24</sup> In addition, NPDES permits are generally prohibited, with some exceptions, from containing effluent limitations that are “less stringent than the comparable effluent limitations in the previous

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<sup>20</sup> Code of Federal Regulations, title 40, section 130.2.

<sup>21</sup> United States Code, title 33, section 1313(d-e).

<sup>22</sup> United States Code, title 33, section 1342(a)(1)

<sup>23</sup> United States Code, title 33, section 1342(a)(5); (b).

<sup>24</sup> United States Code, title 33, section 1342(b)(1).

permit.”<sup>25</sup> An NPDES permit for a point source discharging into an impaired water body must be consistent with the waste load allocations made in a TMDL, if a TMDL is approved and is applicable to the water body.<sup>26</sup>

## **B. State Water Pollution Control Program**

### Porter-Cologne Water Quality Control Act

California’s water pollution control laws were substantially overhauled in 1969 with the Porter-Cologne Water Quality Control Act (Porter-Cologne).<sup>27</sup> Beginning with section 13000, Porter-Cologne provides:

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by all the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety, and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state... and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.<sup>28</sup>

The state water pollution control program was again modified, beginning in 1972, so that the code would substantially comply with the federal Act, and “on May 14, 1973, California became the first state to be approved by the EPA to administer the NPDES permit program.”<sup>29</sup>

Section 13160 provides that the state water resources control board (SWRCB or State Board) “is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act... [and is] authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and acts amendatory thereto.”<sup>30</sup> Section 13001 describes the state and regional boards as being “the principal state agencies with primary responsibility for the coordination and control of water quality.”

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<sup>25</sup> United States Code, title 33, section 1342(o).

<sup>26</sup> Code of Federal Regulations, title 40, section 122.44(b).

<sup>27</sup> Water Code section 13020 (Stats. 1969, ch. 482).

<sup>28</sup> Water Code section 13000 (Stats. 1969, ch. 482).

<sup>29</sup> *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (Cal. Ct. App. 5th Dist. 2005) 127 Cal.App.4th 1544, at pp. 1565-1566. See also Water Code section 13370 *et seq.*

<sup>30</sup> Water Code section 13160 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats 1976, ch. 596).

In order to achieve the objectives of conserving and protecting the water resources of the state, and in exercise of the powers delegated, Porter-Cologne, like the CWA, employs a combination of water quality standards and point source pollution controls.<sup>31</sup>

Porter Cologne sections 13240-13247 address the development and implementation of regional water quality control plans, including “water quality objectives,” defined in section 13050 to mean “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.”<sup>32</sup> Section 13241 provides that each regional board “shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance.” The section directs the regional boards to consider, when developing water quality objectives:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.<sup>33</sup>

Beneficial uses, in turn, are defined in section 13050 as including, but not limited to “domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.”<sup>34</sup> In addition, section 13243 permits a regional board to define “certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.”<sup>35</sup>

Sections 13260-13274 address the development of “waste discharge requirements,” which section 13374 states “is the equivalent of the term ‘permits’ as used in the Federal Water

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<sup>31</sup> Water Code section 13142 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats. 1979, ch. 947; Stats. 1995, ch. 28).

<sup>32</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247), ch. 847 (SB 206); Stats. 1996, ch. 1023 (SB 1497)).

<sup>33</sup> Water Code section 13241 (Stats. 1969, ch. 482; Stats. 1979, ch. 947; Stats. 1991, ch. 187 (AB 673)).

<sup>34</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 847 (SB 206); Stats. 1996 ch. 1023 (SB 1497)).

<sup>35</sup> Water Code section 13243 (Stats. 1969, ch. 482).

Pollution Control Act, as amended.”<sup>36</sup> Section 13263 permits the regional boards, after a public hearing, to prescribe waste discharge requirements “as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system.” Section 13263 also provides that the regional boards “need not authorize the utilization of the full waste assimilation capacities of the receiving waters,” and that the board may prescribe requirements although no discharge report has been filed, and may review and revise requirements on its own motion. The section further provides that “[a]ll discharges of waste into waters of the state are privileges, not rights.”<sup>37</sup> Section 13377 permits a regional board to issue waste discharge requirements “which apply and ensure compliance with all applicable provisions of the [Federal Water Pollution Control Act].”<sup>38</sup> In effect, sections 13263 and 13377 permit the issuance of waste discharge requirements concurrently with an NPDES permit “if a discharge is to waters of both California and the United States.”<sup>39</sup>

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

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

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will

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<sup>36</sup> Water code section 13374 (Stats. 1972, ch. 1256).

<sup>37</sup> Water Code section 13263(a-b); (g) (Stats. 1969, ch. 482; Stats. 1992, ch. 211 (AB 3012) Stats. 1995, ch. 28 (AB 1247), ch. 421 (SB 572)).

<sup>38</sup> Water Code section 13377 (Stats. 1972, ch. 1256; Stats. 1978, ch. 746).

<sup>39</sup> Exhibit A, Test Claim, at p. 7.

not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

### C. Regulatory History

The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates in the San Gabriel Mountains in Los Angeles County, runs through Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Land uses within the watershed include agriculture, open space, and residential uses.<sup>40</sup> Resolution R4-2008-012, adopted by the Regional Board, states that “[r]evenue from the agricultural industry within the Santa Clara watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.”<sup>41</sup> Reaches 5 and 6 of the Santa Clara River are located upstream of the Blue Cut gauging station, near the Los Angeles/Ventura County line, between the cities of Fillmore (in Ventura County) and Santa Clarita in Los Angeles County; Reach 4B is in Ventura County.<sup>42</sup> Claimant operates two WRPs that discharge into Reaches 4B, 5 and 6.<sup>43</sup>

In 1975, the Regional Board established water quality objectives for chloride in the Santa Clara River. The 1975 objectives for surface waters were established, in accordance with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal antidegradation policy (40 C.F.R. 131.12), at a chloride concentration of 90mg/L in Reach 5 and 80 mg/L in Reach 6 (then known as Reaches 7 and 8).<sup>44</sup> The 1975 objectives were based on background concentrations of chloride and intended to protect the beneficial uses identified in the 1975 Basin Plan, including off-stream agricultural irrigation.<sup>45</sup> The Basin Plan included chloride objectives between 50 and 150 mg/L for the remaining reaches of the Santa Clara River.<sup>46</sup> When the

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<sup>40</sup> See Exhibit A, Test Claim, at p. 34; Exhibit B, LA Regional Board Comments, at p. 1.

<sup>41</sup> Exhibit A, Test Claim, at p. 34.

<sup>42</sup> See Exhibit B, Resolution R4-2007-018, at paragraphs 4-6, describing subdividing Reach 4 into Reaches 4A and 4B, for purposes of TMDL revision.

<sup>43</sup> Exhibit A, at pp. 49-52, Resolution R4-2008-012, describing conditional waste load allocations for Valencia and Saugus WRPs.

<sup>44</sup> See Exhibit A, at p. 151, Exhibit 6, LA Regional Board Resolution 97-02.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

SWRCB set the water quality objectives in 1975, it “assumed the chloride concentrations in imported waters would remain relatively low.”<sup>47</sup> However, in the years following, “chloride concentrations in the imported water supply into the Los Angeles Region increased,” and in 1978 the Board “modified the water quality objectives for chloride... to 100 mg/L for both reaches.”<sup>48</sup>

In 1990 the Regional Board adopted a resolution responding to the changing conditions of the imported water supply related to drought (referred to by both the claimant and the Regional Board as the “Drought Policy”). For dischargers into the Santa Clara River who applied for relief under the Drought Policy, chloride concentrations were permitted “in the discharger’s effluent to be the lesser of: (1) 250 mg/L; or (2) the chloride concentration of supply water plus 85 mg/L.”<sup>49</sup> The board renewed the Drought Policy in 1993 and 1995 “because the chloride levels in supply waters remained higher than the chloride levels before the onset of the drought.” In 1997, the Regional Board rescinded the Drought Policy and revised the water quality objectives for chloride for the Los Angeles River, Rio Hondo, and the San Gabriel River, but not for the Santa Clara River, “due to the potential for future adverse impacts to agricultural resources in Ventura County.” The board “granted temporary variances to certain dischargers in the Santa Clara River watershed, including the Valencia and Saugus WRPs.”<sup>50</sup> The interim effluent limits of 190 mg/L were applied for three years to the two facilities.<sup>51</sup>

In 1998 the Santa Clara River “appeared for the first time on the state’s federally required 303(d) list of impaired waterbodies for chloride.”<sup>52</sup> Reaches 5 and 6 of the Upper Santa Clara River did not meet the 100 mg/L water quality objective (WQO), and “[b]eneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired.”<sup>53</sup> The Valencia and Saugus WRPs, which are owned and operated by the District, are two major point sources that discharge to the upper reaches of the River.<sup>54</sup> The two WRPs are responsible for approximately 70 percent of the chloride loading to the River.<sup>55</sup> The Valencia

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<sup>47</sup> Exhibit B, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

<sup>48</sup> Exhibit B, at p. 502, Attachment 56, 1978 Revisions to the Water Quality Control Plan for the Santa Clara River Basin.

<sup>49</sup> See Exhibit B, Attachment 57, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

<sup>50</sup> Exhibit B, LA Regional Board Comments, at p. 10; Attachment 57, at p. 507 [L.A. Regional Board Resolution 97-02, paragraph 2].

<sup>51</sup> Exhibit B, LA Regional Board Comments, at p. 10.

<sup>52</sup> *Ibid* [referring to the Clean Water Act section 303(d), codified at 33 U.S.C. 1313(d), which requires states to identify and report to the EPA on those waters within its boundaries for which the effluent limitations have not proven effective “to implement any water quality standard applicable to such waters”]. See also, Exhibit A, Test Claim, at p. 9.

<sup>53</sup> Exhibit B, LA Regional Board Comments, at p. 10. See also Exhibit B, LA Regional Board Comments, Attachment 58, at p. 523 [L.A. Regional Board Resolution 03-088, paragraph 2].

<sup>54</sup> Exhibit A, Test Claim, at p. 34.

<sup>55</sup> Exhibit B, LA Regional Board Comments, at p. 11. See also, Exhibit A, Test Claim, at p. 48.

and Saugus WRPs were not designed to remove chloride from waste water, and in fact have been contributing to elevated chloride concentrations due to the use of chlorine disinfection.<sup>56</sup>

In October of 2002, the Regional Board adopted Resolution 02-018, amending the Basin Plan to include a TMDL for chloride in the Santa Clara River. The same resolution also assigned “final WLAs to the Valencia and Saugus WRPs of 100 mg/L to be included also in their NPDES permits.” However, the TMDL resolution also included “interim WLAs for the [Saugus and Valencia facilities], to provide the District time to implement chloride source reduction, complete site-specific objective (“SSO”) studies, and make any necessary modifications to the WRPs.”<sup>57</sup> The District determined at the time that the TMDL would require approximately \$500 million in upgrades to its treatment facilities, including advanced treatment (desalination) at both WRPs in order to meet the effluent limitations of 100 mg/L chloride. The District appealed the decision to the SWRCB, which adopted Resolution 2003-0014, remanding the TMDL to the Regional Board for reconsideration of various items including: (1) an extension of the interim chloride limits, and (2) re-evaluation of the water quality objectives accounting for the beneficial uses to be protected, the quality of the imported water supply, and the impacts of drought periods.<sup>58</sup> In response, the Regional Board adopted Resolution 03-008,<sup>59</sup> which included interim WLAs and a phased implementation plan for the chloride TMDL, including a number of required studies. On May 6, 2004, the Regional Board adopted Resolution 04-004, which revised and superseded the interim WLAs and implementation plan adopted by Resolution 03-008. The TMDL was approved by the EPA, as amended by Resolution 03-008, and Resolution 04-004, on April 28, 2005.

In 2006, the board shortened the compliance period and the interim WLAs by two years; Resolution R4-2006-016 was approved by EPA June 12, 2008.<sup>60</sup> And finally, in 2008, the board shortened the compliance period by an additional year, but relaxed the chloride requirements as described in the next paragraph.<sup>61</sup>

Between 2005 and 2008, several special studies were conducted, as required under the prior TMDL.<sup>62</sup> On December 11, 2008, the Regional Board adopted Resolution R4-2008-012, saying: “The completion of these TMDL special studies...has led to the development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and

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<sup>56</sup> Exhibit A, Test Claim, at pp. 7; 11-12; 175; Exhibit B, LA Regional Board Comments, at pp. 9-10.

<sup>57</sup> Exhibit A, Test Claim, at p. 10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

<sup>58</sup> Exhibit B, at p. 523, Attachment 58, LA Regional Board Resolution 03-008.

<sup>59</sup> Exhibit B, at p. 523, Attachment 58, LA Regional Board Resolution 03-008.

<sup>60</sup> Exhibit B, Attachment 60, at p. 566, Regional Board Resolution R4-2006-016, Implementation Task 14. See also, Exhibit X, SCVSD Draft EIR, at p. 8.

<sup>61</sup> Exhibit B, Attachment 63, at p. 624, Regional Board Resolution R4-2006-016, Implementation Task 21.

<sup>62</sup> See Exhibit A, Attachment 1, at pp. 34-36 [Regional Board Resolution R4-2008-012, paragraphs 10-16].

degradation of groundwater.”<sup>63</sup> The alternative plan is known as the Alternative Water Resources Management program; the AWRM includes:

...the development of site-specific objectives [SSOs] for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP’s effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with[in] the Santa Clarita Valley.<sup>64</sup>

The SSOs adopted are 150 mg/L in Reaches 5 and 6 and 117 mg/L for Reach 4B, which is adjusted to 130 mg/L when the supply water has chloride levels above 80 mg/L.<sup>65</sup> The conditional WLAs for the Valencia and Saugus facilities are also 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B.<sup>66</sup> The Resolution provides for the construction and implementation of advanced treatment (reverse osmosis desalination) at the Valencia facility, as well as a number of water supply control measures designed to attain the site specific objectives.<sup>67</sup> The relaxed requirements are conditioned upon “the Claimant’s full and ongoing implementation of the AWRM program.”<sup>68</sup> The 2008 resolution was approved by the State Water Board, OAL, and then finally by the U.S. EPA on April 6, 2010.<sup>69</sup>

This test claim was filed by Santa Clarita Valley Sanitation District on March 30, 2011. On July 29, 2011, the Regional Board filed comments on test claim.<sup>70</sup> On August 8, 2011, the Department of Finance (Finance) filed comments on the test claim.<sup>71</sup> On September 28, 2011, the District filed rebuttal comments in response to both Finance and Regional Board comments.<sup>72</sup>

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<sup>63</sup> Exhibit A, Attachment 1, at p. 36 [Regional Board Resolution R4-2008-012, paragraph 15].

<sup>64</sup> Exhibit A, Attachment 1, at p. 42 [Regional Board Resolution R4-2008-012, Table 3-A “Conditional Site Specific Objectives for the Santa Clara River Surface Waters].

<sup>65</sup> *Id.*, p. 42.

<sup>66</sup> *Id.*, at pp. 49-51.

<sup>67</sup> *Id.*, at p. 51.

<sup>68</sup> Exhibit B, LA Regional Board Comments, at p. 17. See also, Exhibit A, Test Claim, at p. 11 [“If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L.”].

<sup>69</sup> Exhibit A, Test Claim, at p. 11; Exhibit B, LA Regional Board Comments, at p. 17.

<sup>70</sup> Exhibit B, LA Regional Board Comments.

<sup>71</sup> Exhibit C, Department of Finance Comments.

<sup>72</sup> Exhibit D, Claimant’s Rebuttal Comments.

### III. Positions of the Parties

#### Santa Clarita Valley Sanitation District Position

The District seeks reimbursement for costs associated with implementing the Alternative Water Resources Management program (AWRM) described in Resolution R4-2008-012. The AWRM includes technology upgrades at the two WRPs, as well as alternative water supply and groundwater management techniques in order to attain the site-specific objectives and waste load allocations of 150 mg/L for Reaches 5 and 6, and 117 mg/L for Reach 4B.<sup>73</sup> The District also alleges costs incurred in fiscal years 2009-2010 and 2010-2011 associated with Implementation Tasks outlined in the Resolution; these tasks primarily involve conducting studies and developing suggested revisions to the TMDL over a span of years commencing May 4, 2005.<sup>74</sup>

The District explains that the CWA “requires states to adopt water quality standards for the beneficial uses of waters of the United States and the water quality criteria for specific uses of those waters.” The Act further requires “continuing review and revision of the standards,” and requires states to “continually identify those waters of the United States within their boundaries that do not meet water quality standards (the ‘303(d) List’), rank them in order of priority for enforcement, and prepare TMDLs for those waters that will ensure re-attainment of the standard through action by regulated dischargers.” However, the District asserts that “[w]hile the Clean Water Act mandates these planning activities, it leaves to the states their evaluation and specific determination of regulatory requirements based, in part, upon site-specific factors.”<sup>75</sup>

The District argues that the Regional Board’s determination of water quality objectives, and eventually a TMDL for chloride, was discretionary regulatory activity that was not mandated by federal law. The District bases its conclusion that the TMDL was discretionary on the fact that the TMDL and WLAs have changed over time.

The District asserts that it “now faces enormous costs to ‘solve’ a problem that is has not created and does not control, and has already substantially mitigated by implementing a comprehensive chloride source reduction program within the sewer service area.” The District estimates its costs “to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>76</sup> The District acknowledges that “[s]ome of the compliance project costs may be paid from service charges,” but the District asserts that its “elected officials could not support the proposed rate increases in the face of fierce public opposition.” The District maintains that “a local agency does not fall under the fee increase exception [of section 17556(d)] if it is unable to obtain the requisite approval under the Proposition 218 process,” which requires a local agency to provide notice of any new or increased assessment. The District provided the notice, as required, and alleges that it “received strong opposition amongst its constituents,” and “[a]s a result, the District has been unable to successfully implement a rate increase due to public resistance.”<sup>77</sup>

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<sup>73</sup> Exhibit A, Test Claim, at pp. 16; 49-51.

<sup>74</sup> Exhibit A, Test Claim, at pp. 13-17; 59-63.

<sup>75</sup> Exhibit A, Test Claim, at p. 5.

<sup>76</sup> Exhibit A, Test Claim, at p. 12.

<sup>77</sup> *Id.*, at p. 25.

In response to the Regional Board's comments on the test claim, the District's rebuttal comments stress the discretion available to the Regional Board, which it believes demonstrates that the Resolution is not necessary to implement a federal mandate. The comments further state that the District's "elected officials could not implement the proposed rate increase in the face of fierce public opposition;" that the District participated in developing the AWRM "only to protect, to the best of its ability, the interests of its ratepayers;" and that therefore "the District is entitled to subvention of the costs that have been and will be incurred as a result of this mandate."<sup>78</sup>

In comments on the draft staff analysis, the District argues that it is "the passive recipient of imported high-chloride drinking water, which it must treat to prevent a speculative harm." The District argues that the TMDL "requires the District to pay more than its fair share of cleanup costs to prevent speculative damage." The District argues that it "has no legal authority to obtain reimbursement for the parties responsible for much of the chloride nor from the beneficiaries of the treatment," and therefore the district "is being forced to pay to solve a speculative problem with origins and effects that are outside its jurisdiction."<sup>79</sup> With respect to the draft staff analysis, the District argues that (1) the implementation tasks alleged in the test claim Resolution should not be denied on grounds that they are not new, because "the 2008 TMDL is the result of the final appeal of the original 2002 approval;" (2) the acceleration of implementation is a higher level of service; (3) the AWRM must be evaluated with reference to the pre-TMDL requirements, in order to determine whether it constitutes a new program or higher level of service; and (4) the District does not have sufficient fee authority to cover the costs of the program, because it is "subject to Prop. 218 protests and referenda on the rates necessary to support the TMDL facilities."<sup>80</sup>

### **Los Angeles Regional Water Quality Control Board Position**

The Regional Board maintains that this test claim does not qualify for subvention. The Regional Board argues that CWA imposes a requirement to establish a TMDL for chloride for an impaired water body. In addition the Regional Board asserts that that absent the AWRM plan, the claimant would be required to meet the water quality standard established for the Santa Clara River in the 2002 TMDL (and maintained in the revisions of 2004 and 2006) by the year 2015. The Regional Board argues that it has no discretion whether to adopt water quality objectives due to the listing of the Santa Clara River under section 1313(d) of the CWA. The Regional Board asserts that "[w]ater quality standards are adopted pursuant to the Clean Water Act, and *any* TMDL is required to attain and maintain the applicable water quality standards, no matter how many times these regulatory mechanisms are modified and amended."<sup>81</sup> The Regional Board further argues that the alleged discretion exercised in allocating pollutant loading among various dischargers does not make the Resolution a state-mandated program: "a TMDL is not valid unless it contains wasteload and load allocations." The Regional Board holds that "to

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<sup>78</sup> Exhibit D, Rebuttal Comments, at pp. 2-14.

<sup>79</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at pp. 1; 6.

<sup>80</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at pp. 2-6.

<sup>81</sup> Exhibit B, LA Regional Board Comments, at pp. 22-23.

protect beneficial uses, the Los Angeles Water Board had no choice but to assign wasteload allocations to each point source discharger, including the Claimant.”<sup>82</sup>

In addition, the Regional Board also argues that the Resolution does not impose a new program or higher level of service. The Regional Board argues that the chloride water quality objective was first established in 1975, and the 2008 Resolution was intended “to incorporate less-stringent site-specific objectives in order to support the Claimant’s AWRM program.” The Regional Board continues: “[t]hus, if anything, the 2008 Resolution imposed a *lower level* of service in order to make it less expensive for the Claimant to implement the existing 100 mg/L chloride water quality objective.” The Regional Board also asserts that it did not impose this program: “[t]he AWRM is the Claimant’s chosen method of complying with the Chloride TMDL and the water quality objectives.” Finally, the Regional Board argues that if the U.S. EPA had adopted a chloride TMDL for the Santa Clara River, which the applicable laws permit if the state fails to do so, “it would have done so without an implementation plan, since the U.S. EPA does not include implementation plans as part of their TMDLs.” In other words, the District has the Regional Board to thank for the gradual and phased implementation of the TMDL, which the Regional Board implied is less burdensome and expensive than a TMDL adopted by the Administrator of the U.S. EPA.<sup>83</sup>

Moreover, the Regional Board argues that “the 2008 Resolution is a regulatory provision of general applicability and not a new program or higher level of service.” The Regional Board asserts that “[w]ater quality objectives apply to a waterbody as a whole, and all dischargers are subject to them.” The Regional Board further states that “[l]ikewise, TMDLs must assign wasteload allocations and load allocations to all sources of the pollutant, both public agencies and private industry alike.” Therefore, the Regional Board concludes that “the challenged provisions treat dischargers with an even hand, irrespective of status (any point or nonpoint source) and are not peculiar to local agencies.”<sup>84</sup>

Finally, the Regional Board argues that three of the statutory exceptions of Government Code section 17556 are applicable. The Regional Board argues that the water quality standards and the TMDL contained in the Resolution are federally mandated, and therefore section 17556(c) applies.<sup>85</sup> The Regional Board argues also that section 17556(a) applies to bar this test claim because “the Claimant itself developed and proposed the AWRM program and then requested the Los Angeles Water Board to adopt the AWRM as part of its 2008 Resolution.”<sup>86</sup> And, the Regional Board argues that the District possesses fee authority within the meaning of section 17556(d). The Regional Board dismisses the claimant’s assertion that “the District’s board declined to adopt the proposed rate increases based on the expectations that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the district’s

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<sup>82</sup> Exhibit B, LA Regional Board Comments, at p. 24.

<sup>83</sup> Exhibit B, LA Regional Board Comments, at p. 26.

<sup>84</sup> Exhibit B, LA Regional Board comments, at pp. 26-27.

<sup>85</sup> See Exhibit B, LA Regional Board Comments, at p. 28.

<sup>86</sup> Exhibit B, LA Regional Board Comments, at p. 29.

ratepayer.”<sup>87</sup> The Regional Board argues that “[t]he plain language of this exception is based on the Claimant’s authority, not on the Claimant’s practical ability in light of surrounding economic circumstances, to levy fees.”<sup>88</sup> The Regional Board concludes that “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>89</sup>

In comments submitted on the draft staff analysis, the Regional Board substantially concurs with the analysis below, but reiterates that the Resolution is not a reimbursable mandate because it is not unique to government, and applies to the water body generally. The Board “respectfully requests that the Commission address this argument in the context of the Resolution as a whole and determine that the Resolution does not impose requirements unique to government.”<sup>90</sup>

### **Department of Finance Position**

Finance argues that the TMDL does not impose a reimbursable state mandate because “(1) the regulations are required by section 303(d) of the federal Clean Water Act, (2) the regulations by themselves do not require the claimant to act, and (3) even if the regulations required action, claimant has fee authority sufficient to pay its costs.” Finance also questions whether the claim may be time barred, because the Resolution was adopted by the Regional Board in December 2008, and the test claim was filed on March 30, 2011.<sup>91</sup>

### **Other Public Comment**

On October 9, 2013, Ms. Lynda Cook of Santa Clarita filed comments on the draft staff analysis. Ms. Cook asserted that residents of Santa Clarita should not be responsible for the costs of removing chloride from the Santa Clara River, because the residents of Santa Clarita are not the cause of high concentrations of chloride in the Santa Clara River. Ms. Cook further asserted that increased fees for sewer services are a tax, and should be subject to voter approval.<sup>92</sup>

On October 18, 2013 the City of Santa Clarita submitted written comments on the draft staff analysis, in which the City argued that “compliance with the Upper Santa Clara River Chloride Total Maximum Daily Load will cost our Santa Clarita Valley residents and businesses millions of dollars.” The City argued that “[i]t is essential for the vitality of our community that compliance with State-created regulations, such as this one, be supported by the State.”<sup>93</sup>

## **IV. Discussion**

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

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<sup>87</sup> Exhibit B, LA Regional Board Comments, at pp. 30-31 [citing to Exhibit A, Test Claim, at p. 26].

<sup>88</sup> Exhibit B, LA Regional Board Comments, at p. 31 [citing *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, at pp. 401-402].

<sup>89</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>90</sup> Exhibit I, LA Regional Board Comments on Draft Staff Analysis, at pp. 1-2.

<sup>91</sup> Exhibit C, Department of Finance Comments, at pp. 1-2.

<sup>92</sup> Exhibit G, Public Comments on Draft Staff Analysis.

<sup>93</sup> Exhibit H, City of Santa Clarita Comments.

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.”<sup>94</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>95</sup> 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.<sup>96</sup>
2. The mandated activity 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.<sup>97</sup>
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.<sup>98</sup>
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.<sup>99</sup>

The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>100</sup> The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>101</sup> In making its decisions, the Commission must strictly construe article XIII

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<sup>94</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>95</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>96</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>97</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

<sup>98</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>99</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>100</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>101</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>102</sup>

**A. Threshold Issues: the Santa Clarita Valley Sanitation District is an Eligible Claimant Before the Commission; Resolution R4-2008-012 is an Executive Order within the Meaning of Article XIII B, Section 6; and the Test Claim is Timely Filed.**

1. The Santa Clarita Valley Sanitation District is an Eligible Claimant before the Commission.

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. “Costs mandated by the state” is defined to mean “any increased costs which a local agency or school district is required to incur... as a result of any statute... or any executive order implementing any statute... which mandates a new program or higher level of service of an existing program.”<sup>103</sup> “Local agency,” in turn, is defined to include “any city, county, special district, authority, or other political subdivision of the state.”<sup>104</sup>

However, not every “local agency,” as defined, is an eligible claimant before the Commission. In addition to an entity fitting the description above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. The California Supreme Court, in *County of Fresno v. State of California*,<sup>105</sup> explained the constitutional subvention requirement as follows:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments... Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>106</sup>

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,<sup>107</sup> the Fourth District Court of Appeal concluded that redevelopment agencies were not eligible to claim reimbursement because their funding came primarily from tax increment financing, which the court determined, due to a valid statutory exemption, was not subject to the taxing and spending limitations of articles XIII A and XIII B:

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise,

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<sup>102</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

<sup>103</sup> Government Code section 17514 (Stats. 1984, ch. 1459).

<sup>104</sup> Government Code section 17518 (Stats. 1984, ch. 1459).

<sup>105</sup> *County of Fresno, supra*, 53 Cal.3d 482.

<sup>106</sup> *Id.*, at p. 487. Emphasis in original.

<sup>107</sup> (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976

through tax increment financing, “general revenues for the local entity.” The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...<sup>108</sup>

Therefore, a local agency that does not collect and expend “proceeds of taxes” is not an eligible claimant before the Commission.<sup>109</sup>

Here, the District receives *at least some amount* of its funding from local taxes, and is subject to an appropriations limit for at least a portion of its revenues, and is therefore an eligible claimant. The State Controller’s Special Districts Annual Report for 2010-2011 indicates that the Santa Clarita Valley Sanitation District was subject to an appropriations limit for approximately one-third of its total revenue (nearly \$11 million), and made total appropriations subject to the appropriations limit in the amount of \$5,778,450.<sup>110</sup> Based on the foregoing, the Commission finds that the Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

2. The Regional Water Board’s Order is an Executive Order within the Meaning of Article XIII B, Section 6.

Article XIII B, section 6 provides that “[w]hensoever 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...” Government Code section 17514 provides that costs mandated by the state includes “any increased costs which a local agency or school district is required to incur... as a result of... any executive order implementing any statute... which mandates a new program or higher level of service of an existing program...” Government Code section 17516 defines an “executive order” to mean “any order, plan, requirement, rule, or regulation issued by...[a]ny agency, department, board, or commission of state government.”<sup>111</sup>

Because Resolution R4-2008-012 is an order of a state board, the Commission finds that Resolution R4-2008-012 is an executive order within the meaning of article XIII B, section 6.

3. The Test Claim was Timely Filed.

Section 17551 provides that “[l]ocal agency and school district 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.”<sup>112</sup>

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<sup>108</sup> *Redevelopment Agency of San Marcos, supra*, 55 Cal.App.4th at p. 986 [internal citations omitted].

<sup>109</sup> *Ibid.* See also, *County of Fresno, supra* (1991) 53 Cal.3d 482, at p. 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

<sup>110</sup> Exhibit X, 2010-2011 Special Districts Annual Report Excerpts 1 and 2.

<sup>111</sup> Government Code section 17516 (as amended by Stats. 2010, ch. 288 (SB 1169)).

<sup>112</sup> Government Code section 17551 (Stats. 2007, ch. 329 (AB 1222)).

Section 1183 of the Commission's regulations states that "within 12 months," for purposes of test claim filing, "means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the claimant."<sup>113</sup>

Finance has raised the statute of limitations found in section 17551, arguing that the test claim was filed on March 30, 2011, while the Resolution had an effective date of December 11, 2008. Finance further argues that the District "asserts that eligible costs under the claim include those for the entire fiscal year 2009-10." Finance concludes that "[i]f no allegedly state-mandated costs were incurred until fiscal year 2009-2010, all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred."<sup>114</sup>

Finance's first point, that the effective date of the Resolution would place this test claim beyond the time bar, has some merit. An effective date of December 11, 2008 would require that a valid test claim be filed by June 30, 2010.

The cover page of the test claim indicates that the Resolution was effective December 11, 2008, as Finance asserts. However, the Regional Board's comments on the test claim state that the Resolution was effective April 6, 2010, the date of US EPA's approval of the TMDL. In addition, a later settlement agreement between the District and the Regional Board is in accord, stating that the Resolution became effective April 6, 2010.<sup>115</sup> This is a logical conclusion because TMDLs and waste load allocations must be approved by the SWRCB, OAL,<sup>116</sup> and the Administrator of the US EPA.<sup>117</sup> An effective date of April 6, 2010, would require that a timely filed test claim be submitted on or before June 30, 2011. This test claim was filed March 30, 2011, and therefore was filed before the expiration of the statute of limitations, based on the effective date agreed upon by the parties.

Based on the foregoing, the Commission finds that this test claim was timely filed.

**B. The Regional Water Board's Resolution and Order does not Impose a New Program or Higher Level of Service within the Meaning of Article XIII B, Section 6.**

The District states that "Regional Board Resolution No. R4-2008-012 requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs' NPDES permits; and (2) specific "implementation tasks" necessary for compliance." The final waste load allocations, along with the Implementation Tasks, "are the subject of this test claim."<sup>118</sup>

Attachment B to Resolution R4-2008-012 outlines the conditional site-specific objectives for Reaches 4B, 5, and 6, and conditional waste load allocations for the water discharged from the

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<sup>113</sup> Code of Regulations, title 2, section 1183 (Register 2008, No. 17).

<sup>114</sup> Exhibit C, Department of Finance Comments, at p. 2. See also, Exhibit A, Test Claim, at p. 17; Exhibit D, Rebuttal Comments, at p. 13.

<sup>115</sup> Exhibit X, Settlement Agreement, at p. 4.

<sup>116</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing Water Code §§ 13245, 13246; Government Code § 11353]. See also, Exhibit A, Test Claim, at p. 6.

<sup>117</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c)]. See also, Exhibit A, Test Claim, at p. 6.

<sup>118</sup> Exhibit A, Test Claim, at p. 13.

Valencia and Saugus WRPs to Reaches 4B, 5, and 6. The WLAs for the District's WRP facilities are based on, and numerically identical to, the SSOs for the respective reaches (117 mg/L chloride for Reach 4B, and the discharge into Reach 4B; 150 mg/L chloride for Reaches 5 and 6, and for the discharge into Reaches 5 and 6).<sup>119</sup> All other point sources are assigned WLAs equal to 100 mg/L.<sup>120</sup> Attachment B also provides for the operation of reverse osmosis treatment at the Valencia WRP, the provision of supplemental water to Reach 4B when chloride concentrations exceed 117 mg/L, and the design and construction of advanced treatment facilities.<sup>121</sup> In addition, Attachment B outlines the following implementation tasks:

- 4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature, develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6... ¶*
- 5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.*
- 6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.*
- 7. Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.*
- 8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.*
- 9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that*

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<sup>119</sup> Exhibit A, Test Claim, at pp. 46-53.

<sup>120</sup> Exhibit A, Test Claim, at p. 52.

<sup>121</sup> Exhibit A, Test Claim, at pp. 50-52; 58; 63.

identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.

¶...¶

17. a) *Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.*

¶...¶

20. *The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.*<sup>122</sup>

The District alleges the following costs mandated by Resolution R4-2008-012:

Summary of the Implementation Tasks Completed to Date:

TMDL Study/Task	Cost
TMDL Collaborative Process Facilitation Services (Task 4)	\$0.8 million
Ground Water Surface Water Interaction Model (Task 5)	\$3.1 million
Agricultural Chloride Threshold Study (Task 6)	\$0.7 million
Threatened and Endangered Species Study (Task 6)	\$0.1 million
Site Specific Objectives and Anti-Degradation Study (Task 7 & 8)	\$0.3 million
Chloride Compliance Cost Study (Task 9)	\$0.5 million
Facilities Plan & EIR (Task 17a)	\$1.1 million
Total TMDL Study Costs to Date	\$6.6 million

¶...¶

As previously indicated, the District has implemented a comprehensive chloride source reduction program within the sewer service area designed to reduce chloride levels in the WRP discharges in order to comply with final WLAs for chloride. (See Exh. 19). Specifically, the District implemented an innovative automatic water softener public outreach and rebate program, in compliance with Senate Bill 475, to remove automatic water softeners, which contribute significant amounts of chloride to the WRP discharges. The total cost of the program for removal of automatic water softeners, not including the cost of the District's staff time, is approximately \$4.8 million.<sup>123</sup>

<sup>122</sup> Exhibit A, Test Claim, at pp. 59-63.

<sup>123</sup> Exhibit A, Test Claim, at pp. 13-16.

The District goes on to state that compliance with the conditional SSOs and WLAs will require implementation of “ultra-violet light disinfection at both WRPs;” construction of advanced treatment facilities such as microfiltration-reverse osmosis and brine disposal for desalination; salt management facilities such as extraction wells and water supply conveyance pipelines; supplemental water; and alternative water supplies for the protection of beneficial uses.<sup>124</sup> These activities and costs are described as the AWRM. The District’s “present estimate of the cost to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>125</sup>

The District estimates its costs to implement the AWRM program as follows:

AWRM Project Element	Estimated Capital Cost
Facilities Plan & Environmental Impact Report (EIR)	\$2.5 million
Advanced Treatment [MF & RO]	\$30.0 million
Brine Disposal (Deep Well Injection, DWI)	\$53 million
Ventura Salt Export Facilities	
(a) MF/RO Conveyance Pipeline from Valencia WRP	\$46.5 million
(b) GW Extraction Wells in Ventura County	\$5.5 million
(c) Blend Water Pipeline from Wells to River	\$52.3 million
Supplemental Water from local pumped groundwater	\$30.0 million
Supplemental Water conveyance	\$12.0 million
UV Disinfection Facilities at Saugus & Valencia WRP	\$16.5 million
Removal of Automatic Water Softeners	\$2.4 million
<b>Total Estimated Capital Cost</b>	<b>\$250.7 million<sup>126</sup></b>

Thus the District has alleged the above activities required by the 2008 Resolution, totaling approximately \$257 million in alleged increased costs. The analysis below addresses whether the activities alleged in the Implementation Tasks and the AWRM program constitute a new program or higher level of service.

1. Some of the Implementation Tasks alleged in the Resolution are not new.

Resolution R4-2008-012 constitutes a revision to the prior chloride TMDL for the Upper Santa Clara River, and therefore many of the implementation tasks included in the resolution may have already been completed, or, at minimum, were included in earlier versions of the TMDL that continued to be required when the 2008 Resolution was adopted and which have not been pled in this test claim, and are therefore not new, with respect to prior law. Activities that are not new, as compared with an earlier order or resolution in effect at the time the 2008 Resolution was adopted, do not constitute a new program or higher level of service and, thus, are not reimbursable in the context of the current test claim.<sup>127</sup>

<sup>124</sup> Exhibit A, Test Claim, at pp. 11-12.

<sup>125</sup> *Id.*, at p. 12.

<sup>126</sup> Exhibit A, Test Claim, at p. 16.

<sup>127</sup> *Lucia Mar Unified School District, supra*, (1988) 44 Cal.3d 830, at p. 835.

Implementation Tasks 4, 5, 6, 7, 8, and 9, quoted above from Resolution R4-2008-012, are found in nearly identical language in Resolution 04-004,<sup>128</sup> and again in Resolution R4-2006-016, both of which were approved by EPA prior to the adoption of the test claim Resolution.<sup>129,130</sup> Additionally, Implementation Tasks 4-9 are listed in the revised TMDL as having completion dates *prior to* the adoption and approval of the 2008 Resolution.<sup>131</sup> Moreover, these tasks appear to have indeed *been completed* prior to the adoption of Resolution R4-2008-012: the Resolution states that “[t]he Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c).” The Resolution further states that “[t]he completion of these TMDL special studies... has led to the development of an alternative TMDL implementation plan that addressed chloride impairment of surface waters and degradation of groundwater.”<sup>132</sup>

Based on the plain language of the Resolution itself, these Implementation Tasks were completed prior to the adoption of the Resolution. It appears that the tasks were repeated in the revised TMDL adopted December 11, 2008, but activities that were completed (and the costs thereby incurred) prior to July 1, 2009 are outside the period of eligibility for this test claim.<sup>133</sup> Moreover, activities that were required by a prior version of the TMDL are not new. Therefore, all costs and activities alleged for Implementation Tasks 4, 5, 6, 7, 8, and 9 do not result in a state-mandated new program or higher level of service and are denied.

Implementation Task 17a, “Implementation of Compliance Measures, Complete Environmental Impact Report...” is found in Resolution R4-2006-016.<sup>134,135</sup> The claimant alleges \$613,530 for “Facilities Plan & EIR – Task 17” and \$774,890 for “Consultants (TMDL Task 17)” incurred in fiscal year 2009-2010. However, the activities of implementing compliance measures and completing an EIR are not *new*, with respect to prior law, and the resolution which first required these activities was not pled in this test claim. In fact, claimant was required to prepare the draft EIR by May 4, 2010 under prior law and an administrative civil liability complaint was brought

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<sup>128</sup> See Exhibit B, LA Regional Board Comments, at p. 537 and following.

<sup>129</sup> Exhibit B, LA Regional Board Comments, at pp. 564-565.

<sup>130</sup> See Exhibit X, SCVSD Draft EIR, at p. 8 [stating that Resolution 04-004 was “in effect May 4, 2005,” and Resolution R4-2006-016 was “in effect June 12, 2008.”].

<sup>131</sup> E.g., Task 4: Convening a technical advisory committee to conduct literature review and develop methodology for assessment; Completion Date 05/04/2006; Task 5: Groundwater/Surface Water Interaction Model; Completion Date 11/20/2007.

<sup>132</sup> Exhibit A, Test Claim, at p. 36.

<sup>133</sup> Government Code section 17557(e) [“A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” This test claim was submitted on March 30, 2011, establishing eligibility for reimbursement beginning July 1, 2009].

<sup>134</sup> Exhibit B, LA Regional Board Comments, at p. 566.

<sup>135</sup> Exhibit X, SCVSD Draft EIR at p. 8 [stating that Resolution R4-2006-016 was “in effect” on June 12, 2008.].

by the Regional Board against the District “for the failure to complete Wastewater Facilities Plans and Programmatic Environmental Impact Reports by the required due date in 2011.”<sup>136</sup>

Based on the foregoing, the Commission finds that the Implementation Tasks found in the test claim Resolution, alleged to impose costs of approximately \$6.6 million, are not new requirements, when compared with prior law, and therefore cannot impose reimbursable costs mandated by the state.

Finally, the default TMDL, including WLAs of 100 mg/L for the Saugus and Valencia WRPs, which takes effect “if the District cannot comply with the AWRM program,” is not a new requirement. The Regional Board adopted a TMDL for Reaches 5 and 6 of the Santa Clara River in 2002, which “required the Districts to reduce the chloride levels in the Plants’ discharge.”<sup>137</sup> That TMDL was revised in 2004 and 2006, but the numerical limits were not altered. The TMDL in effect prior to the 2008 Resolution “has a numeric target of 100 mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use.”<sup>138</sup> In addition, the TMDL includes “waste load allocations (WLAs) [of] 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP.”<sup>139</sup> The numerical limits, which the parties acknowledge will control if the AWRM program is not fully and continuously implemented, were adopted in 2002, and approved by U.S. EPA in April 2005, and have not changed. The default WLAs are therefore not new, irrespective of whatever costs might be incurred to implement them.

In comments submitted in response to the draft staff analysis, the District argues that the above analysis “completely ignores the fact that the 2008 TMDL is the result of the final appeal of the original 2002 approval.” The District argues that the “entire TMDL process began in 2002 with the initial adoption of the TMDL, and was repeatedly administratively appealed and negotiated over six years until the District had exhausted all of its administrative remedies and was forced to accept the 2008 order in the face of the threat of crippling fines.” The District further argues that “[t]o deny the Test Claim on the grounds that the state mandate is not “new” would be a Catch-22, since any Test Claim during the appeals process would have been unripe.” The District concludes that “because the 2002, 2005, and 2006 approvals are part and parcel of the 2008 TMDL, they were “pled” in this Test Claim.” Therefore, the District argues that “[t]he proper measure of whether the TMDL is a new or higher level of service is to compare the TMDL’s requirements with the existing or pre-TMDL requirements.”

This argument does not change the above analysis. As discussed above, a test claim must 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.”<sup>140</sup> In addition, section 17553 and the regulations require that a claimant identify “the specific sections of statutes or executive orders and the effective date and register number of regulations alleged

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<sup>136</sup> Exhibit X, LA Regional Board, Enforcement News, November 26, 2012.

<sup>137</sup> Exhibit A, Test Claim, at p. 175.

<sup>138</sup> Exhibit A, Test Claim, at p. 191 [Attachment A to Resolution R 02-018].

<sup>139</sup> *Id.*, at p. 192.

<sup>140</sup> Government Code 17551(c) (Stats. 2007, ch. 329 (AB 1222)).

to contain a mandate,” and include a “a detailed description of new activities and costs that arise from the mandate.”

Here, the District argues that the prior Basin Plan amendments are part and parcel of the 2008 Resolution, and were therefore effectively “pled.” But the test claim form cites only Resolution R4-2008-012. Moreover, even if the prior Resolutions were “pled” in this test claim as imposing state-mandated activities, the activities described in Implementation Tasks 4, 5, 6, 7, 8, and 9 would be well outside the statute of limitations described in section 17551, because those activities were already completed at the time the 2008 Resolution was adopted, and thus costs for those activities would necessarily have been “first incurred” prior to the adoption of the 2008 Resolution.<sup>141</sup>

In addition, the District is for the first time arguing that “the 2008 TMDL is the result of the final appeal of the original 2002 approval;”<sup>142</sup> in essence arguing that the District was not mandated to perform any of the activities described in the 2002, 2003, 2004, or 2006 orders until the “final appeal” was exhausted in the 2008 Resolution. The record does not support this interpretation: although Resolution 2002-018 was appealed to the SWRCB, and remanded to the District, the Regional Board on remand adopted Resolution 2003-008, amending Resolution 2002-018, which was ultimately approved by EPA on April 28, 2005, thus ending the administrative appeals process for the “original” TMDL, and giving its provisions the force of law.

Accordingly, the District completed the studies required by the “original” TMDL, and those activities are no longer “new” with respect to prior law. Finally, the “proper measure of whether the TMDL is a new or higher level of service” is not, as the District suggests, to compare Resolution 2008-012 to the “existing or pre-TMDL requirements.” Rather, the “proper measure” of a new program or higher level of service is, as with any other test claim, to compare the test claim statute or regulation with the law in effect immediately prior to the alleged mandate.<sup>143</sup> Here, the requirements of Implementation Tasks 4-9 and 17a, and the chloride WLAs of 100 mg/L were in force at the time the 2008 test claim Resolution was adopted.

Based on the foregoing, Implementation Tasks 4, 5, 6, 7, 8, 9, and 17a are not new, with respect to prior law. In addition, the waste load allocations are not new, with respect to prior law. Therefore the Commission finds that none of these provisions constitutes a state-mandated new program or higher level of service.

2. Accelerating the implementation period of the final waste load allocations under Implementation Task 20 is not a new program or higher level of service resulting in increased costs mandated by the state.

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<sup>141</sup> See Exhibit A, Test Claim, at pp. 34-36 [Resolution R4-2008-012, paragraphs 10; 13-15].

<sup>142</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 4.

<sup>143</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [“Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, *the program was new insofar as plaintiffs are concerned*, since at the time section 59300 became effective they were not required to contribute to the education of students from their districts at such schools.”] (emphasis added).

Implementation Task 20 shortens the applicable period of the interim WLAs, thus accelerating the implementation of the final WLAs for the Saugus and Valencia WRPs, from 11 years to 10 years, commencing with the effective date of the 2002 TMDL.<sup>144</sup> The interim WLAs are designed to accommodate the time needed for the WRPs to implement desalination and other chloride reduction improvements. For the Saugus WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. For the Valencia WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L.<sup>145</sup> These interim WLAs were originally intended to apply for two and one-half years, pursuant to the 2002 TMDL adopted by the Regional Board. That period was expanded to 13 years after appeal and remand from the SWRCB, and the revised schedule was approved by the SWRCB, OAL, and the Administrator of the U.S. EPA.<sup>146</sup> Resolution R4-2006-016 shortened the interim WLA period by two years, as follows:

The interim effluent limits for chloride shall remain in effect for *no more than 11 years after the effective date of the TMDL*. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the [District].<sup>147</sup>

Resolution R4-2008-012 shortened the implementation schedule again, providing that the interim WLAs “shall remain in effect for no more than 10 years after the effective date of the TMDL.”<sup>148</sup>

Based on applicable case law there is no new program inherent in shortening the time frame for the interim WLAs. Pursuant to the test claim Resolution, the requirements of the interim WLAs remain the same, only the schedule is accelerated, and the final WLAs attach one year sooner. It may be argued that it costs more to implement the final WLAs one year sooner, but this change does not of itself constitute a new program or higher level of service.<sup>149</sup>

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<sup>144</sup> The 2002 Resolution was approved by U.S. EPA, after appeal, remand, and revision, on April 28, 2005. (See Exhibit A, Test Claim, at p. 45 [Attachment B to Resolution R4-2008-012].)

<sup>145</sup> Exhibit B, LA Regional Board Comments, at p. 543 [Resolution R4-04-004].

<sup>146</sup> Exhibit B, LA Regional Board Comments, at pp. 533 [Resolution R4-03-008]; 605 [Resolution R4-2008-012].

<sup>147</sup> Exhibit A, Test Claim, at p. 228; Exhibit B, LA Regional Board Comments, at p. 566 [emphasis added].

<sup>148</sup> Exhibit B, LA Regional Board Comments, at pp. 623-624.

<sup>149</sup> In comments submitted on the draft staff analysis, the District argues that the cases cited herein are distinguishable, and that no case “addresses the issue of accelerated timetables for the completion of a project.” While true that no case directly addresses the issue of an accelerated project, two of the three cited cases also ultimately conclude that the local government claimant has experienced a mandate, based on the facts of those cases. More importantly, however, the cases cited show that costs alone do not constitute a reimbursable mandate, unless those costs are

The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*”<sup>150</sup> The Supreme Court has also spoken on the requirement of a new program in *Lucia Mar Unified School District, supra*, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.”<sup>151</sup> Accordingly, in *City of San Jose v. State of California*,<sup>152</sup> the court held that “withdrawal of funds to reimburse [for a program] was not a ‘new program’ under section 6,”<sup>153</sup> and that “there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>154</sup> Finally, not only is an increase in costs not tantamount to a higher level of service, there is no evidence in the record of the incremental cost increase which might be alleged based on accelerating the implementation of the final WLAs by one year.

Based on the foregoing, the Commission finds that Implementation Task 20 does not impose any new state mandated activities and does not result in a new program or higher level of service.

3. The Alternative Water Resources Management program is not a new program or higher level of service.

The California Supreme Court, in *County of Los Angeles I*,<sup>155</sup> addressed the phrase “new program or higher level of service” as follows:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning... We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>156</sup>

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shifted *from* the state *to* the local entity. (Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 5.)

<sup>150</sup> *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, at p. 173 [citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 54-56] [emphasis added].

<sup>151</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [emphasis added].

<sup>152</sup> (1996) 45 Cal.App.4th 1802, at pp. 1811-1813.

<sup>153</sup> *City of San Jose, supra*, 45 Cal.App.4th at p. 1817.

<sup>154</sup> 45 Cal.App.4th at p. 1813 [citing *County of Los Angeles v. Commission on State Mandates, supra* (1995) 32 Cal.App.4th 805, at p. 817].

<sup>155</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, at p. 56.

<sup>156</sup> *Ibid.*

Thus the Supreme Court articulated a multi-faceted test for “new program or higher level of service:” reimbursement requires (1) a new task or activity; (2) which constitutes an increase in service as compared to prior law; (3) and which either provides a service to the public, or imposes requirements uniquely upon government, rather than upon all persons and entities equally.

The Regional Board has argued that the Resolution cannot impose a new program or higher level of service because water quality objectives and TMDLs apply to a water body as a whole, and all dischargers are subject to them, “both public agencies and private industry alike.” The Commission need not address this argument,<sup>157</sup> since the AWRM program is an optional alternative to complying with the more stringent TMDL imposed by prior law, which claimant may choose to reject. Moreover, the requirements of the AWRM provide a lower level of service when compared to the law in effect immediately prior to the adoption of R4-2008-012. Therefore, based on the analysis below, the Commission finds that the AWRM does not impose a state mandated new program or higher level of service.

The Regional Board argues that Resolution R4-2008-12 cannot impose a new program or higher level of service because it “amended the Basin Plan to, among other things, adopt site-specific objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara River...”<sup>158</sup> The Regional Board argues: “thus, if anything, the 2008 Resolution imposes a *lower level of service* in order to make it less expensive for the Claimant to implement” the TMDL.<sup>159</sup> The Commission agrees.

The first water quality objectives for the Santa Clara River were established in 1975, in which chloride objectives were set at 90 mg/L for Reach 5 and 80 mg/L for Reach 6.<sup>160</sup> In 1978, the Regional Board modified the chloride objectives to 100 mg/L for both Reaches 5 and 6. In 2002, the 100 mg/L objective was incorporated into a TMDL, pursuant to the impairment listing under

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<sup>157</sup> In comments submitted on the draft staff analysis, the Regional Board entreats the Commission to consider this argument anyway: “The Board... respectfully requests that the Commission address this argument in the context of the Resolution as a whole and determine that the Resolution does not impose requirements unique to the government.” However, the Second District Court of Appeal has previously called this theory into question, when ruling on the constitutionality of the State Water Resources Control Board’s (and the Regional Boards’ by extension) categorical exemption from the definition of a reimbursable executive order, under prior section 17516. The court stated “the applicability of permits to public and private discharges does not inform us about whether *a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate* necessitating subvention under article XIII B, section 6. (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, at p. 919.) In any event, the Commission need not address this issue because the AWRM program is voluntary, and constitutes a lower level of service than that required under prior law.

<sup>158</sup> Exhibit B, LA Regional Board Comments, at p. 2 [emphasis in original].

<sup>159</sup> Exhibit B, LA Regional Board Comments, at p. 26 [emphasis in original].

<sup>160</sup> Exhibit A, Test Claim, at p. 7; Exhibit B, LA Regional Board Comments, at p. 9.

section 303(d) of the Clean Water Act of certain reaches of the Santa Clara River, and the threat to salt-sensitive agriculture uses both within Reaches 5 and 6 and downstream.<sup>161</sup> Aside from variances and temporary relaxation of the objectives due to drought conditions in the 1990s, the 100 mg/L objective has remained the underlying standard from 1978 to the present.<sup>162</sup> Resolution R4-2008-012 plainly states that the TMDL then in effect is being amended, conditionally, to include the elements of the AWRM.<sup>163</sup> Therefore, the underlying water quality objectives and TMDL in effect are outside the subvention requirement, because any activities or requirements to meet the 100 mg/L objectives, or the TMDL, are not new, and are not pled in this test claim.

Both the District and the Regional Board agree that the AWRM contains “relaxed” requirements, as compared with the prior water quality objectives. The District describes the Resolution as follows:

The December 11, 2008 amendment to the Basin Plan also modified the chloride requirements. This amendment included the enactment of *relaxed site specific objectives (“SSOs”)* for chloride in the Santa Clara River conditioned upon the completion of activities set forth in the revised TMDL that contained new final WLAs and a detailed implementation plan.<sup>164</sup>

The Regional Board states:

In addition, the 2008 Resolution reduces the compliance costs the Claimant would otherwise incur. As detailed above, the 2008 Resolution was specifically adopted to incorporate relaxed site-specific objectives into the Basin Plan in order to implement the Claimant’s proposed AWRM program.<sup>165</sup>

In addition, “implementation actions to attain [the prior TMDL] would require advanced treatment – that is, reverse osmosis – of the full effluent from the Saugus *and* Valencia plants with discharge into the ocean through a 43-mile brine line.”<sup>166</sup> Under the AWRM, reverse osmosis desalination is only required at the Valencia WRP, and the waste is permitted to be disposed of through deep well injection.<sup>167</sup> The District estimates that implementing the advanced treatment upgrades at only one of the two facilities, along with other tasks, will cost only approximately \$250 million, as opposed to \$500 million under the prior TMDL.<sup>168</sup>

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<sup>161</sup> Exhibit A, Test Claim, at pp. 9-10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

<sup>162</sup> Exhibit A, Test Claim, at pp. 7-11; Exhibit B, LA Regional Board Comments, at pp. 9-11.

<sup>163</sup> Exhibit A, Test Claim, at p. 36. See also, Exhibit B, LA Regional Board Comments, at p. 705 [transcript of December 11, 2008 hearing].

<sup>164</sup> Exhibit A, Test Claim, at p. 11 [emphasis added].

<sup>165</sup> Exhibit B, LA Regional Board Comments, at p. 29.

<sup>166</sup> Exhibit B, LA Regional Board Comments, at p. 719 [transcript of December 11, 2008 meeting] [emphasis added]. See also, Exhibit A, Test Claim, at p. 10 [TMDL estimated to cost \$500 million].

<sup>167</sup> Exhibit A, Test Claim, at p. 12; Exhibit B, LA Regional Board Comments, at p. 778-779.

<sup>168</sup> Exhibit A, Test Claim, at pp. 10; 12.

However, in comments submitted on the draft staff analysis, the District argues that “both the AWRM and the compliance plan adopted by the District on October 28, 2013 are designed to comply with Regional Board requirements that are far more stringent than the pre-TMDL standard,” and that, as argued above, “the comparison must be between the pre-TMDL conditions and the present TMDL conditions – not comparisons between the various TMDL standards adopted during the appeals process spanning from 2002 to 2008.”<sup>169</sup> As explained above, there is no support in mandates law for this position, and the requirements of the test claim Resolution are, as in all mandates cases, evaluated with reference to the law in effect immediately prior to the alleged test claim statute or executive order.<sup>170</sup>

There is nothing in the AWRM that imposes a higher level of service on this claimant. Resolution R4-2008-012 calls for the implementation of less-stringent requirements than under prior law, which the District has acknowledged will be less-expensive to implement. In addition, those requirements are conditional, and the default requirements, should the AWRM not continue to be fully implemented, are not new.

Based on the foregoing, the Commission finds that the AWRM program is not a new program or higher level of service, and the costs and activities alleged thereunder are denied.

**C. Even if the Resolution Constitutes a State-Mandated New Program or Higher Level of Service, it Would not Impose Costs Mandated by the State Under Section 17556(d) Because the Claimant Has Sufficient Fee Authority, as a Sanitation District providing Sewer Services, to Cover the Costs of the Program.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds that “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556, subdivision (d), in *County of Fresno v. State of California*.<sup>171</sup> The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B

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<sup>169</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 5.

<sup>170</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>171</sup> *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>172</sup>

Accordingly, in *Connell v. Superior Court of Sacramento County*,<sup>173</sup> the Santa Margarita Water District, among others, was denied reimbursement on the basis of its authority to impose fees on water users. The water districts submitted evidence “that rates necessary to cover the increased costs [of pollution control regulations] would render the reclaimed water unmarketable and would encourage users to switch to potable water.”<sup>174</sup> The court concluded that “[t]he question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs.” Water Code section 35470 authorized the levy of fees to “correspond to the cost and value of the service,” and “to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”<sup>175</sup> The court held that the Districts had not demonstrated “that anything in Water Code section 35470 limits the authority of the Districts to levy fees ‘sufficient’ to cover their costs,” and that therefore “the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry.”<sup>176</sup>

Likewise, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”<sup>177</sup> The court further noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>178</sup>

Here, Health and Safety Code section 5471 permits a sanitation district, “by ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees tolls, rates, rentals, or territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.”<sup>179</sup> This section provides “authority,” within the meaning of section 17556(d), based on the plain language of both Health and Safety Code section 5471 and Government Code section 17556.

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<sup>172</sup> *Id.*, at p. 487.

<sup>173</sup> (Cal. Ct. App. 3d Dist. 1997) 59 Cal.App.4th 382

<sup>174</sup> *Id.*, at p. 399.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Connell, supra*, (1997) 59 Cal.App.4th at p. 401.

<sup>177</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

<sup>178</sup> *Ibid.*

<sup>179</sup> Health and Safety Code section 5471(a) (Stats. 2007, ch. 27 (SB 444)).

Proposition 218, adopted by the voters in 1996, also known as the “Right to Vote on Taxes Act,” declared its purpose to protect taxpayers “by limiting the methods by which local governments exact revenue from taxpayers without their consent.” Proposition 218 added articles XIII C and XIII D to the Constitution;<sup>180</sup> article XIII D, section 6 lays out the procedures and requirements for “new or existing increased fees and charges:”

(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. *If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the

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<sup>180</sup> Exhibit X, Text of Proposition 218.

service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. *Except for fees or charges for sewer, water, and refuse collection services*, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision...

Section 6 of article XIII D thus provides that an agency seeking to impose or increase fees must identify the parcels and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to “consider all protests.” Written protests by a majority of owners of the affected parcels are sufficient to defeat a fee increase. In addition, the section provides that new or increased fees are required to “not exceed the funds required to provide the property related service;” “not be used for any purpose other than that for which the fee or charge was imposed;” “not exceed the proportional cost of the service attributable to the parcel;” and be “actually used by, or immediately available to, the owner of the property in question.” The section provides specifically that new fees or charges may not be imposed for general services such as police and fire protection. Finally, voter approval is required “[e]xcept for fees or charges for sewer, water, and refuse collection services.”<sup>181</sup>

The District asserts that the fee authority case law discussed above is no longer on point “because the most significant cases predate the passage of [Proposition 218].” The District contends that “[t]his potential conflict is significant where a local agency is unable to obtain the requisite approval to implement a proposed fee increase.” The District asserts that it “attempted to implement the Proposition 218 process, but the elected public officials could not support the proposed rate increase in the face of fierce public opposition.” The District states that “[i]n 2010, the District’s board declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the District’s ratepayers.”<sup>182</sup>

In addition, the District argues in comments on the draft staff analysis that it “has no legal authority to obtain reimbursement from the parties responsible for the majority of the chloride concentration, nor does it have the legal authority to obtain reimbursement from the beneficiaries of the treatment.” The District also argues that *Clovis Unified, supra*, “is distinguishable from

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<sup>181</sup> California Constitution, article XIII D, section 6 (adopted November 5, 1996).

<sup>182</sup> Exhibit A, Test Claim, at p. 26.

this Test Claim,” in that the community college districts were “authorized under the Education Code to collect a specified sum of money from each student for health fees,” while the District, “in contrast, has no authority to raise sewer fees by a sum certain.” In addition, the District argues that it is “subject to Prop. 218 protests and referenda on the rates necessary to support the TMDL facilities,” while the community colleges in *Clovis Unified* were “not subject to Prop. 218 or referenda on the health fee because it was directly established by law.”<sup>183</sup>

However, based on the plain language of article XIII D, section 6, above, voter approval is not required for increases to water and sewer rates, and the absence of a statute providing for a specific dollar-amount fee increase is not relevant to the authority of sewer districts to raise fees.<sup>184</sup> All remaining limitations of article XIII D, must be satisfied (e.g., parcels must be identified, and amounts proposed must be calculated; fees shall not exceed the funds required to provide service; revenues may not be used for any other purpose; amount of a fee must be proportional to the cost of the service attributable to a parcel; a public hearing must be held and *if written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge*), but the parties’ comments only identify “written protests” as a limitation at issue here, and state that “elected public officials could not support the proposed rate increase.”

The Regional Board argues that “assuming that Proposition 218 does apply to Claimant’s proposals for rate increases... the number of written protests necessary to preclude the Board of Directors from passing rate increases under Proposition 218 was noticeably lacking.” Section 6(a)(2), states that “[i]f *written protests* against the proposed fee or charge are *presented by a majority of owners of the identified parcels*, the agency shall not impose the fee or charge.” The Regional Board argues that there are nearly 69,000 parcels connected to the District’s sewerage system, and therefore “at least 34,449 written protests” would be a majority of the owners required to defeat a rate increase. At the May 26, 2009 and July 27, 2010 hearings the District received “203 written protests and 7, 732 written protests, respectively.”<sup>185</sup>

The District does not dispute the number of written protests needed, or the number received (the Regional Board’s mathematical reasoning presumes that each of the 69,000 parcels represents an individual voting property owner, but the District fails to argue the point); rather the District argues that the District’s Board “quite reasonably believed that this large rate increase would be rejected if challenged by initiative.”<sup>186</sup> Section 3 of Proposition 218 provides that the initiative power to overturn a tax, fee, or assessment “shall not be prohibited or otherwise limited,” and the District maintains that an initiative to overturn the fee increase would qualify for the ballot with approximately 6,500 votes, based on the estimated number of voters in the last gubernatorial election who would be affected by the increase.<sup>187</sup> Therefore, the District concludes that the

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<sup>183</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 6.

<sup>184</sup> California Constitution, article XIII D, section 6(c) (adopted November 5, 1996).

<sup>185</sup> Exhibit B, LA Regional Board Comments, at p. 20 [citing “Letter from Stephen R. Maguin... to Council members” regarding responses to comments made during the public hearing on proposed rate increases].

<sup>186</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>187</sup> Exhibit D, Rebuttal Comments, at p. 11, Fn. 8. See also article XIII C, section 3.

7,732 written protests “exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase.”<sup>188</sup>

But written protests are not tantamount to an initiative petition, and an initiative petition is not a successful referendum. The District acknowledges that its own board “declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum.”<sup>189</sup> The Commission agrees with the Regional Board, in that “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>190</sup>

The District argues that the Commission’s decision on *Discharge of Stormwater Runoff* (07-TC-09) reflects the tension between Proposition 218 and the precedent of *Connell*,<sup>191</sup> discussed above, because the Commission found in that earlier test claim decision that Proposition 218 limited the authority of the local government to raise the necessary fees. *Connell* did not address Proposition 218, because the water districts did not allege that their authority to raise fees was impacted by Proposition 218.<sup>192</sup> The water districts in *Connell* instead urged an interpretation of “authority” under section 17556(d) that would necessarily include economic feasibility as a test of “sufficiency,” and the court rejected that interpretation. Moreover, the Commission’s decision in *Discharge of Stormwater Runoff* concluded that Proposition 218 was a barrier to raising assessments or fees only because stormwater management charges were not “water” or “sewer” services provided directly to users, and thus exempt from the voter approval requirement of Proposition 218. The Commission concluded that without the exemption from voter approval under section 6(c), “it is possible that the local agency’s voters or property owners may never adopt the proposed fee or assessment, but the local agency would still be required to comply with the state mandate.”<sup>193</sup>

Therefore the Commission’s earlier decision, though it would not in any event be precedential, is distinguishable on the very same ground that renders *Connell* significantly poignant. The District cannot rely on the unwillingness of voters to raise fees, because the fees in question fall, based on the plain language of the Constitution, outside voter-approval requirement of article XIII D, section 6(c). The District would have the Commission recognize “political realities” as a test of the District’s “authority” under Health and Safety Code section 5471 to raise fees, but here, as in *Connell*, “the plain language of the statute defeats the Districts’ position.” The District asserts that “political realities... [made] it *impossible*” for the District to raise fees, but

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<sup>188</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>189</sup> Exhibit A, Test Claim, at p. 26.

<sup>190</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>191</sup> (1997) 59 Cal.App.4th 382.

<sup>192</sup> *Id.*, at p. 402.

<sup>193</sup> *Discharge of Stormwater Runoff* (07-TC-09) at p. 106 [citing *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, at pp. 1358-1359 (concluding that city’s charges on developed parcels to fund stormwater management were property-related fees, but not covered by the exemption for water and sewer fees, and thus required voter approval)].

ultimately “the District’s board *declined to adopt the proposed rate increases...*”<sup>194</sup> In the same way that the court in *Connell* declined to find that an inability to market reclaimed water would undermine the “sufficiency” of the districts’ authority to raise fees, the Commission here declines to make a finding that political opposition undermines the authority of a sanitation district to raise fees.

Furthermore, the ground upon which the District seeks to distinguish *Clovis Unified*, that the District does not have statutory authority to raise rates by “a sum certain,” only serves to demonstrate why the Health Fee Elimination mandate was held to constitute a reimbursable new program offset by the authorized revenues, while this test claim Resolution does not impose costs mandated by the state under section 17556(d). The Health Fee Elimination mandate underlying *Clovis Unified* was approved for ongoing reimbursement in the test claim decision only *because* the fee authority of the community colleges was limited to a certain dollar amount, indexed to inflation, and that amount was held, as a matter of law, to be insufficient to cover the entire mandated cost of the program.<sup>195</sup> Had the community colleges held fee authority as broad as is provided to the District under Health and Safety Code section 5471, the result of the analysis under section 17556(d) in *Clovis Unified* would have been the same as discussed herein: where fee authority is sufficient to cover the costs of the mandated activities, there can be no reimbursable costs mandated by the state.

Based on the foregoing, the Commission finds that the District has not incurred increased costs mandated by the state, pursuant to section 17556(d).

## **V. Conclusion**

Based on the foregoing discussion and analysis, the Commission denies this test claim and concludes that Resolution No. R4-2008-012, adopted December 11, 2008, by the Los Angeles Regional Water Quality Control Board does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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<sup>194</sup> Exhibit A, Test Claim, at p. 26 [emphasis added].

<sup>195</sup> See Education Code section 76355 (Stats. 2005, ch. 320); Test Claim Decision, Health Fee Elimination (CSM-4206).

## **Glossary of Frequently Used Water Quality Related Terms and Acronyms:**

Alternative Water Resources Management program (AWRM)	An alternative to meeting the prior TMDL and WLA requirements of the former basin plan. The requirements for the AWRM were included in a MOU entered into by the stakeholders which was then included in the revised Upper Santa Clara River TMDL and SSOs by Resolution R4-2008-012.
California Antidegradation Policy	A 1968 State Board policy that precludes water quality degradation in the state unless specific conditions are satisfied.
Clean Water Act (CWA)	The primary federal law governing water pollution. The CWA was enacted in 1972, to restore and maintain the chemical, physical, and biological integrity of the nation's waters and includes a goal to eliminate the discharge of pollutants into the navigable waters by 1985.
Effluent	Wastewater - treated or untreated - that flows out of a treatment plant, sewer, or industrial outfall; generally refers to wastes discharged into surface waters.
Environmental Impact Report (EIR)	A detailed statement prepared in accordance with California Environmental Quality Act (CEQA) whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. (Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
Federal Antidegradation Policy	The CWA's antidegradation policy is found in section 303(d) (and further detailed in federal regulations). Its goals are to 1) ensure that no activity will lower water quality to support existing uses, and 2) to maintain and protect high quality waters.

Porter-Cologne Water Quality Control Act	California's Porter-Cologne Water Quality Control Act was enacted in 1969 to allocate and to protect the waters of California. Through it, the State Board and regional boards were established. Many of its provisions mirror those of the CWA which was modeled, in part, on Porter-Cologne.
Reclaimed Water	Treated effluent that is considered to be of appropriate quality for an intended reuse application.
Regional Water Quality Control Boards (RWQCBs or Regional Boards)	The nine RWQCBs develop and enforce water quality objectives and implementation plans to protect the State's waters, recognizing local differences in climate, topography, geology and hydrology.
Site Specific Objective (SSO)	Water Quality Objectives (WQOs) adjusted to reflect localized site specific conditions. Usually initiated by a discharger to allow discharge of pollutants at greater than background levels.
State Water Resources Control Board(SWRCB or State Board)	The state board charged with protecting the waters of California. The SWRCB has joint authority of water allocation and water quality protection. It also oversees and supports the work of the regional boards (RWQCBs).
Total Maximum Daily Load (TMDL)	A calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.
Waste Load Allocation (WLA)	The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution (e.g., permitted waste treatment facilities).
Water Quality Objectives (WQOs)	Define the level of water quality that shall be maintained in a water body or portion thereof.
Water Reclamation Plant (WRP)	A plant which treats sewage and produces reclaimed water.

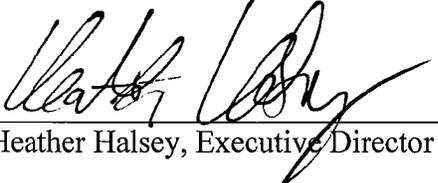
## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

**RE: Adopted Statement of Decision**

*Upper Santa Clara River Chloride Requirements*, 10-TC-09  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

On January 24, 2014, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

Dated: January 31, 2014

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Yolo 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 January 31, 2014, I served the:

**Adopted Statement of Decision**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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 January 31, 2014 at Sacramento, California.

  
\_\_\_\_\_  
Jason Hone  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

**COMMISSION ON STATE MANDATES****Mailing List**

**Last Updated:** 1/22/14

**Claim Number:** 10-TC-09

**Matter:** Upper Santa Clara River Chloride Requirements

**Claimant:** Santa Clarita Valley Sanitation District of Los Angeles

**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, § 1181.2.)

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## COMMISSION ON STATE MANDATES

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December 20, 2013

TO: ALL INTERESTED PERSONS  
FROM: Heather Halsey, Executive Director *H.H.*  
RE: Notice and Agenda

**On Friday, January 24, 2014, the Commission will conduct its next regular meeting and hearing. The hearing will be conducted at 10:00 a.m., at the State Capitol, Room 447, Sacramento, California.**

**Testimony at the Commission Hearings.** If you plan to address the Commission on an agenda item, please notify the Commission Office by noon, two days before the hearing. When calling or emailing, identify the item you want to testify on and the entity you represent. The Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda. If you plan to testify and would like Commission members to review any document other than those prepared by Commission staff, please bring 12 double-sided copies of the document or section of the document you would like the members to review.

**Agenda Materials.** All back-up material and supporting documentation for public meetings are available for public inspection on the Commission's website and at the Commission Office, 980 Ninth Street, Suite 300, Sacramento, California 95814; (916) 323-3562. In addition, a complete copy of the above-described materials will be available for public inspection at the meetings.

**Website.** Agenda items are available on the Commission's website at [www.csm.ca.gov](http://www.csm.ca.gov). After reaching the site's home page, click on "Current Hearing" on the left side of the page for the hearing agenda. Generally, the agenda and items will be uploaded two weeks before the meeting and may be accessed from the agenda. If an item is postponed prior to the meeting, notice will be posted on the agenda. Following the meeting, Commission actions will be posted on the Commission's website, and revised items will be posted upon completion.

The approved minutes of Commission meetings since January 2004 are on the website in PDF format. Transcripts of Commission meetings since July 2011 are attached to the minutes. To access these documents, click "Current Hearing" on the left side of the home page.

**Special Accommodations.** If you need any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Enclosures

**TO RECEIVE NOTICES AND AGENDAS FOR COMMISSION MEETINGS AND HEARINGS ELECTRONICALLY, SUBSCRIBE BY VISITING THE COMMISSION'S WEBSITE AT [WWW.CSM.CA.GOV](http://WWW.CSM.CA.GOV) AND CLICKING ON THE "AGENDA MAILING LIST" LINK ON THE RIGHT SIDE OF THE PAGE.**

AGENDA<sup>1</sup>  
Meeting of the Commission on State Mandates  
State Capitol  
Room 447  
Sacramento, California  
Friday, January 24, 2014  
**10:00 a.m.**

*Reminder: If you plan to testify and would like Commission members to review any document other than those prepared by Commission staff, please bring 12 double-sided copies of the document or section of the document you would like the members to review.*

I. CALL TO ORDER AND ROLL CALL

II. ELECTION OF OFFICERS (action)

Item 1 Staff Report

III. APPROVAL OF MINUTES (action)

Item 2 December 6, 2013

IV. PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA (info)

Please note that the Commission cannot take action on items not on the agenda. However, it can schedule issues raised by the public for consideration at future meetings.

V. PROPOSED CONSENT CALENDAR (action)

If there are no objections to any of the following action items designated by an asterisk (\*), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

VI. HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

A. APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181(c) (info/action)

Item 3 Appeal of Executive Director Decisions

*Note: This item will only be taken up if an appeal is filed and set for this hearing.*

B. TEST CLAIM

Item 4 *Public Guardianship Omnibus Conservatorship Reform, 07-TC-05*

Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923

Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363)

County of Los Angeles, Claimant

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<sup>1</sup> This public meeting notice is available on the Commission's website at [www.csm.ca.gov](http://www.csm.ca.gov).

- Item 5      *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03
- Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code;
- Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code;
- Statutes 2006, Chapter 886 (SB 1849), amending Sections 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code;
- Statutes 2007, Chapter 579 (SB 172), amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and
- California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008
- County of Los Angeles, Claimant
- Item 6      *Upper Santa Clara River Chloride Requirements*, 10-TC-09
- Los Angeles Regional Water Quality Control Board  
Resolution No. R4-2008-012, adopted December 11, 2008,  
approved by United States Environmental Protection Agency  
April 6, 2010.
- Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

C. MANDATE REDETERMINATION

- Item 7      *Local Recreational Areas: Background Screenings (01-TC-11)*, 12-MR-02
- Public Resources Code Section 5164
- Statutes 2001, Chapter 777
- As Alleged to be Modified by: Statutes 2010, Chapter 719 (SB 856)
- California Department of Finance, Requestor

D. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 8      [TENTATIVE] *Local Recreational Areas: Background Screenings*, 01-TC-11 (12-MR-02)
- Public Resources Code Section 5164
- Statutes 2001, Chapter 777
- As Modified by: Statutes 2010, Chapter 719 (SB 856)
- California Department of Finance, Requestor

- Item 9      *Accounting for Local Revenue Realignments*, 05-TC-01  
 Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15;  
 Revenue & Taxation Code Sections 97.68, 97.70, 97.71, 97.72, 97.73  
 Statutes 2003, Chapter 162; Statutes 2004, Chapter 211; Statutes 2004,  
 Chapter 610  
 County of Los Angeles, Claimant
- Item 10      *Crime Statistic Reports for Department of Justice*, 12-PGA-01 (02-TC-04  
 and 02-TC-11 and 07-TC-10)  
 Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3),  
 13014, 13023, and 13730(a)  
 Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB  
 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter  
 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000,  
 Chapter 626 (AB 715)  
 and  
 Penal Code Section 13023  
 Statutes 2004, Chapter 700 (SB 1234)  
*Crime Statistics Reports for the Department of Justice Amended*  
 State Controller's Office, Requestor

E. INCORRECT REDUCTION CLAIMS

- Item 11      Adoption of Statement of Decision for *Health Fee Elimination*, 05-4206-I-04  
 and 05-4206-I-08  
 Education Code Section 76355  
 Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.);  
 Statutes 1987, Chapter 1118  
 Fiscal Years 1999-2000, 2000-2001, 2001-2002 and 2002-2003  
 San Mateo Community College District and San Bernardino Community  
 College, Claimants

VII. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. STATEWIDE COST ESTIMATE

- Item 12\*      *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31  
 Education Code Sections 66010.2, 66010.7, 66721.5, 66731, 66732,  
 66736, 66738, 66740, 66742, 70902, 78015, and 78016  
 Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1991,  
 Chapter 1198; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187  
 California Code of Regulations, Title 5, Sections 53203, 53207, 55001,  
 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753,  
 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759,

55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106

Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18

Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Claimants

Item 13\* *Parental Involvement Programs*, 03-TC-16

Education Code Sections 11504, 49091.10, 51101, 51101.1

Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998, Chapter 1031; and Statutes 2002, Chapter 1037

San Jose Unified School District, Claimant

Item 14\* *Williams Case Implementation I, II, and III*, 05-TC-04, 07-TC-06, and 08-TC-01

Education Code Sections 14501, 33126(b), 35186, 41020, and 42127.6 as Added or Amended by

Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

San Diego County Office of Education, and Sweetwater Union High School District, Claimants

#### B. ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 15\* Proposed Rulemaking Calendar, 2014

#### VIII. HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

Item 16 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

*Note: This item will only be taken up if an application is filed.*

#### IX. REPORTS (info/action)

Item 17 Legislative Update (info)

Item 18 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Item 19 Executive Director: Mid-year Workload Update and Tentative Agenda Items for Next Meeting (info)

X. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604)  
[*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
2. *California School Board Association (CSBA) v. State of California et al.*  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition).  
California Supreme Court, Case No. S214855  
(Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153)  
[*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a).

RECONVENE IN PUBLIC SESSION

XI. REPORT FROM CLOSED EXECUTIVE SESSION

XII. PERSONNEL (action)

- Item 20 [TENTATIVE] Salary Adjustment and Revision of CEA Level: Attorney to the Commission/Chief Legal Counsel (CEA B), pursuant to Government Code Section 17529
- Item 21 [TENTATIVE] Salary Adjustment: Executive Director, pursuant to Government Code Section 17530

ADJOURNMENT

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Heather Halsey, Executive Director  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Email: [heather.halsey@csm.ca.gov](mailto:heather.halsey@csm.ca.gov)

For information regarding this agenda, please contact:

Kerry Ortman  
(916) 323-3562

## NEW FILINGS

November 7, 2013 through December 19, 2013

<b>Date Received</b>	<b>Claimant</b>	<b>Description</b>
10/1/13  Deemed complete 12/18/13	San Juan Unified School District	<b>Incorrect Reduction Claim:</b> <i>Notification of Truancy</i> , 13-904133-I-11 Education Code Sections 48260 and 48260.5 Statutes 1983, Chapter 498 Fiscal Years: 2006-2007, 2007-2008, 2008-2009, and 2009-2010
11/15/13  Deemed complete 12/18/13	Riverside Unified School District	<b>Incorrect Reduction Claim:</b> <i>Notification of Truancy</i> , 13-904133-I-12 Education Code Sections 48260 and 48260.5 Statutes 1983, Chapter 498 Fiscal Years: 2003-2004, 2004-2005, 2005-2006, and 2006-2007
11/15/13  Deemed complete 12/18/13	Riverside Unified School District	<b>Incorrect Reduction Claim:</b> <i>Notification of Truancy</i> , 13-904133-I-13 Education Code Sections 48260 and 48260.5 Statutes 1983, Chapter 498 Fiscal Years: 2007-2008, 2008-2009, and 2009-2010

**COMMISSION ON STATE MANDATES**

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January 9, 2014

Ms. Claire Hervey Collins  
Lewis Brisbois Bisgaard & Smith LLP  
221 N. Figueroa Street, Suite 1200  
Los Angeles, CA 90012

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

**Re: Final Staff Analysis and Proposed Statement of Decision and Notice of Hearing**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

Dear Ms. Hervey Collins:

The final staff analysis and proposed statement of decision for the above-named matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, January 24, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM 6**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

**AND**

**PROPOSED STATEMENT OF DECISION**

Los Angeles Regional Water Quality Control Board  
Resolution No. R4-2008-012, adopted December 11, 2008,  
approved by United States Environmental Protection Agency  
April 6, 2010.

*Upper Santa Clara River Chloride Requirements*

10-TC-09

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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Attached is the proposed statement of decision for this matter. This proposed statement of decision also functions as the final staff analysis, as required by section 1183.07 of the Commission's regulations.

**EXECUTIVE SUMMARY**

**Overview**

This test claim alleges a reimbursable state mandate resulting from Resolution R4-2008-012, adopted December 11, 2008 by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). To assist the reader, there is a glossary of frequently used water quality related terms and acronyms at the end of this document.

The Resolution pled in this test claim amends the prior Basin Plan for the Santa Clara River, which imposed a maximum pollutant concentration for chloride, or "total maximum daily load" (TMDL) of 100 mg/L, and pollutant discharge limitations for chloride, or "waste load allocations" (WLAs), of 100 mg/L for the Santa Clarita Valley Sanitation District's (District) two Water Reclamation Plants (WRPs) that discharge into the river. The test claim Resolution includes a revised, less stringent TMDL and WLAs, providing greater flexibility to the District with respect to its chloride discharges into the river. The Plan, as amended by the test claim Resolution, also significantly reduced the costs for the District to comply with the TMDL and WLAs, as compared to the prior TMDL. The TMDL, as revised by the test claim Resolution, calls for the implementation of an Alternative Water Resources Management program (AWRM), in order to meet conditional "site-specific objectives" (SSOs) for water quality in Reaches 4B, 5, and 6 of the Santa Clara River, and conditional WLAs of 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B for the District's two WRPs.

The District alleges that meeting the SSOs and WLAs contained in the Resolution will require significant advanced treatment and other technological upgrades, and a number of other water supply control measures to control chloride concentrations in the Santa Clara River, especially

during periods of higher concentration in the water supply and groundwater (i.e., during periods of lower precipitation). The District alleges that these upgrades and control measures result in new costs of approximately \$250.7 million.

The test claim Resolution R4-2008-012 also includes a number of Implementation Tasks, consisting primarily of requirements to perform technical and scientific studies of the surface and groundwater, and evaluation of appropriate chloride thresholds, which the District alleges impose costs of approximately \$6.6 million.

Staff recommends the Commission deny this test claim on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program does not impose a new program or higher level of service, but provides for a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

### Background

The federal Clean Water Act (CWA) states that it is the policy of Congress “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution...” The CWA employs two primary mechanisms for the control and prevention of water pollution: identification and standard-setting for bodies of water, and identification and regulation of dischargers of pollutants. Section 1313 of the CWA provides for standard-setting for both intra- and inter-state bodies of water, “such as to protect the public health or welfare, enhance the quality of water,” and take into consideration the waters’ “use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.” Section 1313(d) provides that each state shall identify those waters for which the applicable water quality standards are not being met, and establish “the total maximum daily load [TMDL]... at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” A TMDL is defined as the sum of the amount of a pollutant allocated to all point sources (*i.e.*, the sum of all WLAs relative to the water body), plus the amount of the pollutant allocated for nonpoint sources and natural background; a TMDL should be set for each pollutant identified by the [EPA] Administrator, and constitutes, essentially, a plan or objective setting the amount of a pollutant that will attain the water quality standard necessary for the protection of beneficial uses.<sup>1</sup> The CWA also expressly provides that effluent limitations for a point source discharger may not be renewed or revised to contain limitations less stringent than the previous discharge permit.

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<sup>1</sup> Code of Federal Regulations, title 40, section 130.2.

## Regulatory History

The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates in the San Gabriel Mountains in Los Angeles County, runs through Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Reaches 5 and 6 of the Santa Clara River are located upstream of the Blue Cut gauging station near the Los Angeles/Ventura County line, between the cities of Fillmore (in Ventura County) and Santa Clarita in Los Angeles County; Reach 4B is in Ventura County.

The Regional Board first established water quality objectives for chloride in the Santa Clara River in 1975, and in 1978 the Board set the water quality objectives for chloride at 100 mg/L for both reaches 5 and 6. In 1998 the Santa Clara River was listed for the first time as an impaired water body under section 1313(d) of the federal Clean Water Act: Reaches 5 and 6 of the Upper Santa Clara River did not meet the 100 mg/L water quality objective, and “[b]eneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired.” The Valencia and Saugus Water Reclamation Plants, which are owned and operated by claimant, Santa Clarita Valley Sanitation District, are responsible for approximately 70 percent of the chloride loading to the River. The Valencia and Saugus WRPs were not designed to remove chloride from waste water, and in fact have been contributing to elevated chloride concentrations due to the use of chlorine disinfection.

In October of 2002, the Regional Board adopted a TMDL for chloride in the Santa Clara River, as required under section 1313(d) of the CWA for any impaired waters, which included WLAs of 100 mg/L chloride for the two WRPs that discharge into the River. The TMDL was to be fully implemented within two and one half years. The District appealed the decision to the State Water Resources Control Board (SWRCB), which remanded the TMDL to the Regional Board in 2003, for reconsideration of various items including: (1) an extension of the interim effluent limits for chloride, and (2) re-evaluation of the water quality objectives, including whether an alternate water supply to agricultural users would be appropriate, the beneficial uses to be protected, the quality of the imported water supply, and the impacts of drought periods. In response, the Regional Board adopted Resolution No. 03-008 which included interim WLAs and an implementation plan for the chloride TMDL, extending the time for full implementation of the limits to thirteen years and calling for various studies.<sup>2</sup>

The TMDL was amended again by Resolution No. 04-004, approved by the EPA on April 28, 2005, which added a number of special studies and analyses “to characterize the sources, fate, transport, and specific impacts of chloride in the Upper Santa Clara River, including impacts to downstream reaches and underlying groundwater basins.”<sup>3</sup> The TMDL was amended again by Resolution 2006-016, approved by EPA June 12, 2008, which shortened by two years the time for completing the special studies and implementing the control measures required by the TMDL. In 2008, the Regional Board adopted the test claim Resolution, which shortened the time for full implementation by an additional year, and relaxed the chloride requirements as described in the next paragraph.

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<sup>2</sup> See Exhibit B, LA Regional Board Comments, at p. 523-524 [Attachment 58].

<sup>3</sup> Exhibit B, LA Regional Board Comments, at p. 13.

### Alleged Executive Order, Resolution No. R4-2008-012

Between 2005 and 2008 several special studies were conducted, as required under the TMDL adopted in Resolution No. 04-004. “The completion of these TMDL special studies...has led to the development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater.”<sup>4</sup> The alternative plan, which was adopted by the Regional Board in a basin plan amendment effected by Resolution No. R4-2008-012 (the alleged executive order in this test claim), is known as the Alternative Water Resources Management program (AWRM); the AWRM includes:

...the development of site-specific objectives [SSOs] for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP’s effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with[in] the Santa Clarita Valley.<sup>5</sup>

The new SSOs adopted for chloride concentration are 150 mg/L in Reaches 5 and 6, and 117 mg/L for Reach 4B, which is adjusted to 130 mg/L when the supply water has chloride levels above 80 mg/L. The new conditional WLAs for the Valencia and Saugus facilities are also 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B. Resolution No. R4-2008-012 provides for the construction and implementation of advanced treatment (reverse osmosis desalination) at the Valencia facility, as well as a number of water supply control measures designed to attain the site specific objectives as a condition of the relaxed TMDL and WLAs. The newly relaxed requirements are conditioned upon “the Claimant’s full and ongoing implementation of the AWRM program.”<sup>6</sup> If claimant fails to implement or chooses not to implement AWRM program, the TMDL reverts to the prior TMDL and WLAs of 100 mg/L. Resolution No. R4-2008-012 was approved by SWRCB, the Office of Administrative Law (OAL), and finally the U.S. EPA on April 6, 2010.

### **Procedural History**

This test claim was filed by the District on March 30, 2011. On July 29, 2011, the Regional Board filed comments on the test claim. The Department of Finance (Finance) filed comments on the test claim, dated July 29, 2013. On September 28, 2011, the District filed rebuttal comments.

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<sup>4</sup> Exhibit B, LA Regional Board Comments, Attachment 63, at p. 591 [Resolution R4-2008-012, at paragraph 15].

<sup>5</sup> Exhibit B, LA Regional Board Comments, at p. 15. See also, Exhibit A, Test Claim, at p. 12.

<sup>6</sup> Exhibit B, LA Regional Board Comments, at p. 17. See also, Exhibit A, Test Claim, at p. 11 [“If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L.”].

On September 20, 2013, Commission staff issued a draft staff analysis and proposed statement of decision. On October 7, 2013, Finance submitted written comments on the draft staff analysis. Also on October 7, 2013, the District requested an extension of time to file comments, which was granted for good cause. On October 9, 2013, the Regional Board submitted a request for extension of time and postponement of the hearing, which was granted for good cause. Also on October 9, 2013, public comments were received from Ms. Lynda Cook of Santa Clarita. On October 18, 2013, the City of Santa Clarita submitted written comments on the draft staff analysis. On November 1, 2013, both the Regional Board and the District submitted written comments on the draft staff analysis.

### **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 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. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

### **Claims**

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

<b>Subject</b>	<b>Description</b>	<b>Staff Recommendation</b>
Implementation Tasks 4, 5, 6, 7, 8, 9, 10a-d, 17a (Resolution R4-2008-012, Attachment B), and the default waste load allocations of 100 mg/L for both water reclamation plants operated by the District.	The District is required to conduct a literature review to evaluate an appropriate chloride threshold; develop a groundwater/surface water interaction model to evaluate impacts of the chloride TMDL; evaluate the appropriate chloride threshold for the protection of sensitive agricultural supply water and endangered species protection; develop site-specific objectives for chloride for sensitive agriculture; develop an anti-degradation analysis for revision of the chloride	<i>Deny</i> – The required activities do not impose a new program or higher level of service. Implementation Tasks 4, 5, 6, 7, 8, and 9, 10a-d, and 17a-e and the default TMDL and WLAs were required by prior law. The 100 mg/L TMDL, including 100 mg/L WLAs, have been in effect since Resolution 02-018, which was adopted by the Regional Board October 24, 2002, remanded and revised and adopted again by the Regional Board on May 6, 2004, including tasks 4-10, and approved by U.S.

	<p>objectives; develop pre-planning report on compliance to meet different hypothetical final waste load allocations; evaluate alternative water supplies; analyze feasible compliance measures; complete an environmental impact report, engineering design, permits, construction, and begin operation of advanced treatment facilities to comply with final effluent permit limits for chloride.</p> <p>If the AWRM is not fully and continually implemented, the prior TMDL is triggered, including the default WLAs of 100 mg/L chloride.</p>	<p>EPA April 28, 2005. Task 17a was added by Resolution R4-2006-016, approved by EPA June 12, 2008. In addition, these implementation tasks were either completed or underway at the time the 2008 Resolution was adopted. And, the EIR, design, construction, and operation of advanced treatment facilities is a lower level of service than that required under prior law, according to the District's assertions in the record. Therefore these activities are not new, and by definition cannot impose a reimbursable <i>new</i> program or higher level of service.</p>
<p>Implementation Task 20 (Resolution R4-2008-012, Attachment B).</p>	<p>Implementation task 20 accelerates the implementation period for final WLAs by one year. The prior TMDL provided for interim WLAs to apply for no more than 11 years, Resolution R4-2008-012 provides for interim WLAs to apply for no more than 10 years.</p>	<p><i>Deny</i> – Implementing the underlying final WLAs one year sooner is not a new program or higher level of service; the final WLAs are not made more stringent or more costly by this resolution, and a mere increase in costs is not tantamount to a higher level of service in any event. Furthermore, the claimant has not alleged increased costs due to implementing final WLAs one year sooner.</p>
<p>Conditional site-specific objectives and waste load allocations of 117 mg/L for Reach 4B, and 150 mg/L for Reaches 5 and 6.</p>	<p>Attachment B to Resolution R4-2008-012 provides for conditional SSOs and WLAs for the two WRPs of 117 mg/L for Reach 4B, and the water discharged by the WRPs into Reach 4B; and 150 mg/L for Reaches 5 and 6 and the water discharged into Reaches 5 and 6. The SSOs and WLAs contemplate facilities upgrades and advanced treatment</p>	<p><i>Deny</i> –The Conditional SSOs and WLAs, including all facilities upgrades contemplated to achieve the standards, are a lower level of service than was required under the prior TMDL, and result in reduced costs to claimant.</p>

	technologies at the two WRPs, and outline certain water management activities to reach and maintain the SSOs and WLAs, including during periods of higher chloride concentrations in the supply water.	
Costs incurred as a result of the Implementation Tasks and AWRM steps to comply with the SSOs and WLAs, totaling approximately \$257 million.	The facilities upgrades and other technological controls and water management activities are estimated to result in approximately \$250 million in increased costs. The Implementation Tasks are alleged to result in approximately \$7 million in increased costs.	<i>Deny</i> – Even if the test claim executive order, Resolution R4-2008-012, imposed a new program or higher level of service resulting in state-mandated increased costs, such costs would not be reimbursable because the District has sufficient fee authority to cover the costs of any additional activities, unconstrained by the voter approval requirements of Proposition 218.

### Analysis

Staff finds that this test claim should be denied on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program does not impose a new program or higher level of service, but a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

**A. Threshold Issues: the Santa Clarita Valley Sanitation District is an Eligible Claimant Before the Commission; Resolution R4-2008-012 is an Executive Order within the Meaning of Article XIII B, Section 6; and the Test Claim is Timely Filed.**

1. The Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

Staff finds that SCVSD receives *at least some amount* of its funding from local taxes, and is subject to an appropriations limit for at least a portion of its revenues, and is therefore an eligible claimant. The State Controller’s Special Districts Annual Report for 2010-2011 indicates that SCVSD was subject to an appropriations limit for approximately one-third of its total revenue (nearly \$11 million), and made total appropriations subject to the appropriations limit in the amount of \$5,778,450. While a substantial amount of the District’s revenue comes from user

fees and other sources not considered “proceeds of taxes,” it cannot be said categorically that the District’s revenue is not subject to the limitations of articles XIII A and XIII B.

Based on the foregoing, the staff finds that the Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

2. The Regional Water Board’s order is an executive order within the meaning of Article XIII B, section 6.

Article XIII B, section 6 provides that “[w]henver 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...” Government Code section 17514 provides that costs mandated by the state includes “any increased costs which a local agency or school district is required to incur... as a result of... any executive order implementing any statute... which mandates a new program or higher level of service of an existing program...” Government Code section 17516 defines an “executive order” as “any order, plan, requirement, rule, or regulation issued by...[a]ny agency, department, board, or commission of state government.” Because Resolution No. R4-2008-012 is an order of a state board, it is an executive order for purposes of Government Code 17516 and may result in a reimbursable state-mandated program under article XIII B, section 6 if all required mandates elements are established.

3. The test claim was timely filed.

Section 17551 provides that “[l]ocal agency and school district 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.” Section 1183 of the Commission’s regulations states that “within 12 months,” for purposes of test claim filing, “means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the claimant.”

Finance has raised the statute of limitations found in section 17551, arguing that the test claim was filed on March 30, 2011, while the Resolution had an effective date of December 11, 2008. Finance further argues that “all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred.”

Finance’s first point, that the effective date of the Resolution would place this test claim beyond the time bar, has some merit. An effective date of December 11, 2008 would require that a valid test claim be filed by June 30, 2010. However, because TMDLs and waste load allocations must be approved by the SWRCB, OAL, and the Administrator of U.S.EPA,<sup>7</sup> there is an open question, for purposes of applying section 17551, whether the Resolution at issue is “effective” on the date it was approved by the Regional Board or on the date that it is approved by the Administrator (here, April 6, 2010).

The cover page of the test claim indicates that the Resolution was effective December 11, 2008, as Finance asserts. However, the Regional Board’s comments on the test claim state that the Resolution was effective April 6, 2010, the date of EPA approval. In addition, a later settlement

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<sup>7</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c)]. See also, Exhibit A, Test Claim, at p. 6.

agreement between the District and the Regional Board is in accord, stating that the Resolution became effective April 6, 2010.<sup>8</sup> An effective date of April 6, 2010, would require that a timely filed test claim be submitted on or before June 30, 2011. This test claim was filed March 30, 2011, and therefore was filed before the expiration of the statute of limitations, based on the effective date agreed upon by the parties. Based on the foregoing, staff finds that this test claim was timely filed.

**B. The Regional Water Board's Resolution and Order does not Impose a New Program or Higher Level of Service within the Meaning of Article XIII B, Section 6.**

The District states that "Regional Board Resolution No. R4-2008-012, the revised TMDL, requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs' NPDES permits; and (2) specific 'implementation tasks' necessary for compliance." The Implementation Tasks, along with the final waste load allocations, "are the subject of this test claim."<sup>9</sup> Attachment B to Resolution R4-2008-012 outlines the conditional SSOs for Reaches 4B, 5, and 6, and conditional WLAs for the water discharged from the Valencia and Saugus WRPs to Reaches 4B, 5, and 6. The WLAs for the District's WRP facilities are based on, and numerically identical to, the SSOs for the respective reaches (117 mg/L for Reach 4B, and the discharge into Reach 4B; 150 mg/L for Reaches 5 and 6, and for the discharge into Reaches 5 and 6). All other point sources are assigned WLAs equal to 100 mg/L. Attachment B also outlines the operation of reverse osmosis treatment at the Valencia WRP, the provision of supplemental water to Reach 4B when chloride concentrations exceed 117 mg/L, and the design and construction of advanced treatment facilities. In addition, Attachment B outlines a number of implementation tasks, primarily consisting of technical studies to assess the appropriate threshold for chloride to protect agricultural uses and to determine how best to reach that threshold, including preparation of an Environmental Impact Report (EIR) for the advanced treatment facilities and other upgrades necessary to meet the SSOs and WLAs.

The District has alleged the required activities resulting from Resolution R4-2008-012 impose costs of approximately \$257 million. Though claimant alleges that this \$257 million constitutes *increased costs*, claimant does acknowledge that the costs would be nearly double, approximately \$500 million, if it operated under the prior TMDL. The analysis below concludes that none of the Implementation Tasks, or the AWRM program elements, of Resolution R4-2008-012 constitutes a new program or higher level of service, because the alleged activities and costs either are not new or they provide for a lower level of service and reduced costs when compared to prior law. In addition, the claimant has fee authority sufficient to cover the costs of any required activities and, thus, pursuant to Government Code section 17556(d), there can be no costs mandated by the state.

1. Some of the Implementation Tasks described in the Resolution are not new.

Implementation Tasks 4, 5, 6, 7, 8, 9, and 10a-d of Resolution R4-2008-012 are found also, in nearly identical language, in Resolution 04-004, and again in Resolution R4-2006-016. These prior TMDLs were approved by EPA on April 28, 2005, and June 12, 2008, respectively. Additionally, Implementation Tasks 4-9 are listed in the revised TMDL as having completion

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<sup>8</sup> Exhibit X, Settlement Agreement, at p. 4.

<sup>9</sup> Exhibit A, Test Claim, at p. 13.

dates *prior to* the adoption and approval of the 2008 Resolution. Moreover, these tasks had in fact *been completed* prior to the adoption of the revised TMDL incorporating the AWRM: the Resolution states that “[t]he Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c).” Therefore none of these implementation tasks, or the costs alleged, are reimbursable, both because they are not new, and because the costs incurred are outside the period of eligibility for this test claim (prior to July 1, 2009).

Implementation Task 17a, “Implementation of Compliance Measures, Complete Environmental Impact Report...” was required by identical language in Resolution R4-2006-016. Resolution R4 2006-016 is stated as having an effective date (presumably meaning the date approved by the U.S. EPA) of June 12, 2008. It is unknown, from the test claim exhibits, or any other information in the record, exactly when costs might first have been incurred to complete the Environmental Impact Report; but the direction to implement compliance measures and to complete an EIR is not *new*, with respect to prior law.<sup>10</sup> In fact, claimant was required to prepare the draft EIR by May 4, 2010 under prior law and was fined “for the failure to complete Wastewater Facilities Plans and Programmatic Environmental Impact Reports by the required due date in 2011.”<sup>11</sup> Resolution R4-2006-016, which first required this activity, was not pled in this test claim.

Finally, the default TMDL, including WLAs of 100 mg/L for the Saugus and Valencia WRPs, which takes effect “if the District cannot comply with the AWRM program,” is not a new requirement. The Regional Board adopted a TMDL for Reaches 5 and 6 of the Santa Clara River in 2002, “which became effective May 4, 2005,” and includes WLAs of 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP.”

In comments submitted on the draft staff analysis, the District argues that the test claim Resolution is the result of a years-long administrative appeal and negotiation process, and that the prior TMDLs are “part and parcel of the 2008 TMDL.” The District argues that “[t]he proper measure of whether the TMDL is a new or higher level of service is to compare the TMDL’s requirements with the existing or pre-TMDL requirements.” The District’s reasoning does not comport with existing mandates law, and does not change the above analysis. The prior TMDLs, including the implementation tasks and the effluent limitations, were approved by the State Water Resources Control Board and the U.S. EPA, and are therefore analyzed as “prior law,” for purposes of determining whether the test claim Resolution imposes a new program or higher level of service.<sup>12</sup>

Based on the foregoing, staff finds that Implementation Tasks 4, 5, 6, 7, 8, 9, 10a-d, and 17a, and the waste load allocations, are not new, but rather were required by prior law. Therefore none of these provisions imposes a state-mandated new program or higher level of service.

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<sup>10</sup> Resolution R4-2006-016.

<sup>11</sup> LA Regional Board, Enforcement News, November 26, 2012.

<sup>12</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

2. Implementation Task 20 only accelerates the schedule of implementation of final waste load allocations and is not a new program or higher level of service resulting in increased costs mandated by the state.

Implementation Task 20 shortens the applicable period of the interim WLAs for the Saugus and Valencia WRPs from 11 years to 10 years, commencing with the effective date of the 2002 TMDL. The interim WLAs are designed to accommodate the time needed for the WRPs to implement desalination and other chloride reduction improvements to meet the final WLAs. For the Saugus WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. For the Valencia WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. There is no new program inherent in shortening the time frame for the interim WLAs. The requirements of the interim WLAs remain the same, but are shortened, and the final WLAs attach one year sooner. It may be argued that it costs more to implement the final WLAs one year sooner, but this change does not of itself constitute a new program or higher level of service.

The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*” The Supreme Court has also spoken on the requirement of a new program, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.” Finally, not only is an increase in costs not tantamount to a higher level of service, but there is no evidence in the record of the incremental cost increase which might be alleged based on accelerating the implementation of the final WLAs by one year.

In comments on the draft staff analysis, the District argues that “[j]ust as accelerating a car is a higher level of speed, accelerating a compliance schedule is a higher level of service.” The District argues that “reliance on case law for the proposition that an accelerated compliance schedule’s increased costs are ‘not tantamount to a higher level of service’ is misplaced.” The District argues that the cases are distinguishable. Indeed, the cases are distinguishable; in both *Long Beach Unified* and *County of Los Angeles* the courts found a reimbursable state mandate. Here, staff finds none; the activities required to implement the final WLAs are not changed. The District merely experiences costs to complete the activities one year sooner.

Based on the foregoing, Implementation Task 20 does not impose any new state mandated activities and does not result in a new program or higher level of service.

3. The Alternative Water Resources Management program is not a new program or higher level of service.

The California Supreme Court, in *County of Los Angeles I*, articulated a multi-faceted test for “new program or higher level of service.” reimbursement requires (1) a new task or activity; (2) which constitutes an increase in service as compared to prior law; (3) and which either provides a service to the public, or imposes requirements uniquely upon government, rather than upon all persons and entities equally.

The Regional Board argues that the test claim executive order, Resolution R4-2008-012, cannot impose a new program or higher level of service because it “amended the Basin Plan to, among other things, adopt site-specific objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara River...” The Regional Board argues: “thus, if anything, the 2008 Resolution imposes a *lower level of service* in order to make it less expensive for the Claimant to implement” the TMDL. In 2002, the 100 mg/L objective was incorporated into a TMDL, pursuant to the impairment listing of certain reaches of the Santa Clara River, and the threat to salt-sensitive agriculture uses both within Reaches 5 and 6 and downstream. Both the District and the Regional Board agree that the AWRM contains “relaxed” requirements, as compared with the current water quality objectives.

In addition, both the District and the Regional Board recognize that under the prior TMDL “implementation actions to attain this level would require advanced treatment – that is, reverse osmosis – of the full effluent from the Saugus *and* Valencia plants with discharge into the ocean through a 43-mile brine line.” The District estimated the costs of the facilities upgrades and other compliance tasks at approximately \$500 million. Under the AWRM, reverse osmosis desalination is only required at the Valencia WRP, and the waste is permitted to be disposed of through deep well injection. The District estimates that implementing the advanced treatment upgrades at only one of the two facilities, along with other tasks, will cost just over half of the amount of compliance with the prior TMDL, or approximately \$250 million.

Staff finds that there is nothing in the AWRM that imposes a higher level of service on this claimant. Resolution R4-2008-012 calls for the implementation of less-stringent requirements than under prior law, which the District has acknowledged will be less expensive to implement. In comments on the draft staff analysis, the District continues to stress that the proper test should be to compare the pre-TMDL requirements with the requirements of the Resolution; in that view the requirements of the Resolution are “far more stringent than the pre-TMDL standard.” There is no support in mandates law for this reasoning, and staff’s conclusion is unchanged.

Based on the foregoing, staff finds that Resolution R4-2008-012, which includes the AWRM, does not impose a new program or higher level of service, and the costs and activities thereunder should be denied.

**C. Even if Resolution R4-2008-012 Did Constitute a State Mandated New Program or Higher Level of Service, it Would Not Impose Costs Mandated by the State Under Section 17556(d) Because the Claimant has Sufficient Fee Authority to Fully Fund the Costs of the Required Activities.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514...if...the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

The California Supreme Court held, in *County of Fresno v. State of California*, that “read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.” Accordingly, in *Connell v. Superior Court of Sacramento County*, the Santa Margarita Water District, among others, was denied reimbursement on the basis of its authority to impose fees on water users. The Districts argued

that they did not have “sufficient” authority to levy such fees, because the cost of reclaimed water would make it impractical to market to the users if the Districts were forced to raise fees. The court concluded that the “Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees ‘sufficient’ to cover their costs,” and that “[t]hus, the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry.” Similarly, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court stated: “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.” The court endorsed the Controller’s view that “‘Claimants can choose not to require these fees, but not at the state’s expense.’”

Here, the Regional Board argues that the District “is authorized to impose and increase fees and charges for wastewater management services under Health and Safety Code section 5471.” The District argues that it is constrained by the “the Proposition 218 process...[and] fierce public opposition.” The District further argues that *Connell*, discussed above, “ignored the then-recent passage of Proposition 218.”

Health and Safety Code section 5471 provides “authority,” within the meaning of section 17556(d), “to prescribe, revise and collect, fees tolls, rates, rentals, or territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.”

Proposition 218, adopted by the voters in 1996, added articles XIII C and XIII D to the Constitution; the plain language of article XIII D, section 6 provides that an agency seeking to impose or increase fees must identify the parcels and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to “consider all protests.” Section 6 further provides that if written protests are submitted by more than half of the owners of parcels affected, a fee or assessment may not be raised. In addition, new or increased fees are required to “not exceed the funds required to provide the property related service;” “not be used for any purpose other than that for which the fee or charge was imposed;” “not exceed the proportional cost of the service attributable to the parcel;” and be “actually used by, or immediately available to, the owner of the property in question.” Finally, voter approval is required “[e]xcept for fees or charges for sewer, water, and refuse collection services.”

The District asserts that the case law related to fee authority is no longer on point “because the most significant cases predate the passage of [Proposition 218].” The District asserts that it “attempted to implement the Proposition 218 process, but the elected public officials could not support the proposed rate increase in the face of fierce public opposition.” The District claims that the “political realities...limit the ability of local government to raise fees in a way that makes it impossible for a local agency to raise sufficient funding for state mandate projects.”

Here, the fee authority is that of a sanitation district, and relates to the fees charged to users of the sewerage system; based on the plain language of article XIII D, section 6, voter approval is not required for increases to water and sewer rates. However, the other requirements of XIII D do apply, requiring the District to ensure that any fee increase is noticed to the affected property

owners, that the increase is directly related to and proportional to the service provided, and that at a public hearing the District considers all protests. In addition, the voters have the power, either by referendum, or by written protests of a majority of owners of the affected parcels, to defeat a fee increase. Only the “written protests” provision is raised by the parties’ comments. The Regional Board argues that there are nearly 69,000 parcels connected to the District’s sewerage system, and therefore “at least 34,449 written protests” would be a majority required under XIII D to defeat a rate increase. At the May 26, 2009 and July 27, 2010 hearings the District received “203 written protests and 7,732 written protests, respectively.”

The District does not dispute the number of written protests needed to defeat a fee increase, or the number received (the Regional Board’s argument assumes, without evidence, that all 69,000 parcels represent a single voting property owner); rather the District argues that the District’s Board “quite reasonably believed that this large rate increase would be rejected if challenged by initiative.”<sup>13</sup> The District implies that because an initiative to overturn the fee increase would qualify for the ballot with approximately 6,500 votes, the 7,732 written protests “exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase.”<sup>14</sup>

But written protests are not tantamount to an initiative petition, and an initiative petition is not a successful referendum. The District’s board “declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum.” Nothing in the California Constitution requires a local legislative body to bend to political pressure. As the Regional Board concluded, “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).

It is true, as the District argues, that *Connell* did not discuss Proposition 218, because the water districts did not allege that their authority to raise fees was impacted by Proposition 218. The water districts in *Connell* instead urged an interpretation of “authority” under section 17556(d) that required a “practical ability in light of surrounding economic circumstances,” and the court rejected that interpretation. Here, as in *Connell*, “the plain language of the statute defeats the Districts’ position.” The District here would have the Commission recognize political undesirability as an element of the District’s “authority” under Health and Safety Code section 5471 to raise fees. In the same way that the court in *Connell* declined to find that economic considerations undermine the “sufficiency” of the water districts’ authority to raise fees, staff recommends that the Commission here decline to make a finding that *political opposition* undermines the authority of a sanitation district to raise fees.

In comments submitted on the draft staff analysis, the District continues to stress its concern that the District will be unable, in the face of Proposition 218 “protests and referenda on the rates necessary to support the TMDL facilities,” to raise revenue sufficient to cover the costs of the mandate. However, there is still no credible argument that, as a matter of law, the District’s fee authority is insufficient. Staff’s analysis is unchanged.

Based on the foregoing, staff finds that the District has not incurred increased costs mandated by the state, pursuant to section 17556(d).

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<sup>13</sup> Exhibit D, Claimant Rebuttal Comments, at p. 11.

<sup>14</sup> *Ibid.*

**Conclusion**

Based on the foregoing discussion and analysis, staff concludes that Resolution No. R4-2008-012, adopted December 11, 2008, by the Los Angeles Regional Water Quality Control Board, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010

Filed on March 30, 2011

By Santa Clarita Valley Sanitation District of Los Angeles County, Claimant.

Case No.: 10-TC-09

*Upper Santa Clara River Chloride Requirements*

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

(Adopted January 24, 2014)

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 24, 2014. [Witness list will be included in the final statement of 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 statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

**Summary of the Findings**

This test claim alleges a reimbursable state mandate resulting from Resolution R4-2008-012, adopted December 11, 2008 by the Regional Water Quality Control Board for the Los Angeles region (Regional Board). To assist the reader, there is a glossary of frequently used water quality related terms and acronyms at the end of this document. The Resolution amended the prior Basin Plan, which imposed a maximum chloride concentration limit, or "total maximum daily load" (TMDL) of 100 mg/L for the Santa Clara River and chloride concentration discharge limits, or "waste load allocations" (WLAs) of 100 mg/L for the District's two Water Reclamation Plants (WRPs), to include a revised, less stringent, TMDL and WLAs, providing greater flexibility to the District with regard to chloride discharges into the river and significantly reducing the costs for the District to comply with the TMDL and WLAs for the Upper Santa Clara River. The revised TMDL calls for the implementation of an Alternative Water Resources Management program (AWRM), in order to meet conditional site-specific objectives (SSOs) for

water quality in Reaches 4B, 5, and 6 of the river, and conditional WLAs of 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B for the District's two WRPs.

The District alleges that meeting the SSOs and WLAs will require significant advanced treatment and other technological upgrades, and a number of water supply control measures to control chloride concentrations in the Santa Clara River, especially during periods of higher concentration in the water supply and groundwater (*i.e.*, during periods of lower precipitation). The District alleges that these upgrades and control measures result in increased costs of approximately \$250.7 million. R4-2008-012 also includes a number of Implementation Tasks, primarily consisting of requirements to perform technical and scientific studies of the surface and groundwater and evaluation of appropriate chloride thresholds, which the District alleges impose increased costs of approximately \$6.6 million.

The Commission finds that Resolution R4-2008-012 does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new and cannot impose a *new* program or higher level of service; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program is not a new program or higher level of service, but a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

Because this test claim is denied on the grounds stated above, the Commission declines to make findings on whether claimant is practically compelled to implement the Alternative Water Resources Management activities or whether the Alternative Water Resources Management activities, TMDLs or WLAs are mandated by federal law.

## COMMISSION FINDINGS

### I. Chronology

- |            |                                                                                                                                                                                                                                   |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/30/2011 | Claimant, Santa Clarita Valley Sanitation District of Los Angeles County, filed the test claim, <i>Upper Santa Clara River Chloride Requirements</i> , 10-TC-09, with the Commission on State Mandates (Commission) <sup>15</sup> |
| 04/14/2011 | Commission staff issued a notice of complete filing and request for comments from state agencies.                                                                                                                                 |
| 05/02/2011 | The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) filed a request for an extension of time to submit comments on the test claim.                                                           |
| 05/04/2011 | Commission staff granted the Regional Board's request for an extension of time to comment to July 15, 2011.                                                                                                                       |

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<sup>15</sup> Exhibit A, Test Claim.

06/23/2011 The Regional Board filed a request for an extension of time to comment on the test claim, which was granted for good cause.

07/ 29/2011 The Regional Board filed comments on test claim.<sup>16</sup>

08/01/2011 The Department of Finance (Finance) filed comments on the test claim.<sup>17</sup>

08/19/2011 Claimant filed a request for an extension of time to submit rebuttal comments to September 28, 2011, which was granted for good cause.

09/28/2011 Claimant filed rebuttal comments.<sup>18</sup>

09/20/2013 Commission staff issued the draft staff analysis and proposed statement of decision.<sup>19</sup>

10/07/2013 Finance submitted comments on the draft staff analysis.<sup>20</sup>

10/07/2013 Claimant requested an extension of time to October 25, 2013 to file comments on the draft staff analysis, which was granted for good cause.

10/09/2013 Ms. Lynda Cook of Santa Clarita submitted comments on the draft staff analysis.<sup>21</sup>

10/09/2013 The Regional Board requested an extension of time to file comments to November 1, 2013 and postponement of hearing to January 24, 2014.

10/10/2013 Commission staff granted the Regional Board's request for extension and postponement.

10/18/2013 City of Santa Clarita filed comments on the draft staff analysis.<sup>22</sup>

11/01/2013 The Regional Board filed comments on the draft staff analysis.<sup>23</sup>

11/01/2013 Claimant submitted filed comments on the draft staff analysis.<sup>24</sup>

## **II. Introduction**

### **A. History and Framework of Federal Water Pollution Control**

Regulation of water pollution in the United States finds its beginnings in the Rivers and Harbors Appropriation Act of 1899, which made it unlawful to throw or discharge “any refuse matter of

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<sup>16</sup> Exhibit B, LA Regional Board Comments.

<sup>17</sup> Exhibit C, Department of Finance Comments.

<sup>18</sup> Exhibit D, Claimant's Rebuttal Comments.

<sup>19</sup> Exhibit E, Draft Staff Analysis.

<sup>20</sup> Exhibit F, Department of Finance Comments on Draft Staff Analysis.

<sup>21</sup> Exhibit G, Public Comments on Draft Staff Analysis.

<sup>22</sup> Exhibit H, City of Santa Clarita Comments on Draft Staff Analysis.

<sup>23</sup> Exhibit I, LA Regional Board Comments on Draft Staff Analysis.

<sup>24</sup> Exhibit J, Claimant Comments on Draft Staff Analysis.

any kind or description. . . into any navigable water of the United States, or into any tributary of any navigable water.”<sup>25</sup> This provision survives in the current United States Code, qualified by more recent provisions that outline a regime of discharge permits issued by the U.S. EPA or by states on behalf of the EPA.<sup>26</sup>

In 1948, the Federal Water Pollution Control Act “adopted principles of state and federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance.”<sup>27</sup> Pursuant to further amendments to the Act made in 1965, “States were directed to develop water quality standards establishing water quality goals for interstate waters.” However, “[d]ue to enforcement complexities and other problems, an approach based solely on water quality standards was deemed insufficiently effective.”<sup>28</sup> The Federal Water Pollution Control Act was therefore significantly expanded in 1972 to regulate individual point source dischargers. Later, major amendments to the Federal Water Pollution Control Act were enacted in the Clean Water Act of 1977, and the federal act is now commonly referred to as the Clean Water Act (CWA). The CWA states:

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title.<sup>29</sup>

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

The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” (33 U.S.C. § 1251(a).) Toward this end, the Act provides for two sets of water quality measures. “Effluent limitations” are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. (See §§ 1311, 1314.) “[W]ater quality standards” are, in general, promulgated by the States and establish the desired condition of a waterway. (See § 1313.) These standards supplement effluent limitations “so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable

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<sup>25</sup> United States Code, title 33, section 407 (Mar. 3, 1899, c. 425, § 13, 30 Stat. 1152).

<sup>26</sup> See United States Code, title 33, sections 401; 1311-1342.

<sup>27</sup> Exhibit X, Statutory History of Water Quality Standards: available at <http://water.epa.gov/scitech/swguidance/standards/history.cfm>. (Accessed November 26, 2013.)

<sup>28</sup> *Ibid.*

<sup>29</sup> United States Code, title 33, section 1251(b).

levels.” (*EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).)<sup>30</sup>

The CWA thus employs two primary mechanisms for controlling water pollution: identification and standard-setting for bodies of water, and identification and regulation of dischargers.

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

Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.<sup>31</sup>

And with respect to regulating dischargers, section 1311 requires that point source dischargers be identified and effluent limitations be set, “sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water.”<sup>32</sup> Section 1312 provides that effluent limitations must promote the attainment of water quality objectives, while section 131.10 of the applicable regulations requires also taking into consideration the water quality standards of downstream waters.<sup>33</sup>

Section 303(d) of the CWA, codified at section 1313(d) of title 33 of the United States Code, requires that each state “identify those waters within its boundaries for which the effluent limitations... are not stringent enough to implement any water quality standard applicable to such waters.” Waters for which the effluent limitations are not sufficient to meet water quality standards are called “impaired,” and the list of “impaired” waters is also known as the “303(d)

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<sup>30</sup> *Arkansas v. Oklahoma* (1992) 503 U.S. 91, at pp. 101-102.

<sup>31</sup> United States Code, title 33, section 1313(c)(2).

<sup>32</sup> United States Code, title 33, section 1311.

<sup>33</sup> United States Code, title 33, section 1312; Code of Federal Regulations, title 40, section 131.10(b) (57 FR 60910) [“In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”].

List.” The state is required by the Act to “establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.”

After the waters are ranked, the state “shall establish for the waters identified... and in accordance with the priority ranking, the total maximum daily load [known as a TMDL], for those pollutants which the Administrator identifies... as suitable for such calculation.” The TMDL “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” A TMDL is defined as the sum of the amount of a pollutant allocated to *all point sources* (i.e., the sum of all waste load allocations, or WLAs), plus the amount of a pollutant allocated for nonpoint sources and natural background. A TMDL should be set for each pollutant identified by the Administrator, and is essentially a plan setting forth the amount of a pollutant allowable that will attain the water quality standard necessary for beneficial uses.<sup>34</sup> TMDLs are required to be submitted to the Administrator “from time to time,” and the Administrator “shall either approve or disapprove such identification and load not later than thirty days after the date of submission.” If the Administrator disapproves the 303(d) List or a TMDL, the Administrator “shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement [water quality standards].” Finally, the identification of waters and setting of standards and TMDLs is required as a part of a state’s “continuing planning process approved [by the Administrator] which is consistent with this chapter.”<sup>35</sup>

Section 1342 provides for the National Pollutant Discharge Elimination System (NPDES). NPDES is the final piece of the regulatory framework under which discharges of pollutants are regulated and permitted, and applies whether or not a TMDL has been established. Section 1342 states that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title.”<sup>36</sup> Section 1342 further provides that states may submit a plan to administer the NPDES permit program, and that upon review of the state’s submitted program “[t]he Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State.”<sup>37</sup> Whether issued by the Administrator or by a state permitting program, all NPDES permits must ensure compliance with the requirements of sections 1311, 1312, 1316, 1317, and 1343; must be for fixed terms not exceeding five years; can be terminated or modified for cause, including violation of any condition of the permit; and must control the disposal of pollutants into wells.<sup>38</sup> In addition, NPDES permits are generally prohibited, with some exceptions, from containing effluent limitations that are “less stringent than the comparable effluent limitations in the previous

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<sup>34</sup> Code of Federal Regulations, title 40, section 130.2.

<sup>35</sup> United States Code, title 33, section 1313(d-e).

<sup>36</sup> United States Code, title 33, section 1342(a)(1)

<sup>37</sup> United States Code, title 33, section 1342(a)(5); (b).

<sup>38</sup> United States Code, title 33, section 1342(b)(1).

permit.”<sup>39</sup> An NPDES permit for a point source discharging into an impaired water body must be consistent with the waste load allocations made in a TMDL, if a TMDL is approved and is applicable to the water body.<sup>40</sup>

## **B. State Water Pollution Control Program**

### Porter-Cologne Water Quality Control Act

California’s water pollution control laws were substantially overhauled in 1969 with the Porter-Cologne Water Quality Control Act (Porter-Cologne).<sup>41</sup> Beginning with section 13000, Porter-Cologne provides:

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by all the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety, and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state... and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.<sup>42</sup>

The state water pollution control program was again modified, beginning in 1972, so that the code would substantially comply with the federal Act, and “on May 14, 1973, California became the first state to be approved by the EPA to administer the NPDES permit program.”<sup>43</sup>

Section 13160 provides that the state water resources control board (SWRCB or State Board) “is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act... [and is] authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and acts amendatory thereto.”<sup>44</sup> Section 13001 describes the state and regional boards as being “the principal state agencies with primary responsibility for the coordination and control of water quality.”

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<sup>39</sup> United States Code, title 33, section 1342(o).

<sup>40</sup> Code of Federal Regulations, title 40, section 122.44(b).

<sup>41</sup> Water Code section 13020 (Stats. 1969, ch. 482).

<sup>42</sup> Water Code section 13000 (Stats. 1969, ch. 482).

<sup>43</sup> *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (Cal. Ct. App. 5th Dist. 2005) 127 Cal.App.4th 1544, at pp. 1565-1566. See also Water Code section 13370 *et seq.*

<sup>44</sup> Water Code section 13160 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats 1976, ch. 596).

In order to achieve the objectives of conserving and protecting the water resources of the state, and in exercise of the powers delegated, Porter-Cologne, like the CWA, employs a combination of water quality standards and point source pollution controls.<sup>45</sup>

Porter Cologne sections 13240-13247 address the development and implementation of regional water quality control plans, including “water quality objectives,” defined in section 13050 to mean “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.”<sup>46</sup> Section 13241 provides that each regional board “shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance.” The section directs the regional boards to consider, when developing water quality objectives:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.<sup>47</sup>

Beneficial uses, in turn, are defined in section 13050 as including, but not limited to “domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.”<sup>48</sup> In addition, section 13243 permits a regional board to define “certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.”<sup>49</sup>

Sections 13260-13274 address the development of “waste discharge requirements,” which section 13374 states “is the equivalent of the term ‘permits’ as used in the Federal Water

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<sup>45</sup> Water Code section 13142 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats. 1979, ch. 947; Stats. 1995, ch. 28).

<sup>46</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247), ch. 847 (SB 206); Stats. 1996, ch. 1023 (SB 1497)).

<sup>47</sup> Water Code section 13241 (Stats. 1969, ch. 482; Stats. 1979, ch. 947; Stats. 1991, ch. 187 (AB 673)).

<sup>48</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 847 (SB 206); Stats. 1996 ch. 1023 (SB 1497)).

<sup>49</sup> Water Code section 13243 (Stats. 1969, ch. 482).

Pollution Control Act, as amended.”<sup>50</sup> Section 13263 permits the regional boards, after a public hearing, to prescribe waste discharge requirements “as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system.” Section 13263 also provides that the regional boards “need not authorize the utilization of the full waste assimilation capacities of the receiving waters,” and that the board may prescribe requirements although no discharge report has been filed, and may review and revise requirements on its own motion. The section further provides that “[a]ll discharges of waste into waters of the state are privileges, not rights.”<sup>51</sup> Section 13377 permits a regional board to issue waste discharge requirements “which apply and ensure compliance with all applicable provisions of the [Federal Water Pollution Control Act].”<sup>52</sup> In effect, sections 13263 and 13377 permit the issuance of waste discharge requirements concurrently with an NPDES permit “if a discharge is to waters of both California and the United States.”<sup>53</sup>

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

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

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will

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<sup>50</sup> Water code section 13374 (Stats. 1972, ch. 1256).

<sup>51</sup> Water Code section 13263(a-b); (g) (Stats. 1969, ch. 482; Stats. 1992, ch. 211 (AB 3012) Stats. 1995, ch. 28 (AB 1247), ch. 421 (SB 572)).

<sup>52</sup> Water Code section 13377 (Stats. 1972, ch. 1256; Stats. 1978, ch. 746).

<sup>53</sup> Exhibit A, Test Claim, at p. 7.

not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

### C. Regulatory History

The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates in the San Gabriel Mountains in Los Angeles County, runs through Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Land uses within the watershed include agriculture, open space, and residential uses.<sup>54</sup> Resolution R4-2008-012, adopted by the Regional Board, states that “[r]evenue from the agricultural industry within the Santa Clara watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.”<sup>55</sup> Reaches 5 and 6 of the Santa Clara River are located upstream of the Blue Cut gauging station, near the Los Angeles/Ventura County line, between the cities of Fillmore (in Ventura County) and Santa Clarita in Los Angeles County; Reach 4B is in Ventura County.<sup>56</sup> Claimant operates two WRPs that discharge into Reaches 4B, 5 and 6.<sup>57</sup>

In 1975, the Regional Board established water quality objectives for chloride in the Santa Clara River. The 1975 objectives for surface waters were established, in accordance with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal antidegradation policy (40 C.F.R. 131.12), at a chloride concentration of 90mg/L in Reach 5 and 80 mg/L in Reach 6 (then known as Reaches 7 and 8).<sup>58</sup> The 1975 objectives were based on background concentrations of chloride and intended to protect the beneficial uses identified in the 1975 Basin Plan, including off-stream agricultural irrigation.”<sup>59</sup> The Basin Plan included chloride objectives

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<sup>54</sup> See Exhibit A, Test Claim, at p. 34; Exhibit B, LA Regional Board Comments, at p. 1.

<sup>55</sup> Exhibit A, Test Claim, at p. 34.

<sup>56</sup> See Exhibit B, Resolution R4-2007-018, at paragraphs 4-6, describing subdividing Reach 4 into Reaches 4A and 4B, for purposes of TMDL revision.

<sup>57</sup> Exhibit A, at pp. 49-52, Resolution R4-2008-012, describing conditional waste load allocations for Valencia and Saugus WRPs.

<sup>58</sup> See Exhibit A, at p. 151, Exhibit 6, LA Regional Board Resolution 97-02.

<sup>59</sup> *Ibid.*

between 50 and 150 mg/L for the remaining reaches of the Santa Clara River.<sup>60</sup> When the SWRCB set the water quality objectives in 1975, it “assumed the chloride concentrations in imported waters would remain relatively low.”<sup>61</sup> However, in the years following, “chloride concentrations in the imported water supply into the Los Angeles Region increased,” and in 1978 the Board “modified the water quality objectives for chloride... to 100 mg/L for both reaches.”<sup>62</sup>

In 1990 the Regional Board adopted a resolution responding to the changing conditions of the imported water supply related to drought (referred to by both the claimant and the Regional Board as the “Drought Policy”). For dischargers into the Santa Clara River who applied for relief under the Drought Policy, chloride concentrations were permitted “in the discharger’s effluent to be the lesser of: (1) 250 mg/L; or (2) the chloride concentration of supply water plus 85 mg/L.”<sup>63</sup> The board renewed the Drought Policy in 1993 and 1995 “because the chloride levels in supply waters remained higher than the chloride levels before the onset of the drought.” In 1997, the Regional Board rescinded the Drought Policy and revised the water quality objectives for chloride for the Los Angeles River, Rio Hondo, and the San Gabriel River, but not for the Santa Clara River, “due to the potential for future adverse impacts to agricultural resources in Ventura County.” The board “granted temporary variances to certain dischargers in the Santa Clara River watershed, including the Valencia and Saugus WRPs.”<sup>64</sup> The interim effluent limits of 190 mg/L were applied for three years to the two facilities.<sup>65</sup>

In 1998 the Santa Clara River “appeared for the first time on the state’s federally required 303(d) list of impaired waterbodies for chloride.”<sup>66</sup> Reaches 5 and 6 of the Upper Santa Clara River did not meet the 100 mg/L water quality objective (WQO), and “[b]eneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired.”<sup>67</sup> The Valencia and Saugus WRPs, which are owned and operated by the District, are two major point sources that discharge to the upper reaches of the River.<sup>68</sup> The two WRPs are

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<sup>60</sup> *Ibid.*

<sup>61</sup> Exhibit B, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

<sup>62</sup> Exhibit B, at p. 502, Attachment 56, 1978 Revisions to the Water Quality Control Plan for the Santa Clara River Basin.

<sup>63</sup> See Exhibit B, Attachment 57, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

<sup>64</sup> Exhibit B, LA Regional Board Comments, at p. 10; Attachment 57, at p. 507 [L.A. Regional Board Resolution 97-02, paragraph 2].

<sup>65</sup> Exhibit B, LA Regional Board Comments, at p. 10.

<sup>66</sup> *Ibid* [referring to the Clean Water Act section 303(d), codified at 33 U.S.C. 1313(d), which requires states to identify and report to the EPA on those waters within its boundaries for which the effluent limitations have not proven effective “to implement any water quality standard applicable to such waters”]. See also, Exhibit A, Test Claim, at p. 9.

<sup>67</sup> Exhibit B, LA Regional Board Comments, at p. 10. See also Exhibit B, LA Regional Board Comments, Attachment 58, at p. 523 [L.A. Regional Board Resolution 03-088, paragraph 2].

<sup>68</sup> Exhibit A, Test Claim, at p. 34.

responsible for approximately 70 percent of the chloride loading to the River.<sup>69</sup> The Valencia and Saugus WRPs were not designed to remove chloride from waste water, and in fact have been contributing to elevated chloride concentrations due to the use of chlorine disinfection.<sup>70</sup>

In October of 2002, the Regional Board adopted Resolution 02-018, amending the Basin Plan to include a TMDL for chloride in the Santa Clara River. The same resolution also assigned “final WLAs to the Valencia and Saugus WRPs of 100 mg/L to be included also in their NPDES permits.” However, the TMDL resolution also included “interim WLAs for the [Saugus and Valencia facilities], to provide the District time to implement chloride source reduction, complete site-specific objective (“SSO”) studies, and make any necessary modifications to the WRPs.”<sup>71</sup> The District determined at the time that the TMDL would require approximately \$500 million in upgrades to its treatment facilities, including advanced treatment (desalination) at both WRPs in order to meet the effluent limitations of 100 mg/L chloride. The District appealed the decision to the SWRCB, which adopted Resolution 2003-0014, remanding the TMDL to the Regional Board for reconsideration of various items including: (1) an extension of the interim chloride limits, and (2) re-evaluation of the water quality objectives accounting for the beneficial uses to be protected, the quality of the imported water supply, and the impacts of drought periods.<sup>72</sup> In response, the Regional Board adopted Resolution 03-008,<sup>73</sup> which included interim WLAs and a phased implementation plan for the chloride TMDL, including a number of required studies. On May 6, 2004, the Regional Board adopted Resolution 04-004, which revised and superseded the interim WLAs and implementation plan adopted by Resolution 03-008. The TMDL was approved by the EPA, as amended by Resolution 03-008, and Resolution 04-004, on April 28, 2005.

In 2006, the board shortened the compliance period and the interim WLAs by two years; Resolution R4-2006-016 was approved by EPA June 12, 2008.<sup>74</sup> And finally, in 2008, the board shortened the compliance period by an additional year, but relaxed the chloride requirements as described in the next paragraph.<sup>75</sup>

Between 2005 and 2008, several special studies were conducted, as required under the prior TMDL.<sup>76</sup> On December 11, 2008, the Regional Board adopted Resolution R4-2008-012, saying:

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<sup>69</sup> Exhibit B, LA Regional Board Comments, at p. 11. See also, Exhibit A, Test Claim, at p. 48.

<sup>70</sup> Exhibit A, Test Claim, at pp. 7; 11-12; 175; Exhibit B, LA Regional Board Comments, at pp. 9-10.

<sup>71</sup> Exhibit A, Test Claim, at p. 10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

<sup>72</sup> Exhibit B, at p. 523, Attachment 58, LA Regional Board Resolution 03-008.

<sup>73</sup> Exhibit B, at p. 523, Attachment 58, LA Regional Board Resolution 03-008.

<sup>74</sup> Exhibit B, Attachment 60, at p. 566, Regional Board Resolution R4-2006-016, Implementation Task 14. See also, Exhibit X, SCVSD Draft EIR, at p. 8.

<sup>75</sup> Exhibit B, Attachment 63, at p. 624, Regional Board Resolution R4-2006-016, Implementation Task 21.

<sup>76</sup> See Exhibit A, Attachment 1, at pp. 34-36 [Regional Board Resolution R4-2008-012, paragraphs 10-16].

“The completion of these TMDL special studies... has led to the development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater.”<sup>77</sup> The alternative plan is known as the Alternative Water Resources Management program; the AWRM includes:

...the development of site-specific objectives [SSOs] for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP’s effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with[in] the Santa Clarita Valley.<sup>78</sup>

The SSOs adopted are 150 mg/L in Reaches 5 and 6 and 117 mg/L for Reach 4B, which is adjusted to 130 mg/L when the supply water has chloride levels above 80 mg/L.<sup>79</sup> The conditional WLAs for the Valencia and Saugus facilities are also 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B.<sup>80</sup> The Resolution provides for the construction and implementation of advanced treatment (reverse osmosis desalination) at the Valencia facility, as well as a number of water supply control measures designed to attain the site specific objectives.<sup>81</sup> The relaxed requirements are conditioned upon “the Claimant’s full and ongoing implementation of the AWRM program.”<sup>82</sup> The 2008 resolution was approved by the State Water Board, OAL, and then finally by the U.S. EPA on April 6, 2010.<sup>83</sup>

This test claim was filed by Santa Clarita Valley Sanitation District on March 30, 2011. On July 29, 2011, the Regional Board filed comments on test claim.<sup>84</sup> On August 8, 2011, the Department of Finance (Finance) filed comments on the test claim.<sup>85</sup> On September 28, 2011,

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<sup>77</sup> Exhibit A, Attachment 1, at p. 36 [Regional Board Resolution R4-2008-012, paragraph 15].

<sup>78</sup> Exhibit A, Attachment 1, at p. 42 [Regional Board Resolution R4-2008-012, Table 3-A “Conditional Site Specific Objectives for the Santa Clara River Surface Waters].

<sup>79</sup> *Id.*, p. 42.

<sup>80</sup> *Id.*, at pp. 49-51.

<sup>81</sup> *Id.*, at p. 51.

<sup>82</sup> Exhibit B, LA Regional Board Comments, at p. 17. See also, Exhibit A, Test Claim, at p. 11 [“If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L.”].

<sup>83</sup> Exhibit A, Test Claim, at p. 11; Exhibit B, LA Regional Board Comments, at p. 17.

<sup>84</sup> Exhibit B, LA Regional Board Comments.

<sup>85</sup> Exhibit C, Department of Finance Comments.

the District filed rebuttal comments in response to both Finance and Regional Board comments.<sup>86</sup>

### **III. Positions of the Parties**

#### **Santa Clarita Valley Sanitation District Position**

The District seeks reimbursement for costs associated with implementing the Alternative Water Resources Management program (AWRM) described in Resolution R4-2008-012. The AWRM includes technology upgrades at the two WRPs, as well as alternative water supply and groundwater management techniques in order to attain the site-specific objectives and waste load allocations of 150 mg/L for Reaches 5 and 6, and 117 mg/L for Reach 4B.<sup>87</sup> The District also alleges costs incurred in fiscal years 2009-2010 and 2010-2011 associated with Implementation Tasks outlined in the Resolution; these tasks primarily involve conducting studies and developing suggested revisions to the TMDL over a span of years commencing May 4, 2005.<sup>88</sup>

The District explains that the CWA “requires states to adopt water quality standards for the beneficial uses of waters of the United States and the water quality criteria for specific uses of those waters.” The Act further requires “continuing review and revision of the standards,” and requires states to “continually identify those waters of the United States within their boundaries that do not meet water quality standards (the ‘303(d) List’), rank them in order of priority for enforcement, and prepare TMDLs for those waters that will ensure re-attainment of the standard through action by regulated dischargers.” However, the District asserts that “[w]hile the Clean Water Act mandates these planning activities, it leaves to the states their evaluation and specific determination of regulatory requirements based, in part, upon site-specific factors.”<sup>89</sup>

The District argues that the Regional Board’s determination of water quality objectives, and eventually a TMDL for chloride, was discretionary regulatory activity that was not mandated by federal law. The District bases its conclusion that the TMDL was discretionary on the fact that the TMDL and WLAs have changed over time.

The District asserts that it “now faces enormous costs to ‘solve’ a problem that is has not created as does not control, and has already substantially mitigated by implementing a comprehensive chloride source reduction program within the sewer service area.” The District estimates its costs “to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>90</sup> The District acknowledges that “[s]ome of the compliance project costs may be paid from service charges,” but the District asserts that its “elected officials could not support the proposed rate increases in the face of fierce public opposition.” The District maintains that “a local agency does not fall under the fee increase exception [of section 17556(d)] if it is unable to obtain the requisite approval under the Proposition 218 process,” which requires a local agency to provide notice of any new or increased assessment. The District provided the notice, as required, and alleges that

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<sup>86</sup> Exhibit D, Claimant’s Rebuttal Comments.

<sup>87</sup> Exhibit A, Test Claim, at pp. 16; 49-51.

<sup>88</sup> Exhibit A, Test Claim, at pp. 13-17; 59-63.

<sup>89</sup> Exhibit A, Test Claim, at p. 5.

<sup>90</sup> Exhibit A, Test Claim, at p. 12.

it “received strong opposition amongst its constituents,” and “[a]s a result, the District has been unable to successfully implement a rate increase due to public resistance.”<sup>91</sup>

In response to the Regional Board’s comments on the test claim, the District’s rebuttal comments stress the discretion available to the Regional Board, which it believes demonstrates that the Resolution is not necessary to implement a federal mandate. The comments further state that the District’s “elected officials could not implement the proposed rate increase in the face of fierce public opposition;” that the District participated in developing the AWRM “only to protect, to the best of its ability, the interests of its ratepayers;” and that therefore “the District is entitled to subvention of the costs that have been and will be incurred as a result of this mandate.”<sup>92</sup>

In comments on the draft staff analysis, the District argues that it is “the passive recipient of imported high-chloride drinking water, which it must treat to prevent a speculative harm.” The District argues that the TMDL “requires the District to pay more than its fair share of cleanup costs to prevent speculative damage.” The District argues that it “has no legal authority to obtain reimbursement for the parties responsible for much of the chloride nor from the beneficiaries of the treatment,” and therefore the district “is being forced to pay to solve a speculative problem with origins and effects that are outside its jurisdiction.”<sup>93</sup> With respect to the draft staff analysis, the District argues that (1) the implementation tasks alleged in the test claim Resolution should not be denied on grounds that they are not new, because “the 2008 TMDL is the result of the final appeal of the original 2002 approval;” (2) the acceleration of implementation is a higher level of service; (3) the AWRM must be evaluated with reference to the pre-TMDL requirements, in order to determine whether it constitutes a new program or higher level of service; and (4) the District does not have sufficient fee authority to cover the costs of the program, because it is “subject to Prop. 218 protests and referenda on the rates necessary to support the TMDL facilities.”<sup>94</sup>

### **Los Angeles Regional Water Quality Control Board Position**

The Regional Board maintains that this test claim does not qualify for subvention. The Regional Board argues that CWA imposes a requirement to establish a TMDL for chlorides for an impaired water body. In addition the Regional Board asserts that that absent the AWRM plan, the claimant would be required to meet the water quality standard established for the Santa Clara River in the 2002 TMDL (and maintained in the revisions of 2004 and 2006) by the year 2015. The Regional Board argues that it has no discretion whether to adopt water quality objectives due to the listing of the Santa Clara River under section 1313(d) of the CWA. The Regional Board asserts that “[w]ater quality standards are adopted pursuant to the Clean Water Act, and *any* TMDL is required to attain and maintain the applicable water quality standards, no matter how many times these regulatory mechanisms are modified and amended.”<sup>95</sup> The Regional Board further argues that the alleged discretion exercised in allocating pollutant loading among

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<sup>91</sup> *Id.*, at p. 25.

<sup>92</sup> Exhibit D, Rebuttal Comments, at pp. 2-14.

<sup>93</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at pp. 1; 6.

<sup>94</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at pp. 2-6.

<sup>95</sup> Exhibit B, LA Regional Board Comments, at pp. 22-23.

various dischargers does not make the Resolution a state-mandated program: “a TMDL is not valid unless it contains wasteload and load allocations.” The Regional Board holds that “to protect beneficial uses, the Los Angeles Water Board had no choice but to assign wasteload allocations to each point source discharger, including the Claimant.”<sup>96</sup>

In addition, the Regional Board also argues that the Resolution does not impose a new program or higher level of service. The Regional Board argues that the chloride water quality objective was first established in 1975, and the 2008 Resolution was intended “to incorporate less-stringent site-specific objectives in order to support the Claimant’s AWRM program.” The Regional Board continues: “[t]hus, if anything, the 2008 Resolution imposed a *lower level* of service in order to make it less expensive for the Claimant to implement the existing 100 mg/L chloride water quality objective.” The Regional Board also asserts that it did not impose this program: “[t]he AWRM is the Claimant’s chosen method of complying with the Chloride TMDL and the water quality objectives.” Finally, the Regional Board argues that if the U.S. EPA had adopted a chloride TMDL for the Santa Clara River, which the applicable laws permit if the state fails to do so, “it would have done so without an implementation plan, since the U.S. EPA does not include implementation plans as part of their TMDLs.” In other words, the District has the Regional Board to thank for the gradual and phased implementation of the TMDL, which the Regional Board implied is less burdensome and expensive than a TMDL adopted by the Administrator of the U.S. EPA.<sup>97</sup>

Moreover, the Regional Board argues that “the 2008 Resolution is a regulatory provision of general applicability and not a new program or higher level of service.” The Regional Board asserts that “[w]ater quality objectives apply to a waterbody as a whole, and all dischargers are subject to them.” The Regional Board further states that “[l]ikewise, TMDLs must assign wasteload allocations and load allocations to all sources of the pollutant, both public agencies and private industry alike.” Therefore, the Regional Board concludes that “the challenged provisions treat dischargers with an even hand, irrespective of status (any point or nonpoint source) and are not peculiar to local agencies.”<sup>98</sup>

Finally, the Regional Board argues that three of the statutory exceptions of Government Code section 17556 are applicable. The Regional Board argues that the water quality standards and the TMDL contained in the Resolution are federally mandated, and therefore section 17556(c) applies.<sup>99</sup> The Regional Board argues also that section 17556(a) applies to bar this test claim because “the Claimant itself developed and proposed the AWRM program and then requested the Los Angeles Water Board to adopt the AWRM as part of its 2008 Resolution.”<sup>100</sup> And, the Regional Board argues that the District possesses fee authority within the meaning of section 17556(d). The Regional Board dismisses the claimant’s assertion that “the District’s board declined to adopt the proposed rate increases based on the expectations that any substantive rate

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<sup>96</sup> Exhibit B, LA Regional Board Comments, at p. 24.

<sup>97</sup> Exhibit B, LA Regional Board Comments, at p. 26.

<sup>98</sup> Exhibit B, LA Regional Board comments, at pp. 26-27.

<sup>99</sup> See Exhibit B, LA Regional Board Comments, at p. 28.

<sup>100</sup> Exhibit B, LA Regional Board Comments, at p. 29.

increase would be overturned by way of referendum due to fierce opposition from the district's ratepayer.”<sup>101</sup> The Regional Board argues that “[t]he plain language of this exception is based on the Claimant’s authority, not on the Claimant’s practical ability in light of surrounding economic circumstances, to levy fees.”<sup>102</sup> The Regional Board concludes that “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>103</sup>

In comments submitted on the draft staff analysis, the Regional Board substantially concurs with the analysis below, but reiterates that the Resolution is not a reimbursable mandate because it is not unique to government, and applies to the water body generally. The Board “respectfully requests that the Commission address this argument in the context of the Resolution as a whole and determine that the Resolution does not impose requirements unique to government.”<sup>104</sup>

### **Department of Finance Position**

Finance argues that the TMDL does not impose a reimbursable state mandate because “(1) the regulations are required by section 303(d) of the federal Clean Water Act, (2) the regulations by themselves do not require the claimant to act, and (3) even if the regulations required action, claimant has fee authority sufficient to pay its costs.” Finance also questions whether the claim may be time barred, because the Resolution was adopted by the Regional Board in December 2008, and the test claim was filed on March 30, 2011.<sup>105</sup>

### **Other Public Comment**

On October 9, 2013, Ms. Lynda Cook of Santa Clarita filed comments on the draft staff analysis. Ms. Cook asserted that residents of Santa Clarita should not be responsible for the costs of removing chloride from the Santa Clara River, because the residents of Santa Clarita are not the cause of high concentrations of chloride in the Santa Clara River. Ms. Cook further asserted that increased fees for sewer services are a tax, and should be subject to voter approval.<sup>106</sup>

On October 18, 2013 the City of Santa Clarita submitted written comments on the draft staff analysis, in which the City argued that “compliance with the Upper Santa Clara River Chloride Total Maximum Daily Load will cost our Santa Clarita Valley residents and businesses millions of dollars.” The City argued that “[i]t is essential for the vitality of our community that compliance with State-created regulations, such as this one, be supported by the State.”<sup>107</sup>

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<sup>101</sup> Exhibit B, LA Regional Board Comments, at pp. 30-31 [citing to Exhibit A, Test Claim, at p. 26].

<sup>102</sup> Exhibit B, LA Regional Board Comments, at p. 31 [citing *Connell v. Superior Court* (1997) 59 Cal. App.4th 382, at pp. 401-402].

<sup>103</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>104</sup> Exhibit I, LA Regional Board Comments on Draft Staff Analysis, at pp. 1-2.

<sup>105</sup> Exhibit C, Department of Finance Comments, at pp. 1-2.

<sup>106</sup> Exhibit G, Public Comments on Draft Staff Analysis.

<sup>107</sup> Exhibit H, City of Santa Clarita Comments.

#### 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.”<sup>108</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>109</sup> 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.<sup>110</sup>
2. The mandated activity 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.<sup>111</sup>
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.<sup>112</sup>
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.<sup>113</sup>

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<sup>108</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>109</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>110</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>111</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

<sup>112</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>113</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>114</sup> The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>115</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>116</sup>

**A. Threshold Issues: the Santa Clarita Valley Sanitation District is an Eligible Claimant Before the Commission; Resolution R4-2008-012 is an Executive Order within the Meaning of Article XIII B, Section 6; and the Test Claim is Timely Filed.**

1. The Santa Clarita Valley Sanitation District is an Eligible Claimant before the Commission.

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. “Costs mandated by the state” is defined to mean “any increased costs which a local agency or school district is required to incur... as a result of any statute... or any executive order implementing any statute... which mandates a new program or higher level of service of an existing program.”<sup>117</sup> “Local agency,” in turn, is defined to include “any city, county, special district, authority, or other political subdivision of the state.”<sup>118</sup>

However, not every “local agency,” as defined, is an eligible claimant before the Commission. In addition to an entity fitting the description above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. The California Supreme Court, in *County of Fresno v. State of California*,<sup>119</sup> explained the constitutional subvention requirement as follows:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments... Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>120</sup>

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<sup>114</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>115</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>116</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

<sup>117</sup> Government Code section 17514 (Stats. 1984, ch. 1459).

<sup>118</sup> Government Code section 17518 (Stats. 1984, ch. 1459).

<sup>119</sup> *County of Fresno, supra*, 53 Cal.3d 482.

<sup>120</sup> *Id.*, at p. 487. Emphasis in original.

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,<sup>121</sup> the Fourth District Court of Appeal concluded that redevelopment agencies were not eligible to claim reimbursement because their funding came primarily from tax increment financing, which the court determined, due to a valid statutory exemption, was not subject to the taxing and spending limitations of articles XIII A and XIII B:

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...<sup>122</sup>

Therefore, a local agency that does not collect and expend “proceeds of taxes” is not an eligible claimant before the Commission.<sup>123</sup>

Here, the District receives *at least some amount* of its funding from local taxes, and is subject to an appropriations limit for at least a portion of its revenues, and is therefore an eligible claimant. The State Controller’s Special Districts Annual Report for 2010-2011 indicates that the Santa Clarita Valley Sanitation District was subject to an appropriations limit for approximately one-third of its total revenue (nearly \$11 million), and made total appropriations subject to the appropriations limit in the amount of \$5,778,450.<sup>124</sup> Based on the foregoing, the Commission finds that the Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

2. The Regional Water Board’s Order is an Executive Order within the Meaning of Article XIII B, Section 6.

Article XIII B, section 6 provides that “[w]henever 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...” Government Code section 17514 provides that costs mandated by the state includes “any increased costs which a local agency or school district is required to incur... as a result of... any executive order implementing any statute... which mandates a new program or higher level of service of an existing program...” Government Code section 17516

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<sup>121</sup> (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976

<sup>122</sup> *Redevelopment Agency of San Marcos, supra*, 55 Cal.App.4th at p. 986 [internal citations omitted].

<sup>123</sup> *Ibid.* See also, *County of Fresno, supra* (1991) 53 Cal.3d 482, at p. 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

<sup>124</sup> Exhibit X, 2010-2011 Special Districts Annual Report Excerpts 1 and 2.

defines an “executive order” to mean “any order, plan, requirement, rule, or regulation issued by...[a]ny agency, department, board, or commission of state government.”<sup>125</sup>

Because Resolution R4-2008-012 is an order of a state board, the Commission finds that Resolution R4-2008-012 is an executive order within the meaning of article XIII B, section 6.

### 3. The Test Claim was Timely Filed.

Section 17551 provides that “[l]ocal agency and school district 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.”<sup>126</sup>

Section 1183 of the Commission’s regulations states that “within 12 months,” for purposes of test claim filing, “means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the claimant.”<sup>127</sup>

Finance has raised the statute of limitations found in section 17551, arguing that the test claim was filed on March 30, 2011, while the Resolution had an effective date of December 11, 2008. Finance further argues that the District “asserts that eligible costs under the claim include those for the entire fiscal year 2009-10.” Finance concludes that “[i]f no allegedly state-mandated costs were incurred until fiscal year 2009-2010, all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred.”<sup>128</sup>

Finance’s first point, that the effective date of the Resolution would place this test claim beyond the time bar, has some merit. An effective date of December 11, 2008 would require that a valid test claim be filed by June 30, 2010.

The cover page of the test claim indicates that the Resolution was effective December 11, 2008, as Finance asserts. However, the Regional Board’s comments on the test claim state that the Resolution was effective April 6, 2010, the date of US EPA’s approval of the TMDL. In addition, a later settlement agreement between the District and the Regional Board is in accord, stating that the Resolution became effective April 6, 2010.<sup>129</sup> This is a logical conclusion because TMDLs and waste load allocations must be approved by the SWRCB, OAL,<sup>130</sup> and the Administrator of the US EPA.<sup>131</sup> An effective date of April 6, 2010, would require that a timely filed test claim be submitted on or before June 30, 2011. This test claim was filed March 30,

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<sup>125</sup> Government Code section 17516 (as amended by Stats. 2010, ch. 288 (SB 1169)).

<sup>126</sup> Government Code section 17551 (Stats. 2007, ch. 329 (AB 1222)).

<sup>127</sup> Code of Regulations, title 2, section 1183 (Register 2008, No. 17).

<sup>128</sup> Exhibit C, Department of Finance Comments, at p. 2. See also, Exhibit A, Test Claim, at p. 17; Exhibit D, Rebuttal Comments, at p. 13.

<sup>129</sup> Exhibit X, Settlement Agreement, at p. 4.

<sup>130</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing Water Code §§ 13245, 13246; Government Code § 11353]. See also, Exhibit A, Test Claim, at p. 6.

<sup>131</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c)]. See also, Exhibit A, Test Claim, at p. 6.

2011, and therefore was filed before the expiration of the statute of limitations, based on the effective date agreed upon by the parties.

Based on the foregoing, the Commission finds that this test claim was timely filed.

**B. The Regional Water Board’s Resolution and Order does not Impose a New Program or Higher Level of Service within the Meaning of Article XIII B, Section 6.**

The District states that “Regional Board Resolution No. R4-2008-012 requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs’ NPDES permits; and (2) specific “implementation tasks” necessary for compliance.” The final waste load allocations, along with the Implementation Tasks, “are the subject of this test claim.”<sup>132</sup>

Attachment B to Resolution R4-2008-012 outlines the conditional site-specific objectives for Reaches 4B, 5, and 6, and conditional waste load allocations for the water discharged from the Valencia and Saugus WRPs to Reaches 4B, 5, and 6. The WLAs for the District’s WRP facilities are based on, and numerically identical to, the SSOs for the respective reaches (117 mg/L chloride for Reach 4B, and the discharge into Reach 4B; 150 mg/L chloride for Reaches 5 and 6, and for the discharge into Reaches 5 and 6).<sup>133</sup> All other point sources are assigned WLAs equal to 100 mg/L.<sup>134</sup> Attachment B also provides for the operation of reverse osmosis treatment at the Valencia WRP, the provision of supplemental water to Reach 4B when chloride concentrations exceed 117 mg/L, and the design and construction of advanced treatment facilities.<sup>135</sup> In addition, Attachment B outlines the following implementation tasks:

*4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature, develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6... ¶*

*5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.*

*6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The*

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<sup>132</sup> Exhibit A, Test Claim, at p. 13.

<sup>133</sup> Exhibit A, Test Claim, at pp. 46-53.

<sup>134</sup> Exhibit A, Test Claim, at p. 52.

<sup>135</sup> Exhibit A, Test Claim, at pp. 50-52; 58; 63.

SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.

7. *Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.*

8. *Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.*

9. *Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.*

¶...¶

17. a) *Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.*

¶...¶

20. *The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.<sup>136</sup>*

The District alleges the following costs mandated by Resolution R4-2008-012:

*Summary of the Implementation Tasks Completed to Date:*

TMDL Study/Task	Cost
TMDL Collaborative Process Facilitation Services (Task 4)	\$0.8 million
Ground Water Surface Water Interaction Model (Task 5)	\$3.1 million
Agricultural Chloride Threshold Study (Task 6)	\$0.7 million
Threatened and Endangered Species Study (Task 6)	\$0.1 million
Site Specific Objectives and Anti-Degradation Study (Task 7 & 8)	\$0.3 million
Chloride Compliance Cost Study (Task 9)	\$0.5 million

<sup>136</sup> Exhibit A, Test Claim, at pp. 59-63.

Facilities Plan & EIR (Task 17a)	\$1.1 million
Total TMDL Study Costs to Date	\$6.6 million

¶...¶

As previously indicated, the District has implemented a comprehensive chloride source reduction program within the sewer service area designed to reduce chloride levels in the WRP discharges in order to comply with final WLAs for chloride. (See Exh. 19). Specifically, the District implemented an innovative automatic water softener public outreach and rebate program, in compliance with Senate Bill 475, to remove automatic water softeners, which contribute significant amounts of chloride to the WRP discharges. The total cost of the program for removal of automatic water softeners, not including the cost of the District's staff time, is approximately \$4.8 million.<sup>137</sup>

The District goes on to state that compliance with the conditional SSOs and WLAs will require implementation of “ultra-violet light disinfection at both WRPs;” construction of advanced treatment facilities such as microfiltration-reverse osmosis and brine disposal for desalination; salt management facilities such as extraction wells and water supply conveyance pipelines; supplemental water; and alternative water supplies for the protection of beneficial uses.<sup>138</sup> These activities and costs are described as the AWRM. The District’s “present estimate of the cost to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>139</sup>

The District estimates its costs to implement the AWRM program as follows:

AWRM Project Element	Estimated Capital Cost
Facilities Plan & Environmental Impact Report (EIR)	\$2.5 million
Advanced Treatment [MF & RO]	\$30.0 million
Brine Disposal (Deep Well Injection, DWI)	\$53 million
Ventura Salt Export Facilities	
(a) MF/RO Conveyance Pipeline from Valencia WRP	\$46.5 million
(b) GW Extraction Wells in Ventura County	\$5.5 million
(c) Blend Water Pipeline from Wells to River	\$52.3 million
Supplemental Water from local pumped groundwater	\$30.0 million
Supplemental Water conveyance	\$12.0 million
UV Disinfection Facilities at Saugus & Valencia WRP	\$16.5 million
Removal of Automatic Water Softeners	\$2.4 million
Total Estimated Capital Cost	\$250.7 million <sup>140</sup>

Thus the District has alleged the above activities required by the 2008 Resolution, totaling approximately \$257 million in alleged increased costs. The analysis below addresses whether

<sup>137</sup> Exhibit A, Test Claim, at pp. 13-16.

<sup>138</sup> Exhibit A, Test Claim, at pp. 11-12.

<sup>139</sup> *Id.*, at p. 12.

<sup>140</sup> Exhibit A, Test Claim, at p. 16.

the activities alleged in the Implementation Tasks and the AWRM program constitute a new program or higher level of service.

1. Some of the Implementation Tasks alleged in the Resolution are not new.

Resolution R4-2008-012 constitutes a revision to the prior chloride TMDL for the Upper Santa Clara River, and therefore many of the implementation tasks included in the resolution may have already been completed, or, at minimum, were included in earlier versions of the TMDL that continued to be required when the 2008 Resolution was adopted and which have not been pled in this test claim, and are therefore not new, with respect to prior law. Activities that are not new, as compared with an earlier order or resolution in effect at the time the 2008 Resolution was adopted, do not constitute a new program or higher level of service and, thus, are not reimbursable in the context of the current test claim.<sup>141</sup>

Implementation Tasks 4, 5, 6, 7, 8, and 9, quoted above from Resolution R4-2008-012, are found in nearly identical language in Resolution 04-004,<sup>142</sup> and again in Resolution R4-2006-016, both of which were approved by EPA prior to the adoption of the test claim Resolution.<sup>143,144</sup>

Additionally, Implementation Tasks 4-9 are listed in the revised TMDL as having completion dates *prior to* the adoption and approval of the 2008 Resolution.<sup>145</sup> Moreover, these tasks appear to have indeed *been completed* prior to the adoption of Resolution R4-2008-012: the Resolution states that “[t]he Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c).” The Resolution further states that “[t]he completion of these TMDL special studies... has led to the development of an alternative TMDL implementation plan that addressed chloride impairment of surface waters and degradation of groundwater.”<sup>146</sup>

Based on the plain language of the Resolution itself, these Implementation Tasks were completed prior to the adoption of the Resolution. It appears that the tasks were repeated in the revised TMDL adopted December 11, 2008, but activities that were completed (and the costs thereby incurred) prior to July 1, 2009 are outside the period of eligibility for this test claim.<sup>147</sup> Moreover, activities that were required by a prior version of the TMDL are not new. Therefore,

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<sup>141</sup> *Lucia Mar Unified School District, supra*, (1988) 44 Cal.3d 830, at p. 835.

<sup>142</sup> See Exhibit B, LA Regional Board Comments, at p. 537 and following.

<sup>143</sup> Exhibit B, LA Regional Board Comments, at pp. 564-565.

<sup>144</sup> See Exhibit X, SCVSD Draft EIR, at p. 8 [stating that Resolution 04-004 was “in effect May 4, 2005,” and Resolution R4-2006-016 was “in effect June 12, 2008.”].

<sup>145</sup> E.g., Task 4: Convening a technical advisory committee to conduct literature review and develop methodology for assessment; Completion Date 05/04/2006; Task 5: Groundwater/Surface Water Interaction Model; Completion Date 11/20/2007.

<sup>146</sup> Exhibit A, Test Claim, at p. 36.

<sup>147</sup> Government Code section 17557(e) [“A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” This test claim was submitted on March 30, 2011, establishing eligibility for reimbursement beginning July 1, 2009].

all costs and activities alleged for Implementation Tasks 4, 5, 6, 7, 8, and 9 do not result in a state-mandated new program or higher level of service and are denied.

Implementation Task 17a, “Implementation of Compliance Measures, Complete Environmental Impact Report...” is found in Resolution R4-2006-016.<sup>148,149</sup> The claimant alleges \$613,530 for “Facilities Plan & EIR – Task 17” and \$774,890 for “Consultants (TMDL Task 17)” incurred in fiscal year 2009-2010. However, the activities of implementing compliance measures and completing an EIR are not *new*, with respect to prior law, and the resolution which first required these activities was not pled in this test claim. In fact, claimant was required to prepare the draft EIR by May 4, 2010 under prior law and an administrative civil liability complaint was brought by the Regional Board against the District “for the failure to complete Wastewater Facilities Plans and Programmatic Environmental Impact Reports by the required due date in 2011.”<sup>150</sup>

Based on the foregoing, the Commission finds that the Implementation Tasks found in the test claim Resolution, alleged to impose costs of approximately \$6.6 million, are not new requirements, when compared with prior law, and therefore cannot impose reimbursable costs mandated by the state.

Finally, the default TMDL, including WLAs of 100 mg/L for the Saugus and Valencia WRPs, which takes effect “if the District cannot comply with the AWRM program,” is not a new requirement. The Regional Board adopted a TMDL for Reaches 5 and 6 of the Santa Clara River in 2002, which “required the Districts to reduce the chloride levels in the Plants’ discharge.”<sup>151</sup> That TMDL was revised in 2004 and 2006, but the numerical limits were not altered. The TMDL in effect prior to the 2008 Resolution “has a numeric target of 100 mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use.”<sup>152</sup> In addition, the TMDL includes “waste load allocations (WLAs) [of] 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP.”<sup>153</sup> The numerical limits, which the parties acknowledge will control if the AWRM program is not fully and continuously implemented, were adopted in 2002, and approved by U.S. EPA in April 2005, and have not changed. The default WLAs are therefore not new, irrespective of whatever costs might be incurred to implement them.

In comments submitted in response to the draft staff analysis, the District argues that the above analysis “completely ignores the fact that the 2008 TMDL is the result of the final appeal of the original 2002 approval.” The District argues that the “entire TMDL process began in 2002 with the initial adoption of the TMDL, and was repeatedly administratively appealed and negotiated over six years until the District had exhausted all of its administrative remedies and was forced to

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<sup>148</sup> Exhibit B, LA Regional Board Comments, at p. 566.

<sup>149</sup> Exhibit X, SCVSD Draft EIR at p. 8 [stating that Resolution R4-2006-016 was “in effect” on June 12, 2008].

<sup>150</sup> Exhibit X, LA Regional Board, Enforcement News, November 26, 2012.

<sup>151</sup> Exhibit A, Test Claim, at p. 175.

<sup>152</sup> Exhibit A, Test Claim, at p. 191 [Attachment A to Resolution R 02-018].

<sup>153</sup> *Id.*, at p. 192.

accept the 2008 order in the face of the threat of crippling fines.” The District further argues that “[t]o deny the Test Claim on the grounds that the state mandate is not “new” would be a Catch-22, since any Test Claim during the appeals process would have been unripe.” The District concludes that “because the 2002, 2005, and 2006 approvals are part and parcel of the 2008 TMDL, they were “pled” in this Test Claim.” Therefore, the District argues that “[t]he proper measure of whether the TMDL is a new or higher level of service is to compare the TMDL’s requirements with the existing or pre-TMDL requirements.”

This argument does not change the above analysis. As discussed above, a test claim must 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.”<sup>154</sup> In addition, section 17553 and the regulations require that a claimant identify “the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate,” and include a “a detailed description of new activities and costs that arise from the mandate.”

Here, the District argues that the prior Basin Plan amendments are part and parcel of the 2008 Resolution, and were therefore effectively “pled.” But the test claim form cites only Resolution R4-2008-012. Moreover, even if the prior Resolutions were “pled” in this test claim as imposing state-mandated activities, the activities described in Implementation Tasks 4, 5, 6, 7, 8, and 9 would be well outside the statute of limitations described in section 17551, because those activities were already completed at the time the 2008 Resolution was adopted, and thus costs for those activities would necessarily have been “first incurred” prior to the adoption of the 2008 Resolution.<sup>155</sup>

In addition, the District is for the first time arguing that “the 2008 TMDL is the result of the final appeal of the original 2002 approval;”<sup>156</sup> in essence arguing that the District was not mandated to perform any of the activities described in the 2002, 2003, 2004, or 2006 orders until the “final appeal” was exhausted in the 2008 Resolution. The record does not support this interpretation: although Resolution 2002-018 was appealed to the SWRCB, and remanded to the District, the Regional Board on remand adopted Resolution 2003-008, amending Resolution 2002-018, which was ultimately approved by EPA on April 28, 2005, thus ending the administrative appeals process for the “original” TMDL, and giving its provisions the force of law.

Accordingly, the District completed the studies required by the “original” TMDL, and those activities are no longer “new” with respect to prior law. Finally, the “proper measure of whether the TMDL is a new or higher level of service” is not, as the District suggests, to compare Resolution 2008-012 to the “existing or pre-TMDL requirements.” Rather, the “proper measure” of a new program or higher level of service is, as with any other test claim, to compare the test claim statute or regulation with the law in effect immediately prior to the alleged mandate.<sup>157</sup>

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<sup>154</sup> Government Code 17551(c) (Stats. 2007, ch. 329 (AB 1222)).

<sup>155</sup> See Exhibit A, Test Claim, at pp. 34-36 [Resolution R4-2008-012, paragraphs 10; 13-15].

<sup>156</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 4.

<sup>157</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [“Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, *the program was new insofar as plaintiffs are concerned*, since at the time section

Here, the requirements of Implementation Tasks 4-9 and 17a, and the chloride WLAs of 100 mg/L were in force at the time the 2008 test claim Resolution was adopted.

Based on the foregoing, Implementation Tasks 4, 5, 6, 7, 8, 9, and 17a are not new, with respect to prior law. In addition, the waste load allocations are not new, with respect to prior law. Therefore the Commission finds that none of these provisions constitutes a state-mandated new program or higher level of service.

2. Accelerating the implementation period of the final waste load allocations under Implementation Task 20 is not a new program or higher level of service resulting in increased costs mandated by the state.

Implementation Task 20 shortens the applicable period of the interim WLAs, thus accelerating the implementation of the final WLAs for the Saugus and Valencia WRPs, from 11 years to 10 years, commencing with the effective date of the 2002 TMDL.<sup>158</sup> The interim WLAs are designed to accommodate the time needed for the WRPs to implement desalination and other chloride reduction improvements. For the Saugus WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. For the Valencia WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L.<sup>159</sup> These interim WLAs were originally intended to apply for two and one-half years, pursuant to the 2002 TMDL adopted by the Regional Board. That period was expanded to 13 years after appeal and remand from the SWRCB, and the revised schedule was approved by the SWRCB, OAL, and the Administrator of the U.S. EPA.<sup>160</sup> Resolution R4-2006-016 shortened the interim WLA period by two years, as follows:

The interim effluent limits for chloride shall remain in effect for *no more than 11 years after the effective date of the TMDL*. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the [District].<sup>161</sup>

Resolution R4-2008-012 shortened the implementation schedule again, providing that the interim WLAs “shall remain in effect for no more than 10 years after the effective date of the TMDL.”<sup>162</sup>

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59300 became effective they were not required to contribute to the education of students from their districts at such schools.”] (emphasis added).

<sup>158</sup> The 2002 Resolution was approved by U.S. EPA, after appeal, remand, and revision, on April 28, 2005. (See Exhibit A, Test Claim, at p. 45 [Attachment B to Resolution R4-2008-012].)

<sup>159</sup> Exhibit B, LA Regional Board Comments, at p. 543 [Resolution R4-04-004].

<sup>160</sup> Exhibit B, LA Regional Board Comments, at pp. 533 [Resolution R4-03-008]; 605 [Resolution R4-2008-012].

<sup>161</sup> Exhibit A, Test Claim, at p. 228; Exhibit B, LA Regional Board Comments, at p. 566 [emphasis added].

<sup>162</sup> Exhibit B, LA Regional Board Comments, at pp. 623-624.

Based on applicable case law there is no new program inherent in shortening the time frame for the interim WLAs. Pursuant to the test claim Resolution, the requirements of the interim WLAs remain the same, only the schedule is accelerated, and the final WLAs attach one year sooner. It may be argued that it costs more to implement the final WLAs one year sooner, but this change does not of itself constitute a new program or higher level of service.<sup>163</sup>

The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*”<sup>164</sup> The Supreme Court has also spoken on the requirement of a new program in *Lucia Mar Unified School District, supra*, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.”<sup>165</sup> Accordingly, in *City of San Jose v. State of California*,<sup>166</sup> the court held that “withdrawal of funds to reimburse [for a program] was not a ‘new program’ under section 6,”<sup>167</sup> and that “there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>168</sup> Finally, not only is an increase in costs not tantamount to a higher level of service, there is no evidence in the record of the incremental cost increase which might be alleged based on accelerating the implementation of the final WLAs by one year.

Based on the foregoing, the Commission finds that Implementation Task 20 does not impose any new state mandated activities and does not result in a new program or higher level of service.

3. The Alternative Water Resources Management program is not a new program or higher level of service.

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<sup>163</sup> In comments submitted on the draft staff analysis, the District argues that the cases cited herein are distinguishable, and that no case “addresses the issue of accelerated timetables for the completion of a project.” While true that no case directly addresses the issue of an accelerated project, two of the three cited cases also ultimately conclude that the local government claimant has experienced a mandate, based on the facts of those cases. More importantly, however, the cases cited show that costs alone do not constitute a reimbursable mandate, unless those costs are shifted *from* the state *to* the local entity. (Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 5.)

<sup>164</sup> *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, at p. 173 [citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 54-56] [emphasis added].

<sup>165</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [emphasis added].

<sup>166</sup> (1996) 45 Cal.App.4th 1802, at pp. 1811-1813.

<sup>167</sup> *City of San Jose, supra*, 45 Cal.App.4th at p. 1817.

<sup>168</sup> 45 Cal.App.4th at p. 1813 [citing *County of Los Angeles v. Commission on State Mandates, supra* (1995) 32 Cal.App.4th 805, at p. 817].

The California Supreme Court, in *County of Los Angeles I*,<sup>169</sup> addressed the phrase “new program or higher level of service” as follows:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning... We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>170</sup>

Thus the Supreme Court articulated a multi-faceted test for “new program or higher level of service:” reimbursement requires (1) a new task or activity; (2) which constitutes an increase in service as compared to prior law; (3) and which either provides a service to the public, or imposes requirements uniquely upon government, rather than upon all persons and entities equally.

The Regional Board has argued that the Resolution cannot impose a new program or higher level of service because water quality objectives and TMDLs apply to a water body as a whole, and all dischargers are subject to them, “both public agencies and private industry alike.” The Commission need not address this argument,<sup>171</sup> since the AWRM program is an optional alternative to complying with the more stringent TMDL imposed by prior law, which claimant may choose to reject. Moreover, the requirements of the AWRM provide a lower level of service when compared to the law in effect immediately prior to the adoption of R4-2008-012. Therefore, based on the analysis below, the Commission finds that the AWRM does not impose a state mandated new program or higher level of service.

The Regional Board argues that Resolution R4-2008-12 cannot impose a new program or higher level of service because it “amended the Basin Plan to, among other things, adopt site-specific

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<sup>169</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, at p. 56.

<sup>170</sup> *Ibid.*

<sup>171</sup> In comments submitted on the draft staff analysis, the Regional Board entreats the Commission to consider this argument anyway: “The Board... respectfully requests that the Commission address this argument in the context of the Resolution as a whole and determine that the Resolution does not impose requirements unique to the government.” However, the Second District Court of Appeal has previously called this theory into question, when ruling on the constitutionality of the State Water Resources Control Board’s (and the Regional Boards’ by extension) categorical exemption from the definition of a reimbursable executive order, under prior section 17516. The court stated “the applicability of permits to public and private discharges does not inform us about whether *a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate* necessitating subvention under article XIII B, section 6. (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, at p. 919.) In any event, the Commission need not address this issue because the AWRM program is voluntary, and constitutes a lower level of service than that required under prior law.

objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara River...”<sup>172</sup> The Regional Board argues: “thus, if anything, the 2008 Resolution imposes a *lower level of service* in order to make it less expensive for the Claimant to implement” the TMDL.<sup>173</sup> The Commission agrees.

The first water quality objectives for the Santa Clara River were established in 1975, in which chloride objectives were set at 90 mg/L for Reach 5 and 80 mg/L for Reach 6.<sup>174</sup> In 1978, the Regional Board modified the chloride objectives to 100 mg/L for both Reaches 5 and 6. In 2002, the 100 mg/L objective was incorporated into a TMDL, pursuant to the impairment listing under section 303(d) of the Clean Water Act of certain reaches of the Santa Clara River, and the threat to salt-sensitive agriculture uses both within Reaches 5 and 6 and downstream.<sup>175</sup> Aside from variances and temporary relaxation of the objectives due to drought conditions in the 1990s, the 100 mg/L objective has remained the underlying standard from 1978 to the present.<sup>176</sup> Resolution R4-2008-012 plainly states that the TMDL then in effect is being amended, conditionally, to include the elements of the AWRM.<sup>177</sup> Therefore, the underlying water quality objectives and TMDL in effect are outside the subvention requirement, because any activities or requirements to meet the 100 mg/L objectives, or the TMDL, are not new, and are not pled in this test claim.

Both the District and the Regional Board agree that the AWRM contains “relaxed” requirements, as compared with the prior water quality objectives. The District describes the Resolution as follows:

The December 11, 2008 amendment to the Basin Plan also modified the chloride requirements. This amendment included the enactment of *relaxed site specific objectives (“SSOs”)* for chloride in the Santa Clara River conditioned upon the completion of activities set forth in the revised TMDL that contained new final WLAs and a detailed implementation plan.<sup>178</sup>

The Regional Board states:

In addition, the 2008 Resolution reduces the compliance costs the Claimant would otherwise incur. As detailed above, the 2008 Resolution was specifically adopted

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<sup>172</sup> Exhibit B, LA Regional Board Comments, at p. 2 [emphasis in original].

<sup>173</sup> Exhibit B, LA Regional Board Comments, at p. 26 [emphasis in original].

<sup>174</sup> Exhibit A, Test Claim, at p. 7; Exhibit B, LA Regional Board Comments, at p. 9.

<sup>175</sup> Exhibit A, Test Claim, at pp. 9-10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

<sup>176</sup> Exhibit A, Test Claim, at pp. 7-11; Exhibit B, LA Regional Board Comments, at pp. 9-11.

<sup>177</sup> Exhibit A, Test Claim, at p. 36. See also, Exhibit B, LA Regional Board Comments, at p. 705 [transcript of December 11, 2008 hearing].

<sup>178</sup> Exhibit A, Test Claim, at p. 11 [emphasis added].

to incorporate relaxed site-specific objectives into the Basin Plan in order to implement the Claimant's proposed AWRM program.<sup>179</sup>

In addition, "implementation actions to attain [the prior TMDL] would require advanced treatment – that is, reverse osmosis – of the full effluent from the Saugus *and* Valencia plants with discharge into the ocean through a 43-mile brine line."<sup>180</sup> Under the AWRM, reverse osmosis desalination is only required at the Valencia WRP, and the waste is permitted to be disposed of through deep well injection.<sup>181</sup> The District estimates that implementing the advanced treatment upgrades at only one of the two facilities, along with other tasks, will cost only approximately \$250 million, as opposed to \$500 million under the prior TMDL.<sup>182</sup>

However, in comments submitted on the draft staff analysis, the District argues that "both the AWRM and the compliance plan adopted by the District on October 28, 2013 are designed to comply with Regional Board requirements that are far more stringent than the pre-TMDL standard," and that, as argued above, "the comparison must be between the pre-TMDL conditions and the present TMDL conditions – not comparisons between the various TMDL standards adopted during the appeals process spanning from 2002 to 2008."<sup>183</sup> As explained above, there is no support in mandates law for this position, and the requirements of the test claim Resolution are, as in all mandates cases, evaluated with reference to the law in effect immediately prior to the alleged test claim statute or executive order.<sup>184</sup>

There is nothing in the AWRM that imposes a higher level of service on this claimant. Resolution R4-2008-012 calls for the implementation of less-stringent requirements than under prior law, which the District has acknowledged will be less-expensive to implement. In addition, those requirements are conditional, and the default requirements, should the AWRM not continue to be fully implemented, are not new.

Based on the foregoing, the Commission finds that the AWRM program is not a new program or higher level of service, and the costs and activities thereunder are denied.

**C. Even if the Resolution Constitutes a State-Mandated New Program or Higher Level of Service, it Would not Impose Costs Mandated by the State Under Section 17556(d) Because the Claimant Has Sufficient Fee Authority, as a Sanitation District providing Sewer Services, to Cover the Costs of the Program.**

Government Code section 17556(d) provides that the Commission "shall not find costs mandated by the state, as defined in Section 17514" if the Commission finds that "the local agency or

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<sup>179</sup> Exhibit B, LA Regional Board Comments, at p. 29.

<sup>180</sup> Exhibit B, LA Regional Board Comments, at p. 719 [transcript of December 11, 2008 meeting] [emphasis added]. See also, Exhibit A, Test Claim, at p. 10 [TMDL estimated to cost \$500 million].

<sup>181</sup> Exhibit A, Test Claim, at p. 12; Exhibit B, LA Regional Board Comments, at p. 778-779.

<sup>182</sup> Exhibit A, Test Claim, at pp. 10; 12.

<sup>183</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 5.

<sup>184</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556, subdivision (d), in *County of Fresno v. State of California*.<sup>185</sup> The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>186</sup>

Accordingly, in *Connell v. Superior Court of Sacramento County*,<sup>187</sup> the Santa Margarita Water District, among others, was denied reimbursement on the basis of its authority to impose fees on water users. The water districts submitted evidence “that rates necessary to cover the increased costs [of pollution control regulations] would render the reclaimed water unmarketable and would encourage users to switch to potable water.”<sup>188</sup> The court concluded that “[t]he question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs.” Water Code section 35470 authorized the levy of fees to “correspond to the cost and value of the service,” and “to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”<sup>189</sup> The court held that the Districts had not demonstrated “that anything in Water Code section 35470 limits the authority of the Districts to levy fees “sufficient” to cover their costs,” and that therefore “the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry.”<sup>190</sup>

Likewise, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting

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<sup>185</sup> *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

<sup>186</sup> *Id.*, at p. 487.

<sup>187</sup> (Cal. Ct. App. 3d Dist. 1997) 59 Cal.App.4th 382

<sup>188</sup> *Id.*, at p. 399.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Connell, supra*, (1997) 59 Cal.App.4th at p. 401.

the fees. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”<sup>191</sup> The court further noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>192</sup>

Here, Health and Safety Code section 5471 permits a sanitation district, “by ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees tolls, rates, rentals, or territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.”<sup>193</sup> This section provides “authority,” within the meaning of section 17556(d), based on the plain language of both Health and Safety Code section 5471 and Government Code section 17556.

Proposition 218, adopted by the voters in 1996, also known as the “Right to Vote on Taxes Act,” declared its purpose to protect taxpayers “by limiting the methods by which local governments exact revenue from taxpayers without their consent.” Proposition 218 added articles XIII C and XIII D to the Constitution,<sup>194</sup> article XIII D, section 6 lays out the procedures and requirements for “new or existing increased fees and charges.”

(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. *If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*

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<sup>191</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

<sup>192</sup> *Ibid.*

<sup>193</sup> Health and Safety Code section 5471(a) (Stats. 2007, ch. 27 (SB 444)).

<sup>194</sup> Exhibit X, Text of Proposition 218.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. *Except for fees or charges for sewer, water, and refuse collection services*, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision...

Section 6 thus provides that an agency seeking to impose or increase fees must identify the parcels and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to "consider all protests." Written protests by a majority of owners of the affected parcels are sufficient to defeat a fee increase. In addition, the section provides that new or increased fees are required to "not exceed the funds required to provide the property related service;" "not be used for any purpose other than that for which the fee or charge was imposed;" "not exceed the proportional cost of the service attributable to the parcel;" and be "actually used by, or immediately available to, the owner of the property in question." The section provides specifically that new fees or charges may not be imposed for general services such as police and

fire protection. Finally, voter approval is required “[e]xcept for fees or charges for sewer, water, and refuse collection services.”<sup>195</sup>

The District asserts that the fee authority case law discussed above is no longer on point “because the most significant cases predate the passage of [Proposition 218].” The District contends that “[t]his potential conflict is significant where a local agency is unable to obtain the requisite approval to implement a proposed fee increase.” The District asserts that it “attempted to implement the Proposition 218 process, but the elected public officials could not support the proposed rate increase in the face of fierce public opposition.” The District states that “[i]n 2010, the District’s board declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the District’s ratepayers.”<sup>196</sup>

In addition, the District argues in comments on the draft staff analysis that it “has no legal authority to obtain reimbursement from the parties responsible for the majority of the chloride concentration, nor does it have the legal authority to obtain reimbursement from the beneficiaries of the treatment.” The District also argues that *Clovis Unified, supra*, “is distinguishable from this Test Claim,” in that the community college districts were “authorized under the Education Code to collect a specified sum of money from each student for health fees,” while the District, “in contrast, has no authority to raise sewer fees by a sum certain.” In addition, the District argues that it is “subject to Prop. 218 protests and referenda on the rates necessary to support the TMDL facilities,” while the community colleges in *Clovis Unified* were “not subject to Prop. 218 or referenda on the health fee because it was directly established by law.”<sup>197</sup>

However, based on the plain language of article XIII D, section 6, above, voter approval is not required for increases to water and sewer rates, and the absence of a statute providing for a specific dollar-amount fee increase is not relevant to the authority of sewer districts to raise fees.<sup>198</sup> All remaining limitations of article XIII D, must be satisfied (e.g., parcels must be identified, and amounts proposed must be calculated; fees shall not exceed the funds required to provide service; revenues may not be used for any other purpose; amount of a fee must be proportional to the cost of the service attributable to a parcel; a public hearing must be held and *if written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge*), but the parties’ comments only identify “written protests” as a limitation at issue here, and state that “elected public officials could not support the proposed rate increase.”

The Regional Board argues that “assuming that Proposition 218 does apply to Claimant’s proposals for rate increases... the number of written protests necessary to preclude the Board of Directors from passing rate increases under Proposition 218 was noticeably lacking.” Section 6(a)(2), states that “[i]f *written protests* against the proposed fee or charge are *presented by a majority of owners of the identified parcels*, the agency shall not impose the fee or charge.” The

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<sup>195</sup> California Constitution, article XIII D, section 6 (adopted November 5, 1996).

<sup>196</sup> Exhibit A, Test Claim, at p. 26.

<sup>197</sup> Exhibit J, Claimant Comments on Draft Staff Analysis, at p. 6.

<sup>198</sup> California Constitution, article XIII D, section 6(c) (adopted November 5, 1996).

Regional Board argues that there are nearly 69,000 parcels connected to the District’s sewerage system, and therefore “at least 34,449 written protests” would be a majority of the owners required to defeat a rate increase. At the May 26, 2009 and July 27, 2010 hearings the District received “203 written protests and 7, 732 written protests, respectively.”<sup>199</sup>

The District does not dispute the number of written protests needed, or the number received (the Regional Board’s mathematical reasoning presumes that all 69,000 parcels represent a single voting property owner, but the District fails to argue the point); rather the District argues that the District’s Board “quite reasonably believed that this large rate increase would be rejected if challenged by initiative.”<sup>200</sup> Section 3 of Proposition 218 provides that the initiative power to overturn a tax, fee, or assessment “shall not be prohibited or otherwise limited,” and the District maintains that an initiative to overturn the fee increase would qualify for the ballot with approximately 6,500 votes, based on the estimated number of voters in the last gubernatorial election who would be affected by the increase.<sup>201</sup> Therefore, the District concludes that the 7,732 written protests “exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase.”<sup>202</sup>

But written protests are not tantamount to an initiative petition, and an initiative petition is not a successful referendum. The District acknowledges that its own board “declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum.”<sup>203</sup> The Commission agrees with the Regional Board, in that “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>204</sup>

The District argues that the Commission’s decision on *Discharge of Stormwater Runoff* (07-TC-09) reflects the tension between Proposition 218 and the precedent of *Connell*,<sup>205</sup> discussed above, because the Commission found in that earlier test claim decision that Proposition 218 limited the authority of the local government to raise the necessary fees. *Connell* did not address Proposition 218, because the water districts did not allege that their authority to raise fees was impacted by Proposition 218.<sup>206</sup> The water districts in *Connell* instead urged an interpretation of “authority” under section 17556(d) that would necessarily include economic feasibility as a test of “sufficiency,” and the court rejected that interpretation. Moreover, the Commission’s decision in *Discharge of Stormwater Runoff* concluded that Proposition 218 was a barrier to raising

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<sup>199</sup> Exhibit B, LA Regional Board Comments, at p. 20 [citing “Letter from Stephen R. Maguin...to Council members” regarding responses to comments made during the public hearing on proposed rate increases].

<sup>200</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>201</sup> Exhibit D, Rebuttal Comments, at p. 11, Fn. 8. See also article XIII C, section 3.

<sup>202</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>203</sup> Exhibit A, Test Claim, at p. 26.

<sup>204</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>205</sup> (1997) 59 Cal.App.4th 382.

<sup>206</sup> *Id.*, at p. 402.

assessments or fees only because stormwater management charges were not “water” or “sewer” services provided directly to users, and thus exempt from the voter approval requirement of Proposition 218. The Commission concluded that without the exemption from voter approval under section 6(c), “it is possible that the local agency’s voters or property owners may never adopt the proposed fee or assessment, but the local agency would still be required to comply with the state mandate.”<sup>207</sup>

Therefore the Commission’s earlier decision, though it would not in any event be precedential, is distinguishable on the very same ground that renders *Connell* significantly poignant. The District cannot rely on the unwillingness of voters to raise fees, because the fees in question fall, based on the plain language of the Constitution, outside voter-approval requirement of article XIII D, section 6(c). The District would have the Commission recognize “political realities” as a test of the District’s “authority” under Health and Safety Code section 5471 to raise fees, but here, as in *Connell*, “the plain language of the statute defeats the Districts’ position.” The District asserts that “political realities...[made] it *impossible*” for the District to raise fees, but ultimately “the District’s board *declined to adopt the proposed rate increases...*”<sup>208</sup> In the same way that the court in *Connell* declined to find that an inability to market reclaimed water would undermine the “sufficiency” of the districts’ authority to raise fees, the Commission here declines to make a finding that political opposition undermines the authority of a sanitation district to raise fees.

Furthermore, the ground upon which the District seeks to distinguish *Clovis Unified*, that the District does not have statutory authority to raise rates by “a sum certain,” only serves to demonstrate why the Health Fee Elimination mandate was held to constitute a reimbursable new program offset by the authorized revenues, while this test claim Resolution does not impose costs mandated by the state under section 17556(d). The Health Fee Elimination mandate underlying *Clovis Unified* was approved for ongoing reimbursement in the test claim decision only *because* the fee authority of the community colleges was limited to a certain dollar amount, indexed to inflation, and that amount was held, as a matter of law, to be insufficient to cover the entire mandated cost of the program.<sup>209</sup> Had the community colleges held fee authority as broad as is provided to the District under Health and Safety Code section 5471, the result of the analysis under section 17556(d) in *Clovis Unified* would have been the same as discussed herein: where fee authority is sufficient to cover the costs of the mandated activities, there can be no reimbursable costs mandated by the state.

Based on the foregoing, the Commission finds that the District has not incurred increased costs mandated by the state, pursuant to section 17556(d).

---

<sup>207</sup> *Discharge of Stormwater Runoff* (07-TC-09) at p. 106 [citing *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, at pp. 1358-1359 (concluding that city’s charges on developed parcels to fund stormwater management were property-related fees, but not covered by the exemption for water and sewer fees, and thus required voter approval)].

<sup>208</sup> Exhibit A, Test Claim, at p. 26 [emphasis added].

<sup>209</sup> See Education Code section 76355 (Stats. 2005, ch. 320); Test Claim Decision, Health Fee Elimination (CSM-4206).

## **V. Conclusion**

Based on the foregoing discussion and analysis, the Commission denies this test claim and concludes that Resolution No. R4-2008-012, adopted December 11, 2008, by the Los Angeles Regional Water Quality Control Board does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

## **Glossary of Frequently Used Water Quality Related Terms and Acronyms:**

Alternative Water Resources Management program (AWRM)	An alternative to meeting the prior TMDL and WLA requirements of the former basin plan. The requirements for the AWRM were included in a MOU entered into by the stakeholders which was then included in the revised Upper Santa Clara River TMDL and SSOs by Resolution R4-2008-012.
California Antidegradation Policy	A 1968 State Board policy that precludes water quality degradation in the state unless specific conditions are satisfied.
Clean Water Act (CWA)	The primary federal law governing water pollution. The CWA was enacted in 1972, to restore and maintain the chemical, physical, and biological integrity of the nation's waters and includes a goal to eliminate the discharge of pollutants into the navigable waters by 1985.
Effluent	Wastewater - treated or untreated - that flows out of a treatment plant, sewer, or industrial outfall; generally refers to wastes discharged into surface waters.
Environmental Impact Report (EIR)	A detailed statement prepared in accordance with California Environmental Quality Act (CEQA) whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. (Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
Federal Antidegradation Policy	The CWA's antidegradation policy is found in section 303(d) (and further detailed in federal regulations). Its goals are to 1) ensure that no activity will lower water quality to support existing uses, and 2) to maintain and protect high quality waters.

Porter-Cologne Water Quality Control Act	California's Porter-Cologne Water Quality Control Act was enacted in 1969 to allocate and to protect the waters of California. Through it, the State Board and regional boards were established. Many of its provisions mirror those of the CWA which was modeled, in part, on Porter-Cologne.
Reclaimed Water	Treated effluent that is considered to be of appropriate quality for an intended reuse application.
Regional Water Quality Control Boards (RWQCBs or Regional Boards)	The nine RWQCBs develop and enforce water quality objectives and implementation plans to protect the State's waters, recognizing local differences in climate, topography, geology and hydrology.
Site Specific Objective (SSO)	Water Quality Objectives (WQOs) adjusted to reflect localized site specific conditions. Usually initiated by a discharger to allow discharge of pollutants at greater than background levels.
State Water Resources Control Board(SWRCB or State Board)	The state board charged with protecting the waters of California. The SWRCB has joint authority of water allocation and water quality protection. It also oversees and supports the work of the regional boards (RWQCBs).
Total Maximum Daily Load (TMDL)	A calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.
Waste Load Allocation (WLA)	The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution (e.g., permitted waste treatment facilities).
Water Quality Objectives (WQOs)	Define the level of water quality that shall be maintained in a water body or portion thereof.
Water Reclamation Plant (WRP)	A plant which treats sewage and produces reclaimed water.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 January 9, 2014, I served the:

**Final Staff Analysis and Proposed Statement of Decision**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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 January 9, 2014 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/7/14

**Claim Number:** 10-TC-09

**Matter:** Upper Santa Clara River Chloride Requirements

**Claimant:** Santa Clarita Valley Sanitation District of Los Angeles

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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, § 1181.2.)

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**ITEM 6**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

**AND**

**PROPOSED STATEMENT OF DECISION**

Los Angeles Regional Water Quality Control Board  
Resolution No. R4~2008-012, adopted December 11, 2008,  
approved by United States Environmental Protection Agency  
April 6, 2010

*Upper Santa Clara River Chloride Requirements*

10-TC-09

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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2010-2011 Special Districts Annual Report, Excerpt 2

SCVSD Draft EIR Section 3

Text of Proposition 218

LAO Publication, Understanding Proposition 218, December 1996

Resolution 68-016 Antidegradation Policy

US EPA History of Water Quality Standards

LA Regional Board Enforcement News

Settlement Agreement and Stipulation between Santa Clarita Valley Sanitation District and  
Regional Water Quality Control Board for the Los Angeles Region, dated June 28, 2013

# Exhibit A

## 1. TEST CLAIM TITLE

Santa Clarita Valley Sanitation District of Los Angeles County's Test Claim Regarding  
the Upper Santa Clara River Chloride Total Maximum Daily Load Requirements  
Imposed by the Los Angeles Regional Water Quality Control Board in Resolution

## 2. CLAIMANT INFORMATION

R4-2008-0012

Santa Clarita Valley Sanitation District of Los Angeles County  
Name of Local Agency or School District

Stephen R. Maguin  
Claimant Contact

Chief Engineer and General Manager  
Title

1955 Workman Mill Road  
Street Address

Whittier, California 90601  
City, State, Zip

(562) 699-7411  
Telephone Number

(562) 699-5422  
Fax Number

smaguin@lacsdc.org  
E-Mail Address

## 3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Daniel V. Hyde, Esq.  
Claimant Representative Name

Attorney for the Santa Clarita Valley Sanitation District of Los Angeles  
Title County

Lewis Brisbois Bisgaard & Smith LLP  
Organization

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E-Mail Address

<i>For CSM Use Only</i>	
Filing Date:	
Test Claim #: 10-TC-09	

## 4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

*Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.*

Los Angeles Regional Water Quality Control Board  
Resolution No. R4-2008-012, effective date of  
December 11, 2008.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 9 to 25

6. Declarations: pages 541 to 555

7. Documentation: pages 29 to 660

Index of Exhibits: pages 26 to 28

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

## 5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
  - (i) Dedicated state funds
  - (ii) Dedicated federal funds
  - (iii) Other nonlocal agency funds
  - (iv) The local agency's general purpose funds
  - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

## 6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

## 7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

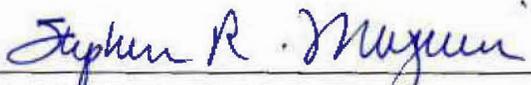
**8. CLAIM CERTIFICATION**

*Read, sign, and date this section and insert at the end of the test claim submission.\**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Stephen Maguin  
\_\_\_\_\_  
Print or Type Name of Authorized Local Agency  
or School District Official

Chief Engineer and General Manager  
\_\_\_\_\_  
Print or Type Title

  
\_\_\_\_\_  
Signature of Authorized Local Agency or  
School District Official

March 28, 2011  
\_\_\_\_\_  
Date

*\* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

**1. TEST CLAIM TITLE.**

Test Claim Submitted by the Santa Clarita Valley Sanitation District of Los Angeles County Regarding the Upper Santa Clara River Chloride Total Maximum Daily Load Requirements Imposed by the California Regional Water Quality Control Board of Los Angeles in Resolution R4-2008-012.

**2. CLAIMANT INFORMATION.**

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**4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED.**

*Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate. When alleging regulations or executive orders, please include the effective date of each one.*

The regulations creating the mandate relate to water quality objectives for chlorides and were generated by the Los Angeles Regional Water Quality Control Board ("Regional Water Board" or "Board"), specifically Resolution No. R4-2008-012. (Regional Water Board, Resolution No. R4-2008-012: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt Site Specific Chloride Objectives and to Revise the Upper Santa Clara River ("USCR") Chloride Total Maximum Daily Load Requirements ("TMDL")* (Dec. 11, 2008) ("Resolution No. R4-2008-012" or "Chloride TMDL Resolution"), attached as Exhibit ("Exh.") 1). This regulation and other relevant regulations are fully described in Subsection 4(B.) of this Test Claim. Subsection 4(A.) describes the context in which these discretionary regulations were issued.

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**A. The State Regulates Water Quality.**

**1. The Clean Water Act Prescribes Minimum Requirements and Permits States to Adopt Additional or More Stringent Requirements.**

The Federal Water Pollution Control Act (“Clean Water Act” or “Act”), 33 U.S.C. §§1251, *et seq.*, prescribes a minimum level of regulation or “floor” for specified industrial and municipal discharges to waters of the United States, based primarily on minimum technological controls. (*See, e.g.*, 33 U.S.C. §1311(b)(1)(A), 33 U.S.C. §1311(b)(1)(B), and 33 U.S.C. §1316.) The Clean Water Act also generally requires compliance with more stringent limitations, including those adopted to meet water quality standards, treatment standards, or schedules of compliance established pursuant to state statutes or regulations. (33 U.S.C. §1311(b)(1)(C).)

The Act encourages states to play the primary role in regulating water quality. (*See, e.g.*, 33 U.S.C. §§1313, 1342(b).) If a state meets the minimum Clean Water Act program requirements, the United States Environmental Protection Agency (“US EPA”) will formally delegate authority to that state to accomplish the goals of the Act. (*See* 33 U.S.C. §1342(b); 40 C.F.R. §123.25.) In California, the State Water Resources Control Board (“State Water Board”) and the nine regional water quality control boards, including the Los Angeles Regional Water Board, are authorized to implement the requirements of the Act. (*See* Cal. Water Code §§13370 – 13389; *see also* Memorandum of Agreement Between the US EPA and the State Water Sources Control Board (“MOA”) (Sept. 28, 1989), attached as Exh. 2.)

Although the Clean Water Act ensures that more-stringent state limitations may be used to regulate matters within the purview of the Act, water quality standards, treatment standards, limitations, or schedules of compliance enacted by the states are discretionary decisions adopted under the states’ laws, regulations, or administrative policies. (*See* 40 C.F.R. §§130.0(a) and (b).) These more-stringent state requirements, while not mandated by the Act, become a part of regulation performed under the auspices of the Act so that dischargers cannot evade state requirements when pursuing federal authorization to discharge. (*See, e.g.*, 40 C.F.R. §123.25.)

Section 1313 of the Act requires states to adopt water quality standards for the beneficial uses of waters of the United States and the water quality criteria for specific uses of those waters (*e.g.*, 5 milligrams per liter (“mg/L”) of copper might be the water quality criteria to protect specified aquatic beneficial uses). (*See* 33 U.S.C. §1313(c).) States must also establish a process for continuing review and revision of the standards. (*Id.*; *see also* 40 C.F.R. §130.5.) Also, Section 303(d) of the Act requires states to continually identify those waters of the United States within their boundaries that do not meet water quality standards (the “303(d) List”), rank them in order of priority for enforcement, and prepare TMDLs for those waters that will ensure re-attainment of the standard through action by regulated dischargers. (*See* 33 U.S.C. §1313(d); 40 C.F.R. §130.7.) TMDLs contain estimates of and assign permissible loads for point and non-point source discharges, called “wasteload allocations” (“WLAs”), necessary to meet and maintain the applicable water quality standard. (*Id.*) While the Clean Water Act mandates these planning activities, it leaves to the states their evaluation and specific determination of regulatory requirements based, in part, upon site-specific factors. (*See, e.g.*, 40 C.F.R. §§131.4 and 131.6.)

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When states adopt water quality standards that will be used to implement the Act, adopt a 303(d) List, or subsequent TMDLs under the Act, they provide the US EPA with documentation regarding these standards for the US EPA to review and approve or disapprove based upon whether the standards satisfy the Act's minimum requirements. (*See* 33 U.S.C. §§1313(c), 1313(d)(2); 40 C.F.R. §§131.21.) If the US EPA disapproves a state-generated standard because it does not meet the Act's requirements, any replacement standard promulgated by the US EPA is subject to the same policies, procedures, analyses, and public participation requirements established for the states. (40 C.F.R. §131.22(c).) Thus, a state's program for water quality regulation always remains tantamount to, if not superior, to the Act.

2. Water Quality Regulation under the Clean Water Act and California's Porter-Cologne Water Quality Control Act.

In California, the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act"), codified at California Water Code ("Water Code") sections 13000, *et seq.*, establishes a comprehensive statewide program for water quality control and the regulation of discharges to waters of the state. Chapter 5.5 of the Water Code provides California's statutory framework for implementing the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") permit program. Water Code section 13372 requires "consistency" between the Water Code's prescribed water quality program and the Clean Water Act's minimum mandates, resulting in a coordinated system that satisfies the Act's minimum requirements while including more-stringent state requirements.

Like the Clean Water Act, the Porter-Cologne Act requires the adoption of water quality standards along with a program to achieve and maintain those standards. (*See* Water Code §§13240 – 13242.) These standards and the means by which they are to be implemented are set forth in water quality control plans ("basin plans") for each of the nine regions in California. (*Id.*) The Regional Water Board is authorized to implement both the Clean Water Act and the Porter-Cologne Act in its region. The State Water Board is responsible for setting statewide policy and reviewing actions taken by the nine regional boards. (*See* Water Code §§ 13140-13197.5, 13220-13228.15, and 13320-13321.)

Section 1342 of the Porter-Cologne Act establishes the NPDES program. NPDES permits are issued to regulate point sources that discharge pollutants into waters of the United States. (33 U.S.C. §§1311(a), 1342, and 1362(12).) Discharge limitations derived from water quality standards and WLAs derived from TMDLs are implemented in NPDES permits. In California, NPDES permits are issued by the State Water Board and the Regional Water Board as part of the Clean Water Act program. (*See* Water Code §13377.) States maintain flexibility under the Clean Water Act as to the specific terms included in an NPDES permit, particularly in determining the necessity for and the type of discharge restriction that may be necessary. If the boards determine that a numerical discharge limitation is appropriate, they will determine the proper level for restriction. (*See, e.g.*, 40 C.F.R. §122.44.)

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State permits that authorize discharges to waters of the state are issued as “Waste Discharge Requirements” (“WDRs”). (Water Code § 13263.) WDRs may be issued concurrently with NPDES permits if a discharge is to waters of both California and the United States. (Water Code §§13263 and 13377.) WDR requirements are derived from the regional basin plans and any applicable state-wide water quality plans adopted by the State Water Board. If an NPDES permit is also applicable, that permit will impose the federally-mandated minimum requirements upon dischargers to satisfy the Clean Water Act and any applicable TMDL-based requirements.

**B. Los Angeles Regional Water Board’s TMDL Requirements and the District’s Mandate Test Claim.**

1. The District Operates Significant Wastewater Infrastructure.

The District provides sewerage services to the Santa Clarita Valley, which is located in the northwest portion of Los Angeles County. The District’s service area includes the City of Santa Clarita and a portion of unincorporated Los Angeles County and serves approximately 250,000 residents (with roughly 70,000 homes and commercial establishments). The District’s sewer system consists of an interconnected network of more than thirty miles of trunk sewers, one pumping plant, and two interconnected water reclamation plants, the Saugus and the Valencia Water Reclamation Plants (“WRPs”).

The Saugus and Valencia WRPs are tertiary treatment plants that provide comminution, grit removal, primary sedimentation, flow equalization, conventional activated sludge biological treatment operating in nitrification denitrification (“NDN”) mode, secondary sedimentation, inert media filtration, chlorination, and dechlorination. Both plants discharge effluent into the Santa Clara River. The Saugus WRP has a design capacity of 6.5 million gallons per day (“mgd”), and the Valencia WRP has a design capacity of 21.6 mgd. While the Saugus and Valencia WRPs produce water that generally meets California’s primary Drinking Water Standards for chemical constituents, conventional tertiary treatment is not designed to remove chloride during the treatment process.

2. The Regional Water Board’s Setting of Chloride Objectives Was Discretionary Regulatory Activity.

In 1975, the Regional Water Board established water quality objectives for chloride, a component of salinity, in most of the region’s bodies of water, including the Santa Clara River. The 1975 Basin Plan adopted a water quality objective for chloride (based on flow-weighted annual average values) of 90 and 80 mg/L for Reaches 7 and 8 of the Santa Clara River, respectively. These objectives were intended to protect what the Board assumed were background water quality conditions along with the beneficial uses identified in the 1975 Basin Plan, including off-stream agricultural irrigation. (Exh. 1 at p. 2, ¶5.) The water quality objectives were modified to 100 mg/L as a flow-weighted annual average in the 1978 Basin

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Plan.<sup>1</sup> (See Memorandum re: 1975 Chloride Objective and 1978 and 1994 Revisions to Chloride Objectives for Reaches 5 and 6 (Oct. 7, 2007) at p. 3, attached as Exh. 3.) The upper reaches of the Santa Clara River include newly named Reaches 5 and 6 (formerly Reaches 7 and 8), which are located upstream of the Blue Cut gauging station, which is west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita.

At the same time the Regional Board adopted the water quality objective for Reaches 5 and 6, the Board also adopted chloride objectives for remaining reaches of the Santa Clara River and other waters in the region. These objectives varied substantially, ranging from 50 to 150 mg/L. (See generally, 1975 Basin Plan, Water Quality Objectives for Inland Surface Waters, Santa Clara River Basin.) The Board's designation of these varied objectives reflects its discretion over specific water quality objectives for the Santa Clara River.<sup>2</sup> Following the US EPA's approval of the objectives, the objectives became effective to implement the Clean Water Act and the NPDES Permit program.

From 1979 through 1989, neither of the WRPs' NPDES permits included discharge limitations for chloride. Between 1990 and 2000, an intricate set of regulatory approvals modified the chloride objective to account for drought, variances, and other factors.<sup>3</sup> (See, e.g.,

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<sup>1</sup> A footnote in the Basin Plan identified that this objective was based on a flow weighted annual average. When the Basin Plan was amended in 1994, the footnote was deleted from the adopted version of the Basin Plan without an explanation of the modification. Since that time, the Regional Water Board had interpreted the 100 mg/L chloride water quality objective as an "instantaneous maximum" (not to be exceeded).

<sup>2</sup> Since that time, chloride concentrations set to protect industrial processing beneficial uses range from 20 to 1,000 mg/L, while protection standards for agricultural uses range from 100 to 355 mg/L. (See Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties ("1994 Basin Plan") at p. 3-12, attached as Exh. 4.) Objectives in the 1994 Basin Plan for chloride in groundwater used specifically for agricultural irrigation range from 15 to 500 mg/L throughout the region, with the objectives for the Eastern Santa Clara and Ventura Central Basins ranging from 30-200 mg/L. (*Id.* at pp. 3-20 to 3-21.)

<sup>3</sup> For instance, from 1990 – 1997, permit limits for wastewater treatment facilities throughout the Los Angeles region were set as water supply plus 85 mg/L, or 250 mg/L, whichever was less, under the policy that was adopted in 1990, and extended in 1993 and 1995 (Regional Water Board Resolution No. 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region* (Mar. 26, 1990) ("Drought Policy"), attached to this Test Claim as Exh. 5.)

In 1997, the Regional Water Board extended the Drought Policy for the Santa Clara River, but set the interim limits at 190 mg/L to reflect the same intent. During the drought of the early 1990s, chloride levels in the water supply reached a maximum of 105 mg/L, so this was considered the maximum level likely to recur. The chloride loading contributed from sources other than potable water supply has dropped from over 100 mg/L in the Santa Clarita Valley to (footnote continued)

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Exh. 5 [the Drought Policy, renewed and revised in 1993 and 1995 to reflect changed conditions due to water supply chloride levels]; *see also*, Regional Water Board Resolution 97-02: *Amendment to Water Quality Control Plan to Incorporate a Policy for Addressing Levels of Chloride in Discharges of Wastewater* (Jan. 27, 1997), attached as Exh. 6 to this Test Claim.) In 1998, Reaches 5 and 6 of the USCR appeared for the first time on the State's 303(d) List of impaired water bodies for chloride because the waters did not meet the Regional Water Board's 100 mg/L water quality objective.

The chloride levels contained in the waters discharged from the two WRPs also reflect the substantial amount of chlorides contained in the potable water received by the WRPs. Chloride levels in the potable water supply are connected to the state's cyclical drought conditions. Except for the period from 1997-2003, when now-banned residential self-regenerating water softeners contributed increasing levels of chloride to the sewerage system, trends for chloride levels in reclaimed water have closely tracked the trend for chloride levels in the potable water supply. Approximately 50-60% of the Santa Clarita Valley's water supply comes from the State Water Project. During droughts, the components of the water furnished through the State Water Project reflect elevated chloride levels present in the San Francisco Bay Delta.

In early 2000, the Regional Water Board proposed a Basin Plan amendment that would change the objective for chlorides from 100 mg/L instantaneous maximum to 143 mg/L based on a 12-month rolling average with 180 mg/L as a maximum not-to-exceed level. (*See Regional Water Board: Notice of Public Hearing for a proposed amendment to the California Regional Water Quality Control Plan for the Los Angeles Region, for Water Quality Objective (Chloride) Changes at Santa Paula and Santa Clarita Reaches of the Santa Clara River* ("Notice") at p. 1 (Jun. 26, 2000), attached as Exh. 7.) The Regional Water Board's Staff Report stated that new evidence demonstrated "that avocados were never grown in the Santa Clarita reaches [of the Santa Clara River], and do not represent an 'existing' (as defined in the Basin Plan) beneficial use in that reach." (*See RWQCB Staff Report Addendum: Basin Plan Amendment to Modify the Chloride Objective for Reaches at Santa Clarita and at Santa Paula in the Santa Clara River* (Jun. 6, 2000) at p. 6, attached as Exh. 8 ; *see also* Regional Water Board Public Hearing Transcript ("Hearing Transcript") re: Basin Plan Amendment for the Santa Clara River (Dec. 7, 2000) at p. 35:19-21, attached as Exh. 9 ["in the Santa Clarita reaches [7 and 8] there are and never have been avocado or strawberries grown."]) The Regional Water Board staff also determined that the proposed changes were "protective of agricultural water supplies as used in the Santa Clara River Watershed." (*See* Exh. 7 – Notice at p. 2.)

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approximately 50 mg/L due to the comprehensive chloride source reduction program that has been implemented by the District over the past ten years, including unprecedented efforts in the state of California ("State") to ban the use of residential self-regenerating water softeners. (*See, e.g.*, Santa Clara River Chloride Reduction Ordinance of 2008 ("SCVSD Water Softener Ordinance") (Jun. 11, 2008), Exh. 10 to this Test Claim.)

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A legal opinion from the State Water Board's Office of Chief Counsel found that:

The evidence in the record apparently indicates that water from the Santa Clarita reach of the Santa Clara River is not currently used to irrigate salt-sensitive crops, such as avocados or strawberries. Nor has it been used in the past for this purpose. Also, chloride levels in the Santa Clarita reach have apparently not changed for the past 25 years or so. They are approximately 143 mg/l. Based on this information, I conclude that the proposed chloride objective of 143 mg/l is protective of the existing agricultural beneficial use. Therefore, it is unnecessary to adopt a subcategory of the agricultural use, such as "restricted agricultural use."

(See Memorandum from Sheila Vassey, Senior Staff Counsel, State Water Board Office of Chief Counsel, to Jon Bishop, Los Angeles Regional Water Board re: Agricultural Beneficial Use in Santa Clara River (Oct. 12, 2000), attached as Exh. 11.)

Despite these determinations, the Regional Water Board's staff abruptly reversed its position at the December 7, 2000 hearing on the Basin Plan amendment. The staff now recommended against revising the chloride water quality objectives based on "new data" demonstrating that the chloride concentrations in the Santa Clara River at the LA-Ventura County line downstream of Reaches 5 and 6, and the WRPs, exceeded 100 mg/L. Based on the "new data," the staff concluded that the river's assimilative capacity for chloride downstream had been exceeded and could cause a problem for downstream agricultural users, especially those growing salt-sensitive crops like avocados. Based upon these representations, and lacking any evidence in the record to support its decision, the Regional Water Board's staff recommended that the Board instruct it to prepare a TMDL to meet the previously-adopted 100 mg/L chloride objective. (Exh. 9 – Hearing Transcript at pp. 30-31 and 44-45.)

On October 24, 2002, the Regional Water Board adopted Resolution No. 02-018, amending the Los Angeles Region's Basin Plan to include a TMDL for chloride in the Santa Clara River based on the 303(d) listing that originally occurred in 1998. In that resolution, the Board assigned final WLAs to the Valencia and Saugus WRPs of 100 mg/L to be included also in their NPDES permits. (Regional Water Board Resolution No. R02-018: *Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate a TMDL for Chloride in the USCR*) (Oct. 24, 2002), attached as Exh. 12 to this Test Claim.) The TMDL also included interim WLAs for the plants to provide the District time to implement chloride source reduction, complete site-specific objective ("SSO") studies, and make any necessary modifications to the WRPs. At that time, the District determined that complying with this TMDL would, among other things, require it to construct costly advanced treatment facilities and would cost approximately \$500 million. The District appealed the Board's decision to the State Water Board.

The State Water Board remanded consideration of the TMDL to the Regional Water Board in 2003. (See State Water Board Resolution No. 2003-0014: *Remanding an Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate TMDL for Chloride in USCR* (Feb. 19, 2003), attached as Exh. 13.) On remand, the Regional Water Board modified the TMDL in July 2003 in Resolution R4-2003-008. (Regional Water Board Resolution No.

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R03-008: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate TMDL for Chloride in USCR* (Jul. 10, 2003), attached as Exh. 14.) In May 2004, the Board further revised the interim WLAs and implementation plan in its Resolution No. 04-004. (Exh. 1 at p. 2, ¶9.) That resolution: (1) extended the final compliance deadline to 2018; and (2) directed studies be performed to characterize the sources, fate, transport, and specific impacts of chloride in the Santa Clara River, including impacts to downstream reaches and underlying groundwater basins. (*Id.*) This version of the TMDL was approved by the US EPA and became effective in May 2005.

The Regional Water Board has twice shortened the compliance period after the 2004 TMDL was issued. In 2006, the Board shortened the overall compliance period by two years, making the final waste load allocations for chloride operative in May 2016. (Regional Water Board Resolution No. R4-2006-016: *Amendment to the Water Quality Control Plan for the Los Angeles Region through revision to the Implementation Plan for the USCR Chloride TMDL, Resolution 04-004* (Aug. 3, 2006), attached as Exh. 15.)

On December 11, 2008, the Regional Water Board adopted Resolution No. R4-2008-012 which further reduced the compliance period, making the final waste load allocations for chloride operative in May 2015. The December 11, 2008 amendment to the Basin Plan also modified the chloride requirements. This amendment included the enactment of relaxed site specific objectives (“SSOs”) for chloride in the Santa Clara River conditioned upon the completion of activities set forth in the revised TMDL that contained new final WLAs and a detailed implementation plan. (*See* Exh. 1 - Resolution No. R4-2008-0012 [SSOs of 117 and 130 mg/L (for non-drought and drought conditions, respectively) in the Santa Clara River at the Los Angeles and Ventura County line and WLAs of 150 mg/L for the WRPs].) These modifications were identified as the “alternative water resources management approach” or “AWRM.” (Exh. 1 at p. 4, ¶15.)

If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L. (*Id.* at p. 5, ¶21.) This resolution was approved by the State Water Board on October 20, 2009, and it was also approved by the State’s Office of Administrative Law and the US EPA in April 2010. Final approval from the US EPA made the revised TMDL fully effective under the Clean Water Act. The NPDES permits for the two WRPs, last updated in June 2009, reflect these terms. (*See* Regional Water Board Order No. R4-2009-0074 and *Letter re: Adopted Waste Discharge Requirements and NPDES for SCVSD Valencia WRP (only relevant pages from NPDES Permit) and Attachment K re: TMDL Related Tasks* (Jun. 4, 2009), attached as Exh. 16 - §§II.D and Special Provision VI.C.7 at pp. 8 and 41; *see also*, Regional Water Board Order No. R4-2009-0075 and *Letter re: Adopted Waste Discharge Requirements and NPDES for SCVSD Saugus WRP (only relevant pages from NPDES Permit)* (Jun. 4, 2009), attached as Exh. 17 - §§II.D and Special Provision VI.C.7 at pp. 8 and 40.)

The revised TMDL and the Saugus and Valencia WRP NPDES permits require final compliance with the conditional SSOs and final WLAs for chloride by May 4, 2015. (Exh. 1, Attachment “A” at p. 20.) To meet these requirements, the District must, among other things, implement ultra-violet light disinfection at both WRPs, construct advanced treatment

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(desalination) facilities at the Valencia WRP (*i.e.*, microfiltration-reverse osmosis and brine disposal), and provide salt management facilities (*i.e.*, extraction wells and water supply conveyance pipelines), supplemental water (*i.e.*, water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. (*See generally*, Exh. 1, Attachment “A”.) In addition, the desalinated recycled water must also be: (1) discharged to ensure compliance with water quality objectives for Reaches 4A, 4B, and 5; (2) used to protect salt-sensitive agricultural beneficial uses; (3) used to remove excess chloride load above 117 mg/L from the East Piru Basin; and, (4) used to enhance water supplies in Ventura and Los Angeles Counties. (*See, e.g.* Exh. 1 at p. 5, ¶22.)

The Regional Water Board’s modification and re-modification of the water quality objectives for chlorides, as well as the Board’s adoption of specific requirements for meeting these objectives, are discretionary technical decisions made by the Board itself and are not specifically prescribed by the Clean Water Act.

The District now faces enormous costs to “solve” a problem that it has not created and does not control, and has already substantially mitigated by implementing a comprehensive chloride source reduction program within the sewer service area. (SCVSD Automatic Water Softener Ordinance, attached as Exh. 19; SCVSD’s Variance Application for Saugus and Valencia WRPs (Oct. 21, 2003) at §3.7 at pp. 11-16 [detailing the District’s residential, commercial, and industrial source control efforts], attached as Exh. 18; *see also* SCVSD Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan/Chloride Source Control Measures (Nov. 2010) at §4, Exh. 20.)

The District’s present estimate of the cost to comply with the TMDL’s conditional SSOs and WLAs is \$250 million. (*See Report: Santa Clarita Valley Sanitation District USCR Chloride TMDL: SCR Reaches 5 & 6 Cost Estimate Summary for Conceptual Compliance Alternatives - Task 9* (June 2008) at p. 17, attached as Exh. 22.) The cost of complying with even the revised TMDL far exceeds the resources and revenues of the District. (*See, infra*, Written Narrative, Section F(v) at p. 16 below.) This estimate does not include the costs expended for the District’s existing activities to reduce chloride from entering the WRPs from commercial and residential sources, including the enactment of ordinances to remove residential self-regenerating water softeners through the SCVSD Water Softener Ordinance.

## 5. WRITTEN NARRATIVE.

*Identify the specific sections of statutes or executive orders alleged to contain a mandate. Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:*

*(A) A detailed description of the new activities and costs that arise from the mandate.*

*(B) A detailed description of existing activities and costs that are modified by the mandate.*

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*(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.*

*(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*

*(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*

*(F) Identification of all of the following funding sources available for this program:*

- (i) Dedicated state funds*
- (ii) Dedicated federal funds*
- (iii) Other nonlocal agency funds*
- (iv) The local agency's general purpose funds*
- (v) Fee authority to offset costs*

*(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.*

- (A) Detailed Description of the New Activities and Costs that Arise From the Mandate; and,**
- (B) Detailed Description of Existing Activities and Costs that are Modified by the Mandate.**

Regional Board Resolution No. R4-2008-012, the revised TMDL, requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs' NPDES permits; and (2) specific "implementation tasks" necessary for compliance. These tasks, along with the final waste load allocations are the subject of this test claim. A detailed description of the implementation tasks and the costs of completing them and complying with the final WLAs follows:

#### Implementation Task 4

*The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature, develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.*

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The District retained a consulting firm to assist in leading the collaborative process required by the Regional Water Board. As part of this process, the District convened a stakeholder work group. The District has spent approximately \$800,000 on consulting services to accomplish this task.

Implementation Task 5

*Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.*

The District retained a technical consulting firm to develop the groundwater/surface water interaction model, required by the TMDL, to examine the feasibility of various compliance alternatives. To date, the District has spent approximately \$3.1 million on consulting services to accomplish this task.

Implementation Task 6

*Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.*

The District retained technical consulting firms to complete the agricultural chloride threshold and the threatened and endangered species chloride threshold studies required by the TMDL. The District has spent approximately \$700,000 and \$100,000, respectively, for these studies.

Implementation Task 7

*Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.*

Implementation Task 8

*Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.*

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The District retained a technical consulting firm to prepare the SSOs study and anti-degradation analysis required by the TMDL. The Regional Board used information prepared for these reports as the technical basis to revise the Basin Plan to incorporate the revised TMDL under Resolution R4-2008-012. The District has spent approximately \$300,000 for consulting services to complete these tasks.

Implementation Task 9

*Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.*

The District retained the services of a technical consulting firm to develop a report on potential compliance measures and costs. The District has spent approximately \$500,000 on this task.

Implementation Task 17a

*Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.*

The District retained technical consulting firms to prepare a facilities plan and environmental analysis to comply with the TMDL. The District has spent approximately \$1.1 million on this task to date.

Summary of the Implementation Tasks Completed to Date:

<b>TMDL Study/Task</b>	<b>Cost</b>
TMDL Collaborative Process Facilitation Services (Task 4)	\$0.8 million
Groundwater Surface Water Interaction Model (Task 5)	\$3.1 million
Agricultural Chloride Threshold Study (Task 6)	\$0.7 million
Threatened and Endangered Species Study (Task 6)	\$0.1 million
Site Specific Objectives and Anti-Degradation Study (Task 7 & 8)	\$0.3 million
Chloride Compliance Cost Study (Task 9)	\$0.5 million
Facilities Plan & EIR (Task 17a)	\$1.1 million
<b>Total TMDL Study Costs to Date</b>	<b>\$6.6 million</b>

\*These costs do not include the cost of District staff time expended on these tasks.

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Implementation Task 20

Implementation Task 20 of the TMDL provides the schedule for compliance of WLAs that will also be incorporated into the Saugus and Valencia WRP's NPDES permits.

*The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.*

As previously indicated, the District has implemented a comprehensive chloride source reduction program within the sewer service area designed to reduce chloride levels in the WRP discharges in order to comply with final WLAs for chloride. (See Exh. 19). Specifically, the District implemented an innovative automatic water softener public outreach and rebate program, in compliance with Senate Bill 475, to remove automatic water softeners, which contribute significant amounts of chloride to the WRP discharges. The total cost of the program for removal of automatic water softeners, not including the cost of the District's staff time, is approximately \$4.8 million.

Although the removal of automatic water softeners has reduced chloride levels in the District's recycled water discharged to the river, that reduction is not sufficient to achieve compliance with the revised TMDL without construction of additional facilities. In order to meet the chloride TMDL requirements set forth in Regional Board Resolution No. R4-2008-012, the District must also implement the AWRM program. The estimated costs of implementing that program are set forth below:

<b>AWRM Project Element</b>	<b>Estimated Capital Cost *</b>
Facilities Plan & Environmental Impact Report (EIR)	\$2.5 million
Advanced Treatment (Micro Filtration, MF & Reverse Osmosis, RO)	\$30.0 million
Brine Disposal (Deep Well Injection, DWI)	\$53.0 million
Ventura Salt Export Facilities	
(a) MF/RO Conveyance Pipeline from Valencia WRP	\$46.5 million
(b) GW Extraction Wells in Ventura County	\$5.5 million
(c) Blend Water Pipeline from Wells to River	\$52.3 million
Supplemental Water from local pumped groundwater	\$30.0 million
Supplemental Water conveyance	\$12.0 million
UV Disinfection Facilities at Saugus & Valencia WRP	\$16.5 million
Removal of Automatic Water Softeners	\$2.4 million
<b>Total Estimated Capital Cost</b>	<b>\$250.7 million</b>

\* Costs based on 2007 dollars.

Note: The costs listed above are capital costs and do not include operation and maintenance expenses required for continued operation of the facilities, which are estimated to be approximately \$4.5 million per year.

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If the District cannot comply with the AWRM program set forth in Resolution No. R4-2008-012, the chloride requirements in Regional Board Resolution No. R4-2006-016 will become effective. These include a final WLA of 100 mg/L assigned to the District's WRPs discharge. In the event that the objective is set at the 100 mg/L discharge limit, the District would need to construct advanced treatment and brine disposal facilities, resulting in a combined cost of approximately \$500 million dollars, which includes operation and maintenance expenses required for continued operation.

- (C) **Actual Increased Costs Incurred by the Claimant During the Fiscal Year; and,**
- (D) **Actual Increased Costs Incurred by the Claimant During the Fiscal Year Immediately Following the Fiscal Year for which the Claim was Filed.**

Eligible costs under this claim include those for the entire fiscal year 2009-2010. Actual increased costs incurred during fiscal year 2009-2010, and estimated increased costs incurred during the fiscal year 2010-2011, are as follows:

Expense (TMDL/AWRM Task)	FY 09-10 Cost	FY 10-11 Estimate
Payroll & Benefits (TMDL General Compliance)	\$ 96,750	\$ 396,000
Payroll & Benefits (Facilities Plan & EIR - Task 17)	\$ 613,530	
Legal Services (TMDL General Compliance)	\$ 19,490	\$ 220,000
Consultants (TMDL Task 5)	\$ 4,020	
Consultants (TMDL Task 4)	\$ 1,190	
Consultants (TMDL Task 17)	\$ 774,980	
Consultants (TMDL General Compliance)		\$ 65,000
Payroll & Benefits (Automatic Water Softener Program)	\$ 17,300	
Rebates (Automatic Water Softener Program)	\$ 739,400	\$ 100,000
Consultants (Automatic Water Softener Program)	\$ 363,210	\$ 100,000
<b>Total Incurred Costs</b>	<b>\$ 2,629,870</b>	<b>\$ 881,000</b>

- (E) **Statewide Cost Estimate of Increased Costs that all Local Agencies will Incur to Implement the Alleged Mandate During the Fiscal Year Immediately Following the Fiscal Year for which the Claim was Filed.**

The proposed project is local in scope and applies only to reaches 5 and 6 of the Santa Clara River. Therefore, no information is available regarding the statewide impact of the Regional Board's mandate. The District is solely responsible for generating sufficient revenues to fund the various projects required by the Regional Water Board.

Due to the increasing financial strain on local governments imposed by state mandates, the League of Cities recently adopted a Resolution on Unfunded Mandates. The resolution demonstrates that the added financial burden on local agencies throughout the State of California is of grave concern to other local entities as well. The resolution is specific to chloride TMDL limits and is attached to this claim as Exhibit 22.

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**(F) Identification of All Possible Funding Sources to Implement the Regional Board's TMDL Ordinance.**

The District has been unable to secure any alternate local, state, or federal funding sources, or identify any other fee authority that may be used to offset the increased costs that will be incurred to implement the compliance project. The District's attempts to secure funding to comply with the mandates are outlined below.

**(i) Dedicated State Funds.**

During 2009 and 2010, no state funding has been available from which the District could seek to fund the mandates. It is possible that a relatively small amount (up to several million dollars) of grant funding may be sought in the future from the Department of Water Resources through the Integrated Regional Water Management Planning Program.

At the time the 2008 revised TMDL was drafted, the Regional Water Board presumed that the District would be able to partially rely on federal and state funding. However, because of subsequent budget constraints and the Legislature's general policy against appropriating funds for new projects, the Regional Water Board's assumption was incorrect. (County Sanitation District Internal Memorandum re: Chloride TMDL (proposed redlined amendment to Resolution 2008-0012) at p. 5, ¶24, emphasis added, attached as Exh. 23 ["The proposed amendment to the Basin Plan will revise SSOs in Reach 4B of the Santa Clara River and . . . allow the opportunity to secure federal and state funding for project implementation."].)

**(ii) Dedicated Federal Funds.**

Over the course of several years, the District has pursued outside sources of federal funding applicable to this mandate. For fiscal year 2011, the District submitted appropriations requests to Congressmen McKeon and Gallegly and Senators Boxer and Feinstein to obtain funding under the State and Tribal Assistance Grants ("STAG") Program (through the US EPA) for \$1 million. Notwithstanding its efforts, the District was not awarded any appropriation for fiscal year 2011. The District also submitted, but did not receive, funding for an appropriations request in fiscal year 2010 for STAG funding.

In the previous Congress, the District prepared and submitted requests for authorization of funding through the Water Resources Development Act ("WRDA") to several members of the House of Representatives and to California's two Senators. However, these authorization requests were not acted on by either the House or the Senate. WRDA reauthorization may be considered again in the 112<sup>th</sup> Congress.

Although the District intends to submit additional requests for STAG and WRDA funding authorization, the outlook for funding at the federal level is bleak, and any funds that become available could at best provide only a small amount towards the project's total cost. The present policy of Congress and the current administration appears to be to afford preference to funding the current backlog of authorized, but not yet funded projects, as opposed to appropriating funds for new projects. Additionally, it is unclear whether the 112th Congress will authorize any new projects under programs like WRDA, or appropriate any funds for new

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projects under STAG or other accounts that were previously available. These developments may preclude or substantially delay the District's obtaining federal funding for this project.

(iii) Other nonlocal agency funds: Not applicable.

(iv) The local agency's general purpose funds: Not applicable.

(v) Fee authority to offset costs:

Some of the compliance project costs may be paid from service charges. Based on the SCVSD's projections, the service charge rate projections indicate that rates must increase over the next thirteen years to generate even the minimum amount of \$250 million needed to fund the TMDL project.

The District's elected officials could not support the proposed rate increases in the face of fierce public opposition. The potential consequences of future rate increase implementation include a referendum to overturn them. Therefore, this source of funding remains uncertain. A more thorough analysis of this "fee increase exemption," codified at Government Code section 17556, subdivision (d), is discussed in Section 8 below.

**(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.**

None.

**6. DECLARATIONS.**

Please see the Declaration of Stephen R. Maguin, filed concurrently herewith, and attached as Exhibit 26.

**7. DOCUMENTATION.**

*Support the written narrative with copies of all of the following:*

*(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or*

*(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and*

*(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and*

*(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.*

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Copies of the relevant resolutions, background material regarding the history of the Chloride TMDL Resolution, and relevant legal authority are attached hereto as Exhibits 1 to 34, and are identified by a separate index to the exhibits provided.

## 8. LEGAL ANALYSIS.

The District's ratepayers have objected to the significant rate increases that are needed to fund the construction and operation of the facilities required for the TMDL compliance project. The ratepayers have inquired whether the Regional Board's chloride objectives constitute an "unfunded state mandate" reimbursable under California Constitution Article XIII B, section 6.

### A. The Costs Mandated by the State are Recoverable by the District.

California Constitution, Article XIII B, section 6, requires the state to reimburse a local agency's costs to implement a "new program or higher level of service" mandated by the Legislature or any state agency, unless the legislative mandates are "requested by the local agency affected" or consist of "[l]egislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (Cal. Const., Art. XIII B, §6, subd. (a)(1) – (3), attached as Exh. 27.) The California Legislature ("Legislature") created the Commission on State Mandates ("Commission") to implement Article XIII B, section 6, by hearing and deciding claims by local agencies that may be entitled to reimbursement. (Cal. Gov. Code §17551.)

Government Code section 17556 provides specific criteria for the Commission to use to determine which costs are state mandated. Claims that are not "costs mandated by the state," and therefore exempt, include:

- c) Claims for federally-mandated costs, except for state mandated costs in excess of the federally-mandated costs;
- d) Claims where the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service;

(*Id.*, emphasis added, attached as Exh. 28.)

Neither of these constitutional exceptions applies to this mandate. Article XIII B, section 6, requires reimbursement of costs to implement a "new program or higher level of service" mandated by the Legislature or any state agency. The Regional Water Board, a state agency, created this mandate through its exercise of discretionary authority by adopting the water quality standards for chloride and electing to impose the WLAs and specified implementation plan requirements. These requirements are not mandated by federal law, and have fluctuated over the years as a result of decisions by the State Water Board and Regional Water Board.

The District has been unable to levy or successfully implement a rate increase due to strong ratepayer opposition. Therefore, the District ought to recover reimbursement for the costs expended to comply with the State Board's resolution. These costs include those associated with

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the construction and implementation of the advanced wastewater treatment, along with costs for any other projects that facilitate or assist the District in its continuing efforts to comply with the Regional Water Board's requirements.

**B. None of the Exceptions to the State Mandate Requirements Apply.**

Government Code section 17556 does not bar the District from recovering reimbursement for mandated costs resulting from the chloride TMDL. The only two potentially applicable exceptions are set forth in subdivisions (c) and (d).

1. The TMDL is Not a Federal Mandate.

Article XIII B, section 6, applies to the State and Regional Water Boards. These boards cannot circumvent their constitutional funding obligations by arguing that they are merely implementing a federal mandate.

In *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 906 ("*County of Los Angeles*") the Court of Appeal held California Government Code section 17516 to be unconstitutional to the extent that it exempted orders of the State Water Board or regional water quality boards from the constitutional state mandate subvention requirement. (A copy of this case is attached as Exh. 29.) Initially, Section 17516 had exempted from the definition of an "executive order," covered by the subvention requirement, "any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board . . ." (*Id.*, subd. (c).) Since the State and the regional water boards are state agencies, the court held that exempting the orders of these boards from coverage under Article XIII B, section 6, contravened the plain, unequivocal, and all-inclusive reference to "any state agency" in that section. (*County of Los Angeles, supra*, 150 Cal.App.4th 898 at p. 904.)

The Court of Appeal further opined that:

Section 6 was included in Article XIII B in recognition that Article XIII A of the Constitution severely restricted the taxing powers of local governments. The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues . . . (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318.)

(*Id.* at p. 906, some citations omitted, emphasis added.)

The Regional Water Board contended in litigating *County of Los Angeles* that the exemption of its decisions from coverage under the state mandates law was constitutional "to the extent Division 7, Chapter 5.5' simply implements federal mandates under the Clean Water Act. . ." (*Id.* at p. 914, citations omitted, emphasis added.) However, the Court of Appeal stated

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that it was not “convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances.” (*Id.*) Expanding on the overlapping federal and state authority included in the regulatory scheme contemplated under the Act, the Court noted that:

There is no precise formula or rule for determining whether the “costs” are the product of a federal mandate. Our Supreme Court explained: “Given the variety of cooperative federal-state-local programs, we here attempt no final test for “mandatory” versus “optional” compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.

(*Id.* at p. 907, fn. 2, emphasis added.)

Further, in *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1594, the Court of Appeal held that “[w]hen federal law imposes a mandate on the state, however, and the state ‘freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.’” (A copy of the *Hayes* case is attached as Exh. 30.)

The Commission recently reaffirmed the State’s role in water quality regulation:

[t]he task of accomplishing [the goal of] . . . “attain[ing] the highest water quality which is reasonable, . . . “ belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise “the principal state agencies with primary responsibility for the coordination and control of water quality.”

Whereas the State Board establishes statewide policy for water quality control, the regional boards “formulate and adopt water quality control plans for all areas within [a] region”

(Commission Stmt. of Dec. re: Discharge of Stormwater Runoff, 07-TC-09 at p. 4, citations omitted.)

Given the discretion granted to and exercised by the Regional Water Board to adopt specific water quality standards, and its adoption of standards for chloride in the Santa Clara River and WLAs, it cannot seriously be argued that the decisions made by the Board were no more than compliance with federal mandates. The State must therefore reimburse the District for the Board’s unfunded mandates.

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2. The Regional Water Board's Discretionary Decisions in Adopting the Water Quality Standard for Chloride and Setting WLAs for the District's WRPs are Unfunded State Mandates.

Although the Regional Water Board's actions to date satisfy the minimum procedural and substantive requirements of the Clean Water Act, the Board's adoption of the chloride water quality objective of 100 mg/L, its modification of the objective via SSOs, and its assignment of specific interim and final WLAs, were discretionary decisions undertaken pursuant to authority conferred to it by the Porter-Cologne Act.<sup>4</sup>

a. *The Regional Board Enacted Regulations Not Mandated by the Clean Water Act to Protect Downstream Agricultural Uses.*

The Clean Water Act requires states to "take into *consideration*" the following uses of waters when adopting water quality standards: "use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation." (33 U.S.C. §1313(c)(2)(A) (emphasis added); *see also* 40 C.F.R. §130.3<sup>5</sup>; 40 C.F.R. §131.10(a).) The Regional Water Board cannot assert that acts to regulate water quality to protect downstream salt-sensitive crops are mandated by the Clean Water Act. Instead, the decision to protect agricultural uses and the means adopted by the Board are state mandates. The Regional Water Board's decision as to the uses it will protect, and the level of protection provided, are discretionary state actions taken pursuant to the Porter-Cologne Act.

Further, the reference in federal regulations to the scope of protection that includes "uses actually attained in the water" does not appear to include off-stream agricultural use as an

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<sup>4</sup> The Regional Board's statements in the TMDL itself give some guidance on the issue:

While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program implementation, and setting various milestones in achieving the water quality standards.

(October 8, 2009 Memorandum re Chloride TMDL at p. 7, emphasis added, Exh. 22.)

<sup>5</sup> Initially set forth in the Clean Water Act are several national goals and objectives, including a "national goal that the discharge of pollutants into the navigable waters be eliminated by 1985" and a "national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water be achieved by July 1, 1983." (*See* 33 U.S.C. §1251(a)(1)-(2).) Congressional declarations of policy are not binding legal mandates, evident by the fact that discharge of pollutants into the navigable waters continue to be authorized today. Nonetheless, the latter goal cited above is often referred to as the Clean Water Act's overarching mandate to protect "fishable/swimmable" beneficial uses of the nation's waters.

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“existing use” that the State may elect to protect. (See 40 C.F.R. §131.3(e).) The US EPA recommends water quality criteria for chloride to protect municipal and domestic supply (potable water) and aquatic species, but not for off-stream agricultural uses. The recommended numeric goal for potable water is 250 mg/L<sup>6</sup>, and the goal to protect aquatic life is a chronic value of 230 mg/L and an acute value of 860 mg/L<sup>7</sup>.

The Clean Water Act does not mandate specific protection of agricultural beneficial uses. Rather, these uses should be considered by the State when it makes its own discretionary, site-specific determinations regarding the beneficial uses it will protect through the regulatory process and water quality objectives. Here, the Regional Water Board initially adopted water quality standards for chlorides of 100 mg/L for Reaches 5 and 6 of the Santa Clara River for the purpose of protecting off-stream agricultural uses, and it also chose to protect the most salt-sensitive crops grown in the downstream region. After that, the Regional Water Board decided to further modify water quality standards, resulting in the currently-imposed AWRM program. These layers of regulation were not mandated by federal law but instead reflect ever-changing State regulatory policy decisions. These decisions are only approved for purposes of the NPDES permit program because they meet minimum federal standards. While the Clean Water Act requires TMDLs to be prepared, the Regional Water Board exercised its discretion when assigning WLAs to the Saugus and Valencia WRPs to achieve more-stringent water quality standards. (See, *infra*, fn 5 at p. 21.) Thus, these regulatory requirements are unfunded state mandates.

b. *Regional Water Quality Control Boards throughout the State Protect Similar Agricultural Uses with Higher Chloride Requirements.*

This Regional Water Board, and other regional water quality control boards, have used their discretionary decision-making power to establish water quality objectives permitting chloride concentrations higher than 100 mg/L designed to protect agricultural beneficial uses. In Reach 2 of the Santa Clara River, where salt-sensitive crops like strawberries are grown, the Regional Water Board has set the water quality objective for chlorides at 150 mg/L. The Regional Water Board has set the same water quality objective level for neighboring Calleguas Creek Watershed, where avocado crops are also commercially cultivated. (See Regional Water Board Resolution R4-2007-016, *Amendment to Water Quality Control Plan to incorporate a*

<sup>6</sup> EPA secondary Maximum Contaminant Level (“MCL”), 40 C.F.R. §143.3; California Code of Regulations, Title 22, §64449, Table 64449-B (the recommended level is 250 mg/L, with an upper level of 500 mg/L and a short-term level of 600 mg/L). It should be noted that these levels all apply to finished drinking water at the tap, not to ambient surface water quality.

<sup>7</sup> EPA, Ambient Water Quality Criteria for Chloride – 1988, EPA 440/5-88-001 (Feb. 1988). This EPA Chloride criteria guidance document includes a recommended chronic value is based on a 4-day average continuous concentration and the recommended acute value based on a one-hour average concentration. These values are not to be exceeded more than once every three years.

*TMDL for Boron, Chloride, Sulfate, and TDS (Salts) in Calleguas Creek Watershed and Attachment "A" (Oct. 4, 2007), attached to this Test Claim as Exh. 24.)*

In other regions, regional boards have established water quality objectives for chloride as high as 180 mg/L. These boards have found values higher than 100 mg/L to be protective of all types of agricultural crops, including salt-sensitive crops. For example, the Central Coast and San Francisco Bay Regional Water Boards cite 142 mg/L or less as the appropriate threshold for chloride, and the Santa Ana Regional Water Board states that "a safe value for irrigation is considered to be less than 175 mg/L of chloride," with water quality objectives for specific water bodies ranging from 55 mg/L to 180 mg/L. (*See Central Coast, San Francisco, and Santa Ana Regions' Basin Plans, chapters re: Water Quality Objectives, attached as Exh. 25.*)

Although the District provided the Regional Water Board with technical information as well as documents demonstrating the economic hardship that would accompany its chloride requirements, the Board elected to impose the water quality standards and WLAs described above. The costs to comply with the Regional Water Board's edicts fall squarely within the parameters of the State's unfunded mandate law.

3. The District Cannot Levy Service Charges, Fees, or Assessments Sufficient to Pay for the Mandated Project Costs.

The second exception from recovery for unfunded mandates, which is found in Government Code section 17556(d) (the "fee increase exception"), relates to instances where the local agency has "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." The fee increase exception, to the extent it even applies in view of the policy behind constitutional provisions limiting the means for revenue generation, does not bar the District's claim because the District's board has not been "authorized" to levy increased fees under the process created in Article XIID of the California Constitution. As discussed in further detail below, the Commission squarely addressed this issue and found that a local agency does not fall under the fee increase exception if it is unable to obtain the requisite approval under the Proposition 218 process. (Commission's Stmt. of Decision re: Discharge of Stormwater Runoff, 07-TC-09 (Mar. 26, 2010) at p. 106.)

This process requires local agencies to provide notice to the affected property owners for any proposed, new, or increased assessment. (*See generally*, Cal. Const., Art. XIID, §6, subd. (c), attached as Exh. 31 [-"[t]he agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, . . .".]) -Upon providing notice to the affected property owners, the District received strong opposition amongst its constituents. As a result, the District has been unable to successfully implement a rate increase due to public resistance.

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Approved by California voters in 1996 and enacted in 1997, Proposition 218 amended the California Constitution by adding Articles XIIC and XIID and significantly changed the process of local government finance by curtailing the deference traditionally accorded legislative enactments on fees, assessments, and charges. (Cal. Const., Art. XIID; *see also Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 187 44 Cal.4th 431, 446, emphasis added, attached hereto as Exh. 32.) The Court of Appeal recognized that Proposition 218 created a significant break with prior law, stating that “. . . the voters sought to curtail local agency discretion in raising funds, Proposition 218's preamble includes an express statement of purpose: ‘The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself.’” (*Id.*)

The underlying purpose of California Constitution Articles XIIB, section 6 (specifically, the provision relating to state mandates) and XIID, section 6 (from Proposition 218) is fundamentally the same: to provide a system of checks and balances to prevent state and local governments from shifting financial responsibility, either onto local agencies of the state or onto the taxpayers of a local district, for carrying out certain governmental functions. (*County of Los Angeles, supra*, 150 Cal.App.4th at p. 906.)

Case law interpreting the applicability of the fee increase exception does not address the potential conflict between that exception and Proposition 218 because the most significant cases predate the passage of that proposition. Consequently, there is no case law that addresses this issue. This potential conflict is significant where a local agency is unable to obtain the requisite approval to implement a proposed fee increase, but is (under one narrow interpretation of the fee increase exception) required to expend exorbitant costs to comply with a state-imposed mandate. The two cases discussed below only tangentially touch upon the fee increase exception and are not factually analogous.

Although *County of Fresno v. State of California* (1991) 53 Cal.3d 482 (“*County of Fresno*”) found Government Code section 17556, subdivision (d) to be “facially” constitutional, the opinion predated the enactment of Proposition 218 by several years. (*Fresno* case attached as Exh. 33.) That opinion provides no guidance regarding the interpretation of the fee increase exception where the local agency is not authorized to levy fees and unable to secure funding through increased revenue. In practical terms, the operation of Proposition 218 and the political realities attendant to its passage limit the ability of local government to raise fees in a way that makes it impossible for a local agency to raise sufficient funding for state mandate projects if the affected property owners object.

This is precisely the situation that has occurred here. The District attempted to implement the Proposition 218 process, but the elected public officials could not to support the proposed rate increase in the face of fierce public opposition. In 2010, the District's board declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the District's

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ratepayers. Since that time, the likelihood that the proposed rate increases would pass muster, in light of strong disapproval of the proposed length and level of rate increases, has been reduced even further.

In the factually-distinct case of *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382 (“*Connell*”), the Court of Appeal summarily held, without conducting a full analysis of the Proposition 218 issue, that the water districts who were the real parties in interest were not entitled to reimbursement for capital expenditures used to implement a wastewater reclamation system because the districts were authorized to levy fees to cover the costs attributable to the regulatory amendment. (*Id.* at pp. 387, 399, attached as Exh. 34.) However, the *Connell* court ignored the then-recent passage of Proposition 218. (*Id.* at p. 403.)

Though the court expressly acknowledged that “the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees,” the court declined to address whether this limitation, or the Proposition 218 notice requirements and any resulting input from property owners, has any bearing on the fee increase exception. This may have been appropriate because that dispute long predated the passage of Proposition 218, but it makes the holding inapplicable here. Therefore, the *Connell* court did not address whether the fee increase exception bars local governments from seeking reimbursement under Article XIII B, section 6 when the agency is unable to offset costs through rate increases.

Because of the absence of applicable case law on this issue, a test claimant placed this question of “first impression” before the Commission. On March 26, 2010, the Commission issued a Statement of Final Decision finding that a local agency does not have sufficient fee authority under the fee increase exception if the fee is contingent on the outcome of the Proposition 218 process. (Commission Stmt. Of Dec. re: Discharge of Stormwater Runoff, 07-TC-09 at p. 106.) The Commission provided the following rationale in reaching its decision:

Under Proposition 218, the local agency has no authority to impose the fee without the consent of the voters or property owners. Additionally, it is possible that the local agency’s voters or property owners may never adopt the proposed fee or assessment, but the local agency would still be required to comply with the state mandate. Denying reimbursement under these circumstances would violate the purpose of article XIII B, section 6, which is to “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.”

(*Id.* at p. 106, citations omitted, emphasis added.)

As acknowledged by the Commission, the enactment of Proposition 218 created a paradigm shift in local government financing that severely limited an agency’s ability to operate and generate revenues given the various hurdles attributable to heightened public involvement. In conjunction with the “government spending limitation” contained in Article XIII B, section 6,  
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*Test Claim Submitted by the Santa Clarita Valley  
Sanitation District of Los Angeles County*

the Legislature recognized that local governments should not bear the burden of mandates imposed by the state or state agencies. In light of the increasing lack of funding options, and the certain opposition of the District's ratepayers, the District ought not be forced to expend significant sums of monies that it does not have and cannot raise to implement a project that is, even in its smallest details, mandated by the State.

4827-7914-5737.1

*Test Claim Submitted by the Santa Clarita Valley  
Sanitation District of Los Angeles County*

**INDEX OF EXHIBITS ATTACHED TO SCVSD'S TEST CLAIM**

- 1) Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-0012: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt Site Specific Chloride Objectives and to Revise the Upper Santa Clara River Chloride TMDL* (Dec. 11, 2008)
- 2) Memorandum of Agreement Between the U.S. Environmental Protection Agency and the California State Water Sources Control Board (Sept. 29, 1989)
- 3) Memorandum re: 1975 Chloride Objective and 1978 and 1994 Revisions to Chloride Objectives for Reaches 5 and 6 at p. 3 (Oct. 7, 2002)
- 4) Los Angeles Regional Water Quality Control Plan: *Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* ("1994 Basin Plan") (adopted Jun. 13, 1994) at pp. 3-12, 3-20, 3-21
- 5) Los Angeles Regional Water Quality Control Board Resolution 90-04 (Drought Policy) (Mar. 26, 1990)
- 6) Los Angeles Regional Water Quality Control Board Resolution 97-02 (Jan. 27, 1997)
- 7) Los Angeles Regional Water Quality Control Board - Notice of Public Hearing for a proposed amendment to the California Regional Water Quality Control Plan for the Los Angeles Region, for Water Quality Objective (Chloride) Changes at Santa Paula and Santa Clarita Reaches of the Santa Clara River (Jun. 26, 2000)
- 8) Los Angeles Regional Water Quality Control Board Staff Report Addendum, Basin Plan Amendment to Modify the Chloride Objective for Reaches at Santa Clarita and at Santa Paula in the Santa Clara River (Jun. 26, 2000), p. 6
- 9) Regional Water Board Hearing Transcript re Basin Plan Amendment for the Santa Clara River (Dec. 7, 2000) at pp. 30-31, 35, 44-45
- 10) Santa Clara River Chloride Reduction Ordinance of 2008 (Jun. 11, 2008)
- 11) Memo from Sheila Vassey, Senior Staff Counsel, State Water Board Office of Chief Counsel, to Jon Bishop, Regional Water Board re: Agricultural Beneficial Use in Santa Clara River (Oct. 12, 2000)
- 12) Los Angeles Regional Water Quality Control Board Resolution No. 02-018 (Oct. 24, 2002)
- 13) State Water Quality Control Board Resolution No. 2003-0014 (Feb. 19, 2003)
- 14) Los Angeles Regional Water Quality Control Board Resolution E03-008 (Jul. 10, 2003)

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- 15) State Water Quality Control Board Resolution No. R4-2006-016 (Jul. 22, 2004)
- 16) Los Angeles Regional Water Quality Control Board Order No. R4-2009-0074, *Letter re: Adopted Waste Discharge Requirements and NPDES for SCVSD Valencia WRP (only relevant pages from NPDES Permit), and Attachment K re: TMDL Related Tasks* (Jun. 4, 2009)
- 17) Los Angeles Regional Water Quality Control Board Order No. R4-2009-0075, *Letter re: Adopted Waste Discharge Requirements and NPDES for SCVSD Saugus WRP (only relevant pages from NPDES Permit)* (Jun. 4, 2009)
- 18) Los Angeles County Sanitation District's Variance Application for the Saugus and Valencia Water Reclamation Plants (Oct. 21, 2003) at pp. 11-16, Section 3.7
- 19) Santa Clarita Valley Sanitation District Automatic Water Softener Ordinance (Feb. 25, 2003)
- 20) County Sanitation Districts of Los Angeles County's 2010 Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan (Nov. 2010)
- 21) Draft Report: Santa Clarita Valley Sanitation District Upper Santa Clara River chloride TMDL: SCR Reaches 5 & 6 Cost Estimate Summary for Conceptual Compliance Alternatives -Task 9, June 2008
- 22) League of Cities Resolution Relating to Unfunded State Mandates for City of Santa Clarita (Sept. 17, 2010)
- 23) Los Angeles County Sanitation District's Memorandum re: Chloride TMDL (Oct. 8, 2009) at p. 7 of redlined proposed "amendment" to Resolution 2008-012
- 24) Los Angeles Regional Water Board Resolution R4-2007-016, *Amendment to Water Quality Control Plan to incorporate a TMDL for Boron, Chloride, Sulfate, and TDS (Salts) in Calleguas Creek Watershed and Attachment "A"* (Oct. 4, 2007)
- 25) Central Coast, San Francisco, and Santa Ana Regions' Basin Plans, relevant chapters re: Water Quality Objectives
- 26) Declaration of Stephen Maguin, Chief Engineer and General Manager of Santa Clarita Valley Sanitation District of Los Angeles County
- 27) California Constitution, Article XIII B, section 6
- 28) California Government Code section 17556
- 29) *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898

30) *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564

31) California Constitution, Article XIIIID, section 6

32) *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008)  
44 Cal.4th 431

33) *County of Fresno v. State of California* (1991) 53 Cal.3d 482

34) *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382

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# EXHIBIT “1”

4837-0090-6752.2

State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2008-012

December 11, 2008

Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt  
Site Specific Chloride Objectives and to Revise the Upper Santa Clara River  
Chloride TMDL

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.
2. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
3. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
4. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

5. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303d list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD), are two major point sources that discharge to the USCR.
6. On October 24, 2002, the Regional Board adopted Resolution No. 02-018, amending the Basin Plan to include a TMDL for chloride in the USCR. Resolution 02-018 assigned waste load allocations (WLAs) to the Valencia and Saugus WRPs, minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River. The TMDL included interim WLAs for chloride for the WRPs. These interim WLAs provide the WRPs the necessary time to implement chloride source reduction, complete site-specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
7. On February 19, 2003 the State Water Resources Control Board (State Board) adopted State Board Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board. The Remand Resolution directed the Regional Board to consider a phased implementation approach to allow SCVSD to complete special studies prior to planning and construction of advanced treatment technologies.
8. On July 10, 2003, in response to the Remand Resolution, the Regional Board adopted Resolution 03-008, revising the implementation Plan for the TMDL. The revised TMDL allowed 13 years to implement the TMDL.
9. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan required the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
10. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," found that the best estimate of a chloride

hazard concentration for avocado crops falls within the range of 100 to 120 mg/L. A similar range of 100 to 117 mg/L was found by an independent technical advisory panel (TAP). An additional study completed in January 2008, entitled "Compliance Averaging Period for Chloride Threshold Guidelines in Avocado," found that a 3-month averaging period of the LRE guidelines would be protective of avocados. The TAP co-chairs reviewed this study and agreed that a 3-month averaging period is appropriate.

11. On August 3, 2006, the Regional Board revised the Implementation Schedule for the TMDL in Resolution No. 04-004 (Resolution No. 06-016). The revised TMDL accelerated the schedule from 13 years to 11 years based on findings from the LRE. The State Board approved the Regional Board amendment on May 22, 2007 (State Board Resolution No. 2007-0029). In approving the amendment, the State Board directed the Regional Board to consider variability in the SSO for chloride to account for the effects of drought on source water quality.
12. Prior to completion of the special studies, the presumed implementation plan included two options: advanced treatment of effluent from the Valencia and Saugus WRPs and disposal of brine in the ocean through an ocean outfall, or disposal of tertiary treatment effluent in the ocean through an ocean outfall. Both options entail construction of a pipeline from the Santa Clarita Valley WRPs to the ocean and an ocean outfall.
13. The second special study required by the Implementation Plan is the "Groundwater/Surface Water Interaction (GSWI) Model." The GSWI study model has been completed, reviewed and approved as an appropriate and adequate modeling tool by the stakeholders and an independent GSWI TAP. The GSWI model has been used to examine feasibility of various implementation alternatives. The GSWI study predicts that none of the alternatives, including the advanced treatment of WRP effluent and disposal of brine in a new ocean outfall or disposal of tertiary treatment effluent in an ocean outfall, would achieve compliance with the existing chloride WQO of 100 mg/L at all times and at all locations and that an alternative water resources management approach could achieve attainment for certain reaches.
14. The third special study required by the Implementation Plan is the "Evaluation of Appropriate Chloride Threshold for Endangered Species Protection (ESP)." This special study has been completed and found that the existing USEPA chloride criteria of 230 mg/L as a chronic threshold and 860 mg/L as an acute threshold are protective of aquatic life in the USCR, including Threatened and Endangered species. These conclusions indicate that endangered species can tolerate higher levels of chloride than salt-sensitive agricultural crops. The independent ESP TAP concurred with the study findings and conclusions.

15. The Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c). The completion of these TMDL special studies, all conducted in a facilitated stakeholder process in which stakeholders participated in scoping and reviewing the studies, has led to development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater. The alternative, termed the alternative water resources management approach (AWRM), develops site specific objectives (SSOs) for chloride while protecting beneficial uses. The AWRM provides water quality and water supply benefits in Los Angeles and Ventura Counties. The AWRM consists of chloride source reduction actions and chloride load reduction through advanced treatment (microfiltration and reverse osmosis) of a portion of the Valencia WRP effluent in conformance with SSOs.
16. To support the development of the AWRM compliance option by stakeholders, Regional Board adopted Resolution No. 07-018 on November 1, 2007. Resolution No. 07-018 modified the regulatory provisions of the Basin Plan by subdividing Reach 4 of the Santa Clara River (SCR) as two separate Reaches, Reach 4A between the confluence of Piru Creek and the A Street Bridge in the City of Fillmore and Reach 4B between the Blue Cut Gauging Station and the confluence of Piru Creek. The Regional Board stated that this action would allow the development of more geographically precise SSOs.
17. This amendment to the Basin Plan will incorporate SSOs for chloride in Reaches 4B, 5, and 6 of the Santa Clara River and the groundwater basins underlying those reaches. The SSOs are protective of beneficial uses of these waterbodies. The GSWI study found that the AWRM compliance alternative will result in timely attainment of the SSOs for Reaches 4B, 5, and 6 and reduce the chloride load to the USCR and underlying groundwater basins. The proposed implementation activities under AWRM, which will increase chloride export from the East Piru groundwater basin underlying Reach 4B, will offset any increases in chloride discharges.
18. This amendment to the Basin Plan will include implementation language, including minimum salt export requirements to ensure that excess salt loadings to the groundwater basin due to periods of elevated water supply concentrations are removed from the groundwater basin through pumping and export.
19. The adoption of SSOs for chloride is part of a comprehensive strategy for addressing the buildup of salts in the Santa Clara watershed, which includes development and implementation of Total Maximum Daily Loads and corresponding effluent and receiving water limitations in NPDES permits.

20. The TMDL numeric targets, WLAs, and Implementation Plan are based on the SSOs for chloride. The TMDL provides interim WLAs for chloride, as well as interim WLAs for sulfate and TDS to support the supplemental water and water recycling components of the AWRM.
21. The TMDL provides a ten-year schedule to attain compliance with the SSOs for chloride. The SSOs are conditioned on full and ongoing implementation of the AWRM program; if the AWRM system is not built and operated, the water quality objectives for chloride revert back to the current levels in the Basin Plan, which are 100 mg/L.
22. The SCVSD, Ventura County Agricultural Water Quality Coalition, the United Water Conservation District, and Upper Basin Water Purveyors, consisting of the Castaic Lake Water Agency (CLWA), Valencia Water Company, Newhall County Water District, Santa Clarita Water Division of the CLWA, and the Los Angeles County Waterworks District No. 36, herein referred to as the AWRM Stakeholders have entered into a memorandum of understanding (MOU), effective October 23, 2008 to implement the AWRM Program. The AWRM MOU specifies the agreed-upon responsibilities of AWRM Stakeholders for the implementation of ultra-violet light disinfection and advanced treatment facilities (i.e., microfiltration-reverse osmosis and brine disposal), salt management facilities (i.e., extraction wells and water supply conveyance pipelines), supplemental water (i.e., water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. The AWRM MOU also specifies the various uses of desalinated recycled water, which include: (1) compliance with water quality objectives for Reaches 4A, 4B and 5; (2) protection of salt-sensitive agricultural beneficial uses; (3) removal of excess chloride load above 117 mg/L from the East Piru Basin; and (4) enhancement of water supplies in Ventura and Los Angeles Counties. In addition, the AWRM MOU will implement an extension of the GSWI model to assess the groundwater and surface water interactions and impacts to surface water and groundwater quality from the AWRM program to the Fillmore and Santa Paula basins.
23. Implementation actions to achieve SSOs in Reaches 4B, 5, and 6 and the TMDL must also result in compliance with downstream water quality objectives for chloride. Surface water chloride concentrations will comply with the existing water quality objective of 100 mg/L in Reach 4A.
24. Regional Board staff prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this amendment. The technical document entitled "Upper Santa Clara River Chloride TMDL Reconsideration and Conditional Site Specific Objectives" (Staff Report) is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting on December 11, 2008. The Staff Report relies upon the scientific background and data collection and analysis documented in the TMDL special studies.

The TMDL special studies are distinguished from the Regional Board's staff report in that they do not present the recommendations of Regional Board staff.

25. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. Stakeholders have participated extensively in the special studies since 2005 through a facilitated process in which meetings are held monthly in the cities of Fillmore, Santa Paula, and Santa Clarita. Technical working groups (TWGs) have executed the implementation studies and stakeholder-selected TAPs have reviewed the studies. All meetings are open to the public, and agendas and minutes from meetings are published on the Santa Clara River Chloride TMDL website: [www.santaclarariver.org](http://www.santaclarariver.org). A draft of the amendment was released for public comment on September 30, 2008; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; a notice of hearing published in the Los Angeles Daily News, the Santa Clarita Signal, and the Ventura County Star on September 30, 2008; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on December 11, 2008 to consider adoption of the amendment.
26. In amending the Basin Plan to establish SSOs and to revise this TMDL, the Regional Board considered the requirements set forth in Sections 13240, 13241, and 13242 of the California Water Code. The 13241 factors are set forth and considered in the staff report.
27. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
28. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Water Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report, the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations,

determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.

29. A CEQA Scoping hearing was conducted on July 29, 2008 at the Council Chamber of City of Fillmore – 250 Central Avenue, Fillmore, California. A notice of the CEQA Scoping hearing was sent to interested parties. The notice of CEQA Scoping hearing was also published in the Los Angeles Daily News on July 11, 2008 and Ventura County Star on July 11, 2008.
30. In preparing the accompanying CEQA substitute documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid or eliminate the identified impacts. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.
31. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)
32. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents may not foreseeably reduce impacts to less than significant levels.

33. The substitute documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
34. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)
35. Considering the record as a whole, this Basin Plan amendment will result in no effect, either individually or cumulatively, on wildlife resources.
36. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
37. The Basin Plan amendment incorporating SSOs and a revision of the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.
38. Occasionally during its approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided she informs the Board of any such changes.

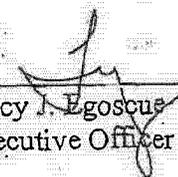
**Therefore, be it resolved that:**

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 3 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, to incorporate SSOs for chloride for Reaches 4B, 5, and 6 in the Santa Clara River watershed and underlying groundwater basins (as identified in Tables 3-8 and 3-10), which will replace the previously applicable water quality objectives in Reaches 4B, 5, and 6 of the Santa Clara River and underlying groundwater basins.
2. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 4 of the Water

Quality Control Plan for the Los Angeles Region as set forth in Attachment B hereto, to include USCR SSOs for chloride.

3. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment C hereto, to incorporate the revisions to the Upper Santa Clara River Chloride TMDL.
4. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)
5. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.
6. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
7. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL and U.S. EPA.
8. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 11, 2008.

  
Tracy J. Egoscue  
Executive Officer

1/15/08  
Date

**Attachment A to Resolution R4-2008-012**  
**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

The following language will be added to Chapter 3, Water Quality Objectives of the Basin Plan, under “Mineral Quality”:

*Add table after Table 3-8.*

**Table 3-8a. Conditional Site Specific Objectives for Santa Clara River Surface Waters**

<b>WATERSHED/STREAM REACH</b>	<b>Chloride (mg/L)</b>
<b>Santa Clara River Watershed:</b>	
Between Bouquet Canyon Road Bridge and West Pier Highway 99	150 (12-month average)
Between West Pier Highway 99 and Blue Cut gaging station	150 (12-month average)
Between Blue Cut gaging station and confluence of Piru Creek	117/130 <sup>a</sup> (3-month average) <sup>b</sup>

- a. The conditional site specific objective of 130 mg/L applies only if the following conditions and implementation requirements are met:
1. Water supply chloride concentrations measured in Castaic Lake are  $\geq 80$  mg/L.
  2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B (between Blue Cut gaging station and confluence of Piru Creek) surface water exceeds 117 mg/L.
  3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (CNCI<sub>117</sub>)<sup>i</sup> to Reach 4B of the Santa Clara River (SCR), calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.

$${}^i \text{CNCI}_{117} = \text{Cl}_{(\text{Above } 117)} - \text{Cl}_{(\text{Below } 117)} - \text{Cl}_{(\text{Export Ews})}$$

Where:

$$\text{Cl}_{(\text{Above } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{>117}^3]$$

$$\text{Cl}_{(\text{Below } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{\leq 117}^4]$$

$$\text{Cl}_{(\text{Export EWs})} = \text{Cl Load Removed by Extraction Wells}$$

<sup>1</sup> WRP Cl Load is determined as the monthly average chloride (Cl) concentration multiplied by the monthly average flow measured at the Valencia WRP.

<sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).

**Attachment A to Resolution R4-2008-012**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

- <sup>3</sup> Reach 4B Cl Load<sub>>117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.  
<sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.

4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.
- b. The averaging period for the critical condition SSO of 130 mg/L may be reconsidered based on results of chloride trend monitoring after the alternative water resources management (AWRM) system is applied.

The conditional site specific objectives for chloride in the surface water between Bouquet Canyon Road bridge and West Pier Highway 99, between West Pier Highway 99 and Blue Cut gaging station, and between Blue Cut gaging station and confluence of Piru Creek shall apply and supersede the existing water quality objectives in Table 3-8 only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.

*Add table after Table 3-10.*

**Table 3-10a. Conditional Site Specific Objectives for Selected Constituents in Regional Groundwaters**

DWR Basin No.	BASIN	Chloride (mg/L)
4-4	Ventura Central <sup>d</sup> Lower area east of Piru Creek <sup>1</sup>	150 (rolling 12-month average)
4-4.07	Eastern Santa Clara Santa Clara—Bouquet & San Francisquito Canyons  Castaic Valley	150 (rolling 12-month average)  150 (rolling 12-month average)

1. This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.

The conditional site specific objectives for chloride in the groundwater in Santa Clara--

**Attachment A to Resolution R4-2008-012**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for  
Chloride in Upper Santa Clara River Watershed**

Bouquet & San Francisquito Canyons, Castaic valley, and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing regional groundwater quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.

**Attachment B to Resolution No. R4-2008-012**

**Revision of the TMDL for Chloride in the Upper Santa Clara River**

Adopted by the California Regional Water Quality Control Board, Los Angeles Region on December 11, 2008.

**Amendments**

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Chapter 7. Total Maximum Daily Loads (TMDLs) Tables

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7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule (Revised)

Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.

This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003

This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6, 2004.

This TMDL was approved by: The State Water Resource Control Board on July 22, 2004

The Office of Administrative Law on November 15, 2004

The U.S. Environmental Protection Agency on April 28, 2005

This TMDL was revised and adopted by: The Regional Water Quality Control Board on August 3, 2006.

This TMDL was approved by: The State Water Resource Control Board on May 22, 2007.

The Office of Administrative Law on July 3, 2007.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on December 11, 2008.

This TMDL was approved by: The State Water Resource Control Board on xxx xx, 200x.

The Office of Administrative Law on xxx xx, 200x.

<b>Element</b>	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>															
<b>Problem Statement</b>	Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River (SCR). These reaches are on the 1998 and 2002 Clean Water Act (CWA) 303(d) lists of impaired water bodies as impaired due to chloride. The objectives for these reaches were set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River (USCR). Irrigation of salt sensitive crops such as avocados, strawberries, and nursery crops with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater in Piru Basin underlying the reach downstream of Reach 5 are also rising.															
<b>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</b>	<p>Numeric targets are equivalent to conditional site specific objectives (SSOs) that are based on technical studies regarding chloride levels which protect salt sensitive crops and endangered and threatened species, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River and underlying groundwater basin. The TMDL special study, Literature Review Evaluation, shows that the most sensitive beneficial uses can be supported with rolling averaging periods as shown in the tables below.</p> <p>1. Conditional Surface Water SSOs</p> <p>The conditional SSOs for chloride in the surface water of Reaches 4B, 5, and 6 shall apply and supersede the existing water quality objectives of 100 mg/L only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. Conditional surface water SSOs for Reaches 4B, 5, and 6 of the Santa Clara River are listed as follows:</p> <table border="1" data-bbox="535 1426 1339 1758"> <thead> <tr> <th>Reach</th> <th>Conditional SSO for Chloride (mg/L)</th> <th>Rolling Averaging Period</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>150</td> <td>12-month</td> </tr> <tr> <td>5</td> <td>150</td> <td>12-month</td> </tr> <tr> <td>4B</td> <td>117</td> <td>3-month</td> </tr> <tr> <td>4B Critical Conditions</td> <td>130<sup>a</sup></td> <td>3-month<sup>b</sup></td> </tr> </tbody> </table>	Reach	Conditional SSO for Chloride (mg/L)	Rolling Averaging Period	6	150	12-month	5	150	12-month	4B	117	3-month	4B Critical Conditions	130 <sup>a</sup>	3-month <sup>b</sup>
Reach	Conditional SSO for Chloride (mg/L)	Rolling Averaging Period														
6	150	12-month														
5	150	12-month														
4B	117	3-month														
4B Critical Conditions	130 <sup>a</sup>	3-month <sup>b</sup>														

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>
	<p>a. The conditional SSO for chloride in Reach 4B under critical condition shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</li> <li>2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</li> <li>3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (<math>CNCl_{117}</math>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.</li> </ol> <p><sup>1</sup> <math>CNCl_{117} = Cl_{(Above\ 117)} - Cl_{(Below\ 117)} - Cl_{(Export\ Ews)}</math></p> <p>Where:</p> <p><math>Cl_{(Above\ 117)}</math> = <math>[WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{&gt;117}^3]</math></p> <p><math>Cl_{(Below\ 117)}</math> = <math>[WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{\leq 117}^4]</math></p> <p><math>Cl_{(Export\ Ews)}</math> = Cl Load Removed by Extraction Wells</p> <p><sup>1</sup> WRP Cl Load is determined as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B Cl Load<sub>&gt;117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.</p> <p><sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.</p> <ol style="list-style-type: none"> <li>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Los Angeles Regional Water Quality Control Board (Regional Board) a letter documenting the fulfillment of conditions 1, 2, and 3.</li> </ol>

<b>Element</b>	<b>Table 7-6.1 - Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>												
	<p>b. The averaging period for the critical condition SSO may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</p> <p>2. Conditional SSOs for Groundwater</p> <p>Conditional groundwater SSOs are listed as follows:</p> <table border="1" data-bbox="552 659 1323 1117"> <thead> <tr> <th data-bbox="560 670 803 741"><b>Groundwater Basin</b></th> <th data-bbox="836 670 1047 807"><b>Conditional Groundwater SSO for Chloride (mg/L)</b></th> <th data-bbox="1079 670 1315 741"><b>Rolling Averaging Period</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="560 818 803 962">Santa Clara-- Bouquet &amp; San Francisquito Canyons</td> <td data-bbox="836 818 1047 851">150</td> <td data-bbox="1079 818 1315 851">12-month</td> </tr> <tr> <td data-bbox="560 973 803 1006">Castaic Valley</td> <td data-bbox="836 973 1047 1006">150</td> <td data-bbox="1079 973 1315 1006">12-month</td> </tr> <tr> <td data-bbox="560 1028 803 1094">Lower area east of Piru Creek <sup>a</sup></td> <td data-bbox="836 1028 1047 1061">150</td> <td data-bbox="1079 1028 1315 1061">12-month</td> </tr> </tbody> </table> <p><sup>a</sup> This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.</p> <p>The conditional SSOs for chloride in the groundwater in Santa Clara--Bouquet &amp; San Francisquito Canyons, Castaic Valley and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing groundwater quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1.</p>	<b>Groundwater Basin</b>	<b>Conditional Groundwater SSO for Chloride (mg/L)</b>	<b>Rolling Averaging Period</b>	Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month	Castaic Valley	150	12-month	Lower area east of Piru Creek <sup>a</sup>	150	12-month
<b>Groundwater Basin</b>	<b>Conditional Groundwater SSO for Chloride (mg/L)</b>	<b>Rolling Averaging Period</b>											
Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month											
Castaic Valley	150	12-month											
Lower area east of Piru Creek <sup>a</sup>	150	12-month											
<b>Source Analysis</b>	<p>The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus WRP and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6. These sources of chloride accumulate and degrade groundwater in the lower area east of Piru Creek in the basin.</p>												
<b>Linkage Analysis</b>	<p>A groundwater-surface water interaction (GSWI) model was developed to</p>												

<b>Element</b>	<b>Table 7-6.1 Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>						
	<p>assess the linkage between chloride sources and in-stream water quality and to quantify the assimilative capacity of Reaches 4A, 4B, 5, and 6 and the groundwater basins underlying those reaches. GSWI was then used to predict the effects of WRP discharges on chloride loading to surface water and groundwater under a variety of future hydrology, land use, and water use assumptions including future discharges from the Newhall Ranch WRP in order to determine appropriate wasteload allocations (WLAs) and load allocations (LAs).</p> <p>The linkage analysis demonstrates that beneficial uses can be protected through a combination of SSOs for surface water and groundwater and reduction of chloride levels from the Valencia WRP effluent through advanced treatment.</p>						
<i>Waste Load Allocations (for point sources)</i>	<p>The conditional WLAs for chloride for all point sources shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, WLAs shall be based on existing water quality objectives for chloride of 100 mg/L.</p> <p>Conditional WLAs for chloride for discharges to Reach 4B by the Saugus and Valencia WRPs are as follows:</p> <table border="1" data-bbox="613 1161 1274 1559"> <thead> <tr> <th data-bbox="613 1161 803 1294"><b>Reach</b></th> <th data-bbox="803 1161 1274 1294"><b>Concentration-based Conditional WLA for Chloride (mg/L)</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="613 1294 803 1426">4B</td> <td data-bbox="803 1294 1274 1426">117 (3-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="613 1426 803 1559">4B Critical Conditions</td> <td data-bbox="803 1426 1274 1559">130<sup>a</sup> (3-month Average<sup>b</sup>), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>a. The Conditional WLA under critical conditions shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</li> </ol>	<b>Reach</b>	<b>Concentration-based Conditional WLA for Chloride (mg/L)</b>	4B	117 (3-month Average), 230 (Daily Maximum)	4B Critical Conditions	130 <sup>a</sup> (3-month Average <sup>b</sup> ), 230 (Daily Maximum)
<b>Reach</b>	<b>Concentration-based Conditional WLA for Chloride (mg/L)</b>						
4B	117 (3-month Average), 230 (Daily Maximum)						
4B Critical Conditions	130 <sup>a</sup> (3-month Average <sup>b</sup> ), 230 (Daily Maximum)						

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>
	<p>2. SCVSD shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</p> <p>3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (CNCI<sub>117</sub>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the Saugus and Valencia WRPs shall be zero or less.</p> <p><sup>i</sup> CNCI<sub>117</sub> = CI<sub>(Above 117)</sub> - CI<sub>(Below 117)</sub> - CI<sub>(Export Ews)</sub></p> <p>Where:</p> <p>CI<sub>(Above 117)</sub> = [WRP CI Load<sup>1</sup>/Reach 4B CI Load<sup>2</sup>] * [Reach 4B CI Load<sub>&gt;117</sub><sup>3</sup>]</p> <p>CI<sub>(Below 117)</sub> = [WRP CI Load<sup>1</sup>/Reach 4B CI Load<sup>2</sup>] * [Reach 4B CI Load<sub>&lt;=117</sub><sup>4</sup>]</p> <p>CI<sub>(Export EWs)</sub> = CI Load Removed by Extraction Wells</p> <p><sup>1</sup> WRP CI Load is determined as the monthly average CI concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B CI Load is determined as the monthly average CI concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B CI Load<sub>&gt;117</sub> means the calculated CI load to Reach 4B when monthly average CI concentration in Reach 4B is above 117 mg/L.</p> <p><sup>4</sup> Reach 4B CI Load<sub>&lt;=117</sub> means the calculated CI load to Reach 4B when monthly average CI concentration in Reach 4B is below or equal to 117 mg/L.</p> <p>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.</p> <p>b. The averaging period for the critical condition WLA may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</p>

Element	<b>Table 7-6.1 Upper Santa Clara River Chloride TMDL Elements</b> Santa Clara River Chloride										
	<p>Discharges to Reaches 5 and 6 by the Saugus and Valencia WRPs will have final concentration-based and mass-based conditional WLAs for chloride based on conditional SSOs as follows:</p> <table border="1" data-bbox="500 548 1372 924"> <thead> <tr> <th data-bbox="508 548 678 716">WRP</th> <th data-bbox="678 548 1036 716">                     Concentration-based Conditional WLA for Chloride (mg/L)                 </th> <th data-bbox="1036 548 1372 716">                     Mass-based Conditional WLA for Chloride (pounds/day)                 </th> </tr> </thead> <tbody> <tr> <td data-bbox="508 716 678 814">Saugus</td> <td data-bbox="678 716 1036 814">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1036 716 1372 814"><math>Q_{Design} * 150 \text{ mg/L} * 8.34</math> (12-month Average)</td> </tr> <tr> <td data-bbox="508 814 678 924">Valencia</td> <td data-bbox="678 814 1036 924">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1036 814 1372 924"><math>Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}</math> (12-month Average)</td> </tr> </tbody> </table>		WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)	Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)	Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)
WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)									
Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)									
Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)									
	<p>Where <math>Q_{design}</math> is the design capacity of WRPs in units of million gallons per day (MGD), <math>AF_{RO}</math> is the chloride mass loading adjustment factor for operation of reverse osmosis (RO) facilities, where:</p> <p>If RO facilities are operated at <math>\geq 50\%</math> Capacity Factor<sup>a</sup> in preceding 12 months</p> $AF_{RO} = 0$ <p>If RO facilities are operated at <math>&lt; 50\%</math> Capacity Factor<sup>b</sup> in preceding 12 months</p> $AF_{RO} = (50\% \text{ Capacity Factor} - \%RO \text{ Capacity}) * ChlorideLoadRO^c$ <p><sup>a</sup> Capacity Factor is based on 3 MGD of recycled water treated with RO, 90% of the time.</p> <p><sup>b</sup> If operation of RO facilities at <math>&lt; 50\%</math> rated capacity is the result of conditions that are outside the control of SCVSD, then under the discretion of the Executive Officer of the Regional Board, the <math>AF_{RO}</math> may be set to 0.</p> <p><sup>c</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride</p>										

Element	<b>Table 7-6.1 Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>								
	<p>rejection rate of 95%. Determination of chloride load based on the following:</p> $\text{ChlorideLoad}_{RO} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$ <p>Where:  <math>Q_{RO}</math> = 3 MGD of recycled water treated with RO  <math>C_{WRP}</math> = Chloride concentration in water supply + 50 mg/L  <math>r</math> = % Reverse Osmosis chloride rejection (95% or 0.95)              8.34 = Conversion factor (ppd/(mg/L*MGD))</p> <p>The final WLAs for TDS and sulfate are equal to existing surface water and groundwater quality objectives for TDS and sulfate in Tables 3-8 and 3-10 of the Basin Plan. The Regional Board may revise the final WLAs based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p> <p>Other minor NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive conditional WLAs. The conditional WLA for these point sources is as follows:</p> <table border="1" data-bbox="649 1057 1230 1543"> <thead> <tr> <th>Reach</th> <th>Concentration-based Conditional WLA for Chloride (mg/L)</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td>5</td> <td>150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td>4B</td> <td>117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>Other major NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive WLAs equal to 100 mg/L. The Regional Board may consider assigning conditional WLAs to other major dischargers based on an analysis of the downstream increase in net chloride loading to surface water and groundwater as a result of implementation of conditional WLAs.</p>	Reach	Concentration-based Conditional WLA for Chloride (mg/L)	6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
Reach	Concentration-based Conditional WLA for Chloride (mg/L)								
6	150 (12-month Average), 230 (Daily Maximum)								
5	150 (12-month Average), 230 (Daily Maximum)								
4B	117 (3-month Average), 230 (Daily Maximum)								
<b>Load Allocation</b>	The source analysis indicates nonpoint sources are not a major source of								

<b>Element</b>	<b>Table 7-6.1 Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>								
<i>(for non point sources)</i>	<p>chloride. The conditional LAs for these nonpoint sources are as below:</p> <table border="1" data-bbox="604 444 1279 891"> <thead> <tr> <th data-bbox="604 444 792 533"><b>Reach</b></th> <th data-bbox="792 444 1279 533"><b>Concentration-based Conditional LA for Chloride (mg/L)</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="604 533 792 643">6</td> <td data-bbox="792 533 1279 643">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="604 643 792 754">5</td> <td data-bbox="792 643 1279 754">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="604 754 792 891">4B</td> <td data-bbox="792 754 1279 891">117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>The conditional LAs shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, LAs are based on existing water quality objectives of 100 mg/L.</p>	<b>Reach</b>	<b>Concentration-based Conditional LA for Chloride (mg/L)</b>	6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
<b>Reach</b>	<b>Concentration-based Conditional LA for Chloride (mg/L)</b>								
6	150 (12-month Average), 230 (Daily Maximum)								
5	150 (12-month Average), 230 (Daily Maximum)								
4B	117 (3-month Average), 230 (Daily Maximum)								

**Implementation**

Refer to Table 7-6.2.

**Implementation of Upper Santa Clara River Conditional Site Specific Objectives for Chloride**

In accordance with Regional Board resolution 97-002, the Regional Board and stakeholders have developed an integrated watershed plan to address chloride impairments and protect beneficial uses of surface waters and groundwater basins underlying Reaches 4B, 5, and 6 of the Santa Clara River. The plan involves: 1) Reducing chloride loads and/or increasing chloride exports from the USCR watershed through implementation of advanced treatment (RO) of a portion of the effluent from the Valencia WRP. The advanced treated effluent will be discharged into Reach 4B or blended with extracted groundwater from the Piru Basin underlying Reach 4B and discharged into Reach 4A. The resultant brine from the advanced treatment process will be disposed in a legal and environmentally sound manner. 2) Implementing the conditional SSOs for chloride in surface waters and underlying groundwater basins of the USCR watershed provided in Chapter 3.

The watershed chloride reduction plan will be implemented through NPDES permits for the Valencia WRP and a new NPDES permit for discharge into Reach 4A. The conditional SSOs for chloride in the USCR watershed shall apply and supersede the regional water quality objectives only when chloride load reductions and/or chloride export projects are in operation and reduce chloride loading in accordance with the following table:

<b>Water Supply Chloride<sup>1</sup></b>	<b>Chloride Load Reductions<sup>2</sup></b>
40 mg/L	58,000 lbs per month
50 mg/L	64,000 lbs per month
60 mg/L	71,000 lbs per month
70 mg/L	77,000 lbs per month
80 mg/L	83,000 lbs per month
90 mg/L	90,000 lbs per month
100 mg/L	96,000 lbs per month

<sup>1</sup> Based on measured chloride of the State Water Project (SWP) water stored in Castaic Lake.

<sup>2</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of

chloride load based on the following:

$$ChlorideLoad = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$$

where r = % chloride rejection (95%)  
 Q<sub>RO</sub> = 3 MGD of recycled water treated  
 with RO  
 C<sub>WRP</sub> = SWP Cl + 50 mg/L

***Conditional WLAs***

Conditional WLAs for the Saugus and Valencia WRPs will be implemented through effluent limits, receiving water limits and monitoring requirements in NPDES permits. Conditional WLAs for Reach 4B will be implemented as receiving water limits. Conditional WLAs for Reaches 5 and 6 will be implemented as effluent limits.

The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluent limits will be evaluated in accordance with interim WLAs.

**Saugus WRP:**

The interim WLA for chloride is equal to the interim limit for chloride specified in order No. R4-04-004. The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Saugus WRP instead of existing water quality objectives.

**Valencia WRP:**

The interim WLA for chloride is equal to the interim limit for chloride specified in order No. R4-04-004. The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Valencia WRP instead of existing water quality objectives.

**Other Major NPDES Permits (including Newhall Ranch WRP):**

The Regional Board may consider assigning conditional WLAs for other major NPDES permits, including the Newhall Ranch WRP, pending implementation of a chloride mass removal quantity that is proportional to

	<p>mass based chloride removal required for the Valencia WRP.</p> <p><u>Supplemental Water released to Reach 6 of Santa Clara River:</u></p> <p>In order to accommodate the discharge of supplemental water to Reach 6, interim WLAs are provided for sulfate of 450 mg/L and TDS of 1000 mg/L as annual averages. The final WLAs are equal to the existing water quality objectives for sulfate and TDS in Table 3-8 of the Basin Plan. The Regional Board may revise the final WLA based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p>
<p><b>Monitoring</b></p>	<p>NPDES monitoring: NPDES Permittees will conduct chloride, TDS, and sulfate monitoring to ensure that water quality objectives are being met.</p> <p>Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p> <p>Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the</p>

	<p>following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>
<p><i>Margin of Safety</i></p>	<p>An implicit margin of safety is incorporated through conservative model assumptions and chloride mass balance analysis. The model is an integrated groundwater surface water model which shows that chloride discharged from the WRPs accumulates in the east Piru Basin. Further mass balance analysis shows that the chloride mass removed from the Piru Basin exceeds the chloride loaded into the Piru Basin from implementation of the conditional SSOs.</p>
<p><i>Seasonal Variations and Critical Conditions</i></p>	<p>During dry weather conditions, less surface flow is available to dilute effluent discharge, groundwater pumping rates for agricultural purposes are higher, groundwater discharge is lower, poorer quality groundwater may be drawn into the aquifer, and evapotranspiration effects are greater than in wet weather conditions. During drought, reduced surface flow and increased groundwater extraction continues through several seasons with greater impacts on groundwater resources and discharges. Dry and critically dry periods affecting the Sacramento and San Joaquin River Valleys reduce fresh-water flow into the Sacramento-San Joaquin Delta and result in higher than normal chloride concentrations in the State Water Project supply within the California aqueduct system. These increased chloride levels are transferred to the upper Santa Clara River. This critical condition is defined as when water supply concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</p> <p>These critical conditions were included in the GSWI model to determine appropriate allocations and implementation scenarios for the TMDL.</p>

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>1. Alternate Water Supply</p> <p>a) Should (1) the in-river concentration at Blue Cut, the Reach 4B boundary, exceed the conditional SSO of 117 mg/L, measured for the purposes of this TMDL as a rolling three-month average, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and Santa Clarita Valley County Sanitation Districts of Los Angeles County (SCVSD) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provides photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then the SCVSD will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between the SCVSD and the agricultural diverter at the direction of the Regional Water Quality Control Board until such time as the in-river chloride concentrations do not exceed the conditional SSO.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in the three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p>	<p>Effective Date of TMDL (05/04/2005)</p>
<p>2. Progress reports will be submitted by the SCVSD to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4, 6, and 7, and on an annual basis for Tasks 5 and 11.</p> <p>Progress reports will be submitted by the Reach 4A Permittee to Regional Board staff on an annual basis for Task 12.</p>	<p>Semiannually and annually</p>
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, the SCVSD will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by the SCVSD, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in</p>	<p>6 months after Effective Date of TMDL (11/04/2005)</p>

<p><b>Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation</b></p> <p><b>Implementation Tasks</b></p>	<p><b>Completion Date</b></p>
<p>controlling chloride. The SCVSD shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.</p>	
<p>4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.</p>	<p>12 months after Effective Date (05/04/2006)</p>
<p>5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>
<p>6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>7. Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p> <p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p> <p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.</p>	<p>2.8 years after Effective Date of TMDL (02/20/2008)</p>
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: The SCVSD will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Conditional Wasteload Allocations for Proposed Chloride Objective. The SCVSD will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Conditional Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p>3.5 years after Effective Date of TMDL (12/11/2008)</p>
<p>11. Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin,</p>	<p>4 years after Effective Date of TMDL (05/04/2009)</p>

<b>Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	
<p>12. Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	<p>Submitted with permit application</p>
<p>13. Begin monitoring per approved SVCSD monitoring plan completed in Task 11.</p>	<p>One year after Executive Officer approval of Task 11 monitoring plan for SVCSD</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>14. Begin monitoring per approved Reach 4A Permittee monitoring plan.</p>	<p>One year after Executive Officer approval of Task 12 monitoring plan for Reach 4A Permittee</p>
<p>15. a) Implementation of Compliance Measures, Planning: The SCVSD shall submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Wastewater Facilities Plan and Programmatic EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Wastewater Facilities Plan and Programmatic EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision.</p> <p>b) Implementation of Compliance Measures, Planning: The SCVSD shall provide a schedule of related tasks and subtasks related to Task 15a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Wastewater Facilities Plan and Programmatic EIR.</p>	<p>5 years after Effective Date of TMDL (05/04/2010)</p> <p>5 years after Effective Date of TMDL (05/04/2010)</p>
<p>16. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion date of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task.</p>	<p>6 years after Effective Date of TMDL (05/04/2011)</p>
<p>17. a) Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.</p> <p>b) Implementation of Compliance Measures, Engineering Design:</p>	<p>6 years after Effective Date of TMDL (05/04/2011)</p> <p>6 years after</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>The SCVSD will begin the engineering design of the recommended project wastewater facilities.</p> <p>c) Implementation of Compliance Measures, Engineering Design: The SCVSD will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition the SCVSD will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project wastewater facilities.</p> <p>d) Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of the recommended project wastewater facilities.</p> <p>e) Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of the recommended project wastewater facilities.</p>	<p>Effective Date of TMDL (05/04/2011)</p> <p>7 years after Effective Date of TMDL (05/04/2012)</p> <p>9.5 years after Effective Date of TMDL (11/04/2014)</p> <p>10 years after Effective Date of TMDL (05/04/2015)</p>
<p>18. The Regional Board Executive Officer may consider conditional SSOs for TDS and sulfate for Reaches 4B, 5, and 6 based on results of groundwater-surface water interaction studies on accumulation of TDS and sulfate in groundwater, potential impacts to beneficial uses, and an anti-degradation analysis.</p>	<p>7 years after Effective Date of TMDL (05/04/2012)</p>
<p>19. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted for chloride pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task. The Regional Board will also consider conditional SSOs and final conditional WLAs for TDS and sulfate based on results of Task 18.</p>	<p>9.5 years after Effective Date of TMDL (11/04/2014)</p>
<p>20. The interim WLAs for chloride shall remain in effect for no more</p>	<p>10 years after</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.</p>	<p>Effective Date of TMDL (05/04/2015)</p>
<p>21. The interim WLAs for TDS and sulfate contained in this BPA (Resolution No. R4-2008-012) shall be implemented no sooner than the effective date of this BPA, and shall remain in effect until May 4, 2015. Final WLAs shall apply by May 5, 2015 unless conditional SSOs and final conditional WLAs for TDS and sulfate are adopted as described in Task 19.</p>	<p>10 years after Effective Date of TMDL (05/04/2015)</p>

# EXHIBIT “2”

4837-0090-6752.2

United States  
Environmental Protection  
Agency

Regional Administrator  
215 Fremont Street  
San Francisco CA 94105

Region 9  
Arizona, California  
Hawaii, Nevada  
Pacific Islands



September 25, 1989

In Reply  
Refer To: W-5

W. Don Maughn, Chairman  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95801

RECEIVED  
OCT 2 1989  
*Orig DWQ*  
EXECUTIVE OFFICE

Dear Mr. Maughn:

It is with pleasure, today, that I can inform you of EPA's approval of the California NPDES Pretreatment Program and revisions to the existing State NPDES permit regulations.

California, as you know, was the first state to request and receive approval of its NPDES program and authorization to regulate discharges from federal facilities via the NPDES permit program. We look forward to State management of the pretreatment program with the same vigor and thoroughness that has characterized State management of the NPDES program.

The enclosed signed and approved Memorandum of Agreement and Agreement on a Conflict Resolution Process should serve to ensure that the working harmony of our agencies continues.

Sincerely,

*John Wise*  
for Daniel W. McGovern  
Regional Administrator

Enclosures

cc: James W. Baetge, SWRCB

DWQ Received  
Division Chief's Office

OCT 3 - 1989

AGREEMENT ON A CONFLICT RESOLUTION PROCESS  
BETWEEN  
REGIONAL ADMINISTRATOR, EPA, REGION 9  
AND  
CHAIRMAN, STATE WATER RESOURCES CONTROL BOARD

I. INTRODUCTION

The State Water Resources Control Board (State Board) is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The U.S. Environmental Protection Agency (EPA), Region 9 is under the delegation of the Administrator of EPA, responsible for implementing or over-seeing implementation of requirements of the Clean Water Act within the boundaries of Region 9. The State Board and EPA, Region 9 agree that it is desirable to define a process for resolving disagreements or conflicts between the respective agencies which have not otherwise been resolved.

II. PURPOSE

The purpose of this agreement is to define a process for resolving conflicts and disagreements where other processes or attempts at reaching agreement have failed or where other opportunities have not been available. This agreement neither supersedes nor replaces existing or prospectively developed processes for resolving disputes.

III. SCOPE

This agreement applies to all programs, activities and financial support which is authorized by the Clean Water Act. The agreement is binding on the State Board and EPA, Region 9, and is not binding on Regional Water Quality Control Boards nor on other organizational entities of EPA.

IV. PROCESS AND STANDARDS FOR DISPUTE RESOLUTION

A. General Principles

1. Whenever possible, disputes should be resolved informally at the lowest possible level.
2. Disputes should be resolved in a timely manner.
3. Attempts to resolve disputes shall be consistent with the Clean Water Act and the President's October 26, 1987 Executive Order, entitled "Federalism".
4. Both parties agree to respond to each other in writing within 30 days of receipt of requests for agreement or decisions or elevation to the next level may occur.

-2-

**B. Resolution Process**

Disputes which cannot be resolved at the staff level will be referred to a higher level as follows:

1. **First step:** Resolution at the State Board Division and EPA Branch level.
2. **Second step:** Resolution at the State Board Executive Director/EPA Division Director level.
3. **Third step:** Resolution at the State Board/EPA Regional Administrator level. This is the final step where the Regional Administrator has authority to resolve the conflict.
4. **Fourth step:** For disputes over requirements originating at EPA Headquarters or for programs where clear delegation of authority has not been made to the Regional Administrator, the Chairman of the State Board may seek resolution by directing the dispute to the Regional Administrator. Upon receipt of the request the Regional Administrator shall consult with or seek assistance from the appropriate office at EPA Headquarters.

Where the Regional Administrator is unable to resolve the dispute, the Chairman of the State Board may pursue a solution to the dispute by direct contact with Headquarters. The Regional Administrator shall, upon request of the Chairman of the State Board, provide assistance to the State in contacting the appropriate managers in EPA Headquarters.

**C. Review of Delegated Authority**

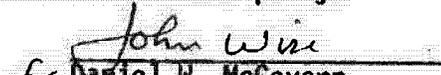
The State reserves the right to advise the Administrator of EPA by letter from the Chairman of the State Board, when it is of the opinion that authority delegated to the Regional Administrator is inappropriate at that level or has been abused.

**V. TERM**

This agreement may be modified from time to time as the parties may agree in order to simplify the procedures. The agreement may be rescinded by either party upon 90 days written notice to the other party.

  
W. Don Maughan  
Chairman  
State Water Resources Control  
Board

JUN - 8 1989

  
Daniel W. McGovern  
Regional Administrator  
U.S. Environmental  
Protection Agency,  
Region 9

22 SEP 1989

\* \* \* \* \*

**N P D E S**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

**AND**

**THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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NPDES MEMORANDUM OF AGREEMENT BETWEEN  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND  
THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

I. PREFACE

A. Introduction

The State Water Resources Control Board (State Board) is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The State Board has been authorized by the U.S. Environmental Protection Agency (EPA), pursuant to Section 402 of the Clean Water Act (CWA), to administer the National Pollutant Discharge Elimination System (NPDES) program in California since 1973.

The Chairman of the State Board and the Regional Administrator of EPA, Region 9 hereby affirm that the State Board and the Regional Boards have primary authority for the issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for federal facilities; and implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under Sections 301(h) or 301(m), and permits to dischargers for which EPA has assumed direct responsibility pursuant to 40 CFR 123.44. The State may apply separate requirements to these facilities under its own authority.

This Memorandum of Agreement (MOA) redefines the working relationship between the State and EPA pursuant to the Federal regulatory amendments that have been promulgated since 1973, and supersedes:

1. THE MEMORANDUM OF UNDERSTANDING REGARDING PERMIT AND ENFORCEMENT PROGRAMS BETWEEN THE STATE WATER RESOURCES CONTROL BOARD AND THE REGIONAL ADMINISTRATOR, REGION IX, ENVIRONMENTAL PROTECTION AGENCY, signed March 26, 1973; and
2. The STATE/EPA COMPLIANCE AND ENFORCEMENT AGREEMENT, dated October 31, 1986. The State's standard operating procedures for the NPDES and pretreatment programs are described in the State's Administrative Procedures Manual (APM).

The State shall implement the provision of this MOA through the APM. The State's annual workplan, which is prepared pursuant to Section 106 of the CWA, will establish priorities, activities and outputs for the implementation of specific components of the NPDES and pretreatment programs. The basic requirements of this MOA shall override any other State/EPA agreements as required by 40 CFR 123.24(c). EPA shall implement the provisions of this MOA through written EPA policy guidance and the annual State/EPA 106 agreement.

**B. Definitions**

The following definitions are provided to clarify the provisions of this MOA.

1. "The APM" means the State's Administrative Procedures Manual. The APM describes standard operating requirements, procedures, and guidance for internal management of the State Board and Regional Boards in the administration of the NPDES and pretreatment programs. The APM is kept current through periodic updates.
2. "Comments" means recommendations made by EPA or another party, either orally or in writing, about a draft permit.
3. "Compliance monitoring" means the review of monitoring reports, progress reports, and other reports furnished by members of the regulated community. It also means the various types of inspection activities conducted at the facilities of the regulated community.
4. "CWA" means the Clean Water Act [33 USC 1251 et. seq.].
5. "Days" mean calendar days unless specified otherwise.
6. "Prenotice draft permit" is the document reviewed by EPA, other agencies, and the applicant prior to public review.
7. "Draft permit" is the document reviewed by EPA and the public.

8. "Enforcement" means all activities that may be undertaken by the Regional Boards, the State Board, or EPA to achieve compliance with NPDES and pretreatment program requirements.
9. "EPA" means the U.S. Environmental Protection Agency (EPA) Region 9, unless otherwise stated.
10. "Formal enforcement action" means an action, order or referral to achieve compliance with NPDES and pretreatment program requirements that: (a) specifies a deadline for compliance; (b) is independently enforceable without having to prove the original violation; and (c) subjects the defendant to adverse legal consequences for failure to obey the order (see footnote #6, p.19, National Guidance for Oversight of NPDES Programs, FFY 1986, dated January 20, 1985). Time Schedule Orders, Administrative Civil Liability Orders, Cease and Desist Orders, Cleanup and Abatement Orders, and referrals to the Attorney General meet these criteria. Effective January 1, 1988, the State and Regional Boards will have authority to impose administrative civil liability, consistent with the requirements of 40 CFR 123.27(a)(3)(i), for all NPDES and pretreatment program violations.
11. "Issuance" means the issuance, reissuance, or modification of NPDES permits through the adoption of an order by a Regional Board or the State Board.
12. "Objections" means EPA objections to applications, prenotice draft permits, draft permits, or proposed permits that are based on federal law or regulation, which are filed as "objections", and which must be resolved before a NPDES permit can be issued, or reissued or modified thereto. "Objection" and "formal objection" mean the same thing.
13. "Proposed permit" means a permit adopted by the State after the close of the public comment period which may then be sent to EPA for review before final issuance by the State. The State's common terminology of "adopted permit" is equivalent to the term "proposed permit" as used at 40 CFR 122.2.

14. "Quality Assurance" means all activities undertaken by the State or EPA to determine the accuracy of the sampling data reported on Discharge Monitoring Reports (DMRs), inspection reports, and other reports.
15. "State" means the staff and members of the Regional Boards and the State Board collectively.
16. "106 Workplan" means the annual agreement that is negotiated between the State and EPA.

C. Roles and Responsibilities

1. EPA Responsibilities

EPA is responsible for:

- a. Providing financial, technical, and other forms of assistance to the State;
- b. Providing the State Board with copies of all proposed, revised, promulgated, remanded, withdrawn, and suspended federal regulations and guidelines;
- c. Advising the State Board of new case law pertaining to the NPDES and pretreatment programs;
- d. Providing the State Board with draft and final national policy and guidance documents;
- e. Monitoring the NPDES and pretreatment programs in California to assure that the program is administered in conformance with federal legislation, regulations, and policy;
- f. Intervening as necessary in specific situations (such as development of draft permits, or permit violations) to maintain program consistency throughout all states and over time;
- g. Administering the program directly to the following classes of facilities:

- (1) Dischargers granted variances under Sections 301(h) or 301(m) of the CWA; and
- (2) Dischargers which EPA has assumed direct responsibility for pursuant to 40 CFR 123.44, and

2. State Board Responsibilities

The State Board is responsible for supporting and overseeing the Regional Board's management of the NPDES and pretreatment programs in California. This responsibility includes:

- a. Evaluating Regional Board performance in the areas of permit content, procedure, compliance, monitoring and surveillance, quality assurance of sample analyses, and program enforcement;
- b. Acting on its own motion as necessary to assure that the program is administered in conformance with Federal and State legislation, regulations, policy, this MOA, and the State annual 106 Workplan;
- c. Providing technical assistance to the Regional Boards;
- d. Developing and implementing regulations, policies, and guidelines as needed to maintain consistency between State and federal policy and program operations, and to maintain consistency of program implementation throughout all nine regions and over time;
- e. Reviewing decisions of the Regional Boards upon petition from aggrieved persons or upon its own motion;
- f. Assisting the Regional Boards in the implementation of federal program revisions through the development of policies and procedures; and
- g. Performing any of the functions and responsibilities ascribed to the Regional Boards.

- h. California Pretreatment Program responsibilities as listed in Section III.B. of this MOA.

3. Regional Board Responsibilities

The following responsibilities for managing the NPDES and pretreatment programs in California have been assigned to the Regional Boards. These responsibilities include:

- a. Regulating all discharges subject to the NPDES and pretreatment programs, except those reserved to EPA, in conformance with Federal and State law, regulations, and policy;
- b. Maintaining technical expertise, administrative procedures and management control, such that implementation of the NPDES and pretreatment programs consistently conforms to State laws, regulations, and policies;
- c. Implementing federal program revisions;
- d. Providing technical assistance to the regulated community to encourage voluntary compliance with program requirements;
- e. Assuring that no one realizes an economic advantage from noncompliance;
- f. Maintaining an adequate public file at the appropriate Regional Board Office for each permittee. Such files must, at a minimum, include copies of: permit application, issued permit, public notice and fact sheet, discharge monitoring reports, all inspection reports, all enforcement actions, and other pertinent information and correspondence;
- g. Comprehensively evaluating and assessing compliance with schedules, effluent limitations, and other conditions in permits;
- h. Taking timely and appropriate enforcement actions in accordance with the CWA, applicable Federal regulations, and State Law; and

- i. California Pretreatment Program responsibilities as listed in Section III. B of this MOA.

D. Program Coordination

In order to reinforce the State Board's program policy and overview roles, EPA will normally arrange its meetings with Regional Board staff through appropriate staff of the State Board. In all cases, the State Board will be notified of any EPA meetings with Regional Boards.

E. Conflict Resolution

Disputes shall be resolved in accordance with the Agreement on a Conflict Resolution Process Between Regional Administrator, EPA, Region 9 and Chairman, State Water Resources Control Board.

II. PERMIT REVIEW, ISSUANCE, AND OBJECTIONS

A. General

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 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.

To the extent possible, all expiring NPDES permits shall be reissued on or before their expiration. If timely reissuance is not possible, the State Board will notify the Regional Administrator of the reasons for the delay. In no event will permits continued administratively beyond their expiration date be modified or revised.

In the case of the development of a general permit, the Regional Board will collect sufficient data to develop effluent limitations and prepare and draft the general permit. The Regional Board will issue and administer NPDES general permits in accordance with the California Water Code, Division 7 and federal regulations 40 CFR 122.28.

1. EPA Waiver of Review

- a. EPA waives the right to routinely review, object to, or comment upon State-issued permits under Section 402 of the CWA for all categories of discharges except those identified under II.A.2. below.
- b. Notwithstanding this waiver, the State Board and the Regional Boards shall furnish EPA with copies of any file material within 30 days of an EPA request for the material.
- c. The Regional Administrator of EPA, Region 9 may terminate this waiver at any time, in whole or in part, by sending the State Board a written notice of termination.
- d. The State shall supply EPA with copies of final permits.

2. Permits Subject to Review

- a. The Regional Boards shall send EPA copies of applications, prenotice draft permits, draft permits, adopted (proposed) permits, and associated Fact Sheets and Statements of Basis for the following categories of discharges.
  - (1) Discharges from a "major" facility as defined by the current major discharger list;

- (2) Discharges to territorial seas;
- (3) Discharges from facilities within any of the industrial categories described under 40 CFR Part 122, Appendix A;
- (4) Discharges which may affect the water quality of another state;
- (5) Discharges to be regulated by a General Permit (excludes applications since they are not part of the General Permit process);
- (6) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons;
- (7) Discharges from any other source which exceeds a daily average discharge of 0.5 million gallons; and
- (8) Other categories of discharges EPA may designate which may have an environmental impact or public visibility. The Regional Boards or the State Board will consult with EPA regarding other significant discharges.

**B. Applications**

The provisions for EPA review of applications do not apply to General Permits, because applications are not part of the General Permit Process.

**1. Initial Applications**

- a. The Regional Boards shall forward a complete copy of each NPDES application to EPA and the State Board within 15 days of its receipt.

b. EPA shall have 30 days\* from receipt of the application to comment upon or object to its completeness.

- (1) EPA shall initially express its comments and objections to the Regional Board through staff telephone liaison.
- (2) EPA shall send a copy of comments or objections to an application to the Regional Board, the State Board, and the applicant.
- (3) If EPA fails to send written comments or objections to an application within 30 days of receipt, EPA waives its right to comment or object.

c. An EPA objection to an application shall specify in writing:

- (1) The nature of the objection;
- (2) The sections of the CWA or the NPDES regulations that support the objection; and
- (3) The information required to eliminate the objection.

2. State Agreement with EPA Objections and Revised Applications

a. If the State agrees with EPA's objections, the Regional Board shall forward a complete copy of the revised application to EPA within 10 days of its arrival at the Regional Board offices.

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\*COMPUTATION OF TIME: Pursuant to 40 CFR 124.20(d), three(3) days shall be allowed for transit of documents by mail. Therefore, the State must allow at least 36 days, from the postmark date on the application for receipt of an EPA response. If the State Board or a Regional Board delivers a document to EPA within less than three days, the number of days saved by such delivery may be subtracted from the 36 days. All of the timeframes mentioned in this MOA are in calendar days.

- b. Another 30-day review period shall begin upon EPA's receipt of the revised application; and
- c. This application review process shall be repeated until the application complies with all NPDES regulations.
- d. When EPA has no objections pursuant to 40 CFR 123.44, the Regional Board may complete development of a prenotice draft NPDES permit.
- e. If an objection is filed, EPA shall advise the State Board and the Regional Board in writing when the application is complete.
- f. The Regional Board will be responsible for notifying the applicant.

3. State Disagreement with EPA Objections and Draft Permits

If the Regional Board or the State Board disagrees with EPA's assertion that an application is incomplete, they may issue a prenotice draft permit, provided that:

- a. The Regional Board or the State Board states in a transmittal letter that the prenotice draft permit has been issued an EPA objection to the application;
- b. EPA may add comments upon or objections to the prenotice draft permit including a reiteration of its objection to the application;
- c. Objections to an application will be subject to the same procedures as an EPA objection to the prenotice draft permit, as described below except that the State shall not issue a public notice for a draft permit for which there is an unresolved EPA objection.

C. Prenotice Draft Permits

1. EPA Review of Individual Prenotice Draft Permits

- a. It is the intent of the Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES permit, to issue a prenotice draft NPDES permit. A copy of

associated Statement of Basis or Fact Sheet shall be sent to EPA. As a matter of urgency the Regional Board or the State Board may decide not to issue a prenotice draft NPDES permit.

b. EPA shall have 30 days from its receipt to send comments upon, or an initial objection to, the prenotice draft permit to the Regional Board and State Board.

(1) If EPA mails an initial objection pursuant to 40 CFR 23.44 within 30 days from its receipt of a prenotice draft permit, EPA shall have 90 days from its receipt of the prenotice draft permit to mail a formal objection.

(2) If EPA requests additional information on a prenotice draft permit, a new 30-day review shall begin upon EPA's receipt of the additional information.

(3) If EPA mails an initial objection pursuant to 40 CFR 123.44 within 30 days from its receipt of additional information, EPA shall have 90 days from its receipt of the additional information to mail a formal objection.

c. If a prenotice draft permit is not issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4, shall apply to the draft permit.

## 2. EPA Review of Prenotice Draft General Permits

a. The Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES General Permit, shall mail a copy of each prenotice draft Generalmit and Fact Permit Sheet, except for those for stormwater point sources, to:

(1) Director  
Office of Water Enforcement and  
Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street S.W.  
Washington, D.C. 20460; and

(2) EPA, Region 9.

- b. EPA, Region 9, and the Director of the Office of Water Enforcement and Permits, EPA Headquarters, shall have 90 days from their receipt of the prenotice draft General Permit to send comments upon or objections to the State Board and Regional Board.
- c. If a prenotice draft general permit is issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4 shall apply to the draft general permit.

3. EPA Comments

- a. The Regional Boards and State Board shall treat any comments made by EPA upon a prenotice draft individual permit or upon a prenotice draft General Permit as they would comments from any authoritative source.
- b. The Regional Boards or the State Board shall prepare a written response to each significant comment made by EPA that they do not accommodate by revising the draft permit.

4. EPA Objections

The discussion below describes the procedures the Regional Boards and State Board may pursue if EPA issues an objection to a prenotice draft permit. NPDES regulations restrict the resolution of an EPA objection to three alternatives, or a combination thereof: (a) the Regional Board or the State Board changes the permit, (b) EPA withdraws the objection, or (c) EPA acquires exclusive NPDES jurisdiction over the discharge.

a. **Timing of EPA Objections**

- (1) If the Regional Board or the State Board receives an initial objection from EPA within 36 days of the postmark on the prenotice draft permit sent to EPA, the Regional Board or the State Board shall delay issuance of the public notice until one of the following events occur:
  - (a) The Regional Board has received EPA's formal objection;
  - (b) EPA withdraws the initial objection; or
  - (c) Ninety-six (96) days have passed from the postmark on the prenotice draft (See Section II.C.2 for timing of EPA objections to prenotice general permits).
- (2) Whenever EPA files an initial objection to a prenotice draft permit, EPA shall expedite its effort to file the formal objection, in order to avoid undue delay of the permit's final issuance.
- (3) EPA may not make an initial objection to the prenotice draft permit once its 30-day review period has lapsed.
- (4) EPA may not make a formal objection to the prenotice draft permit, if it failed to make an initial objection within the 30-day period.
- (5) EPA may not make a formal objection to the Preenotice draft permit once the 90-day objection period has lapsed.
- (6) EPA may not modify the objection, after the 90-day formal objection period, to require more change to the prenotice draft permit than was required under the original objection.

(7) EPA may revise the objection within its allotted 90-day objection period to require additional changes to the prenotice draft permit than were required under its original objection. Such a change to an objection by EPA shall cause the State's allotted 90 day response period to restart upon the State's receipt of the revised objection.

(8) If the Regional Board receives an EPA formal objection within the 96 days specified above, the State Board or the Regional Board may exercise one of the options described under II.C.4.c. and II.C.4.d. below.

b. Content of EPA Objections

(1) For initial objections that must be filed within 30 days, EPA may simply identify:

- (a) The name of the facility and its NPDES number; and
- (b) The general nature of the objection.

(2) For formal objections that must be filed within 90 days, EPA shall specify:

- (a) The reasons for the objections;
- (b) The section of the CWA, the regulations or the guidelines which support the objection; and
- (c) The changes to the permit that are required as a condition to elimination of the objection.

(3) Every EPA objection shall be based upon one or more of the grounds for objection described under 40 CFR 123.44(c). EPA shall:

- (a) Cite each of the grounds which applies to the objection; and

(b) Explain how each citation applies to a deficiency of the prenotice draft permit.

(4) Correspondence from EPA which objects to a prenotice draft permit, but which fails to meet the substantive criteria of this part (II.C.4.b) does not constitute an objection and may be treated by the State as comments.

c. State Board Options

(1) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the State Board may mediate the disagreement to a resolution that is satisfactory to EPA and to the Regional Board.

(2) If the disagreement proves intractable, the State Board may:

(a) Revise and resubmit the prenotice draft permit in accordance with the required by the EPA objection (The State Board would then be obliged to continue the issuance process and adopt the permit if the Regional Board declines to do so);

(b) Request a public hearing pursuant to 40 CFR 123.44(e); or

(c) Hold a public hearing on the EPA objection.

d. Regional Board Options

(1) If the Regional Board changes the prenotice draft permit to eliminate the basis of the EPA formal objection within 90 days of the Regional Board's receipt of that objection, the permit will remain within the

Regional Board's jurisdiction (see 40 CFR 123.44(h)). The Regional Board may then continue on to the public notice of the permit.

(2) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the Regional Board may:

(a) Request that EPA conduct a public hearing, pursuant to 40 CFR 123.44(e); or

(b) Hold a public hearing on the EPA objection.

e. The State Board or a Regional Board Holds a Public Hearing

(1) If either the State Board or a Regional Board decide to hold a public hearing on an EPA objection, that Board shall:

(a) Prepare a written rebuttal describing the legal and environmental reasons why each each provision of the prenotice draft permit should not be changed to accomodate the objection.

(b) Issue a public notice in accordance with 40 CFR 124.10 and 40 CFR 124.57(a) to open the public comment period and announce the public hearing;

(c) Make available for public review:

- o The permit application;
- o The draft permit;
- o The Fact Sheet or Statement of Basis;
- o All comments received upon the draft permit;



a public hearing before EPA has issued the public notice, EPA shall cancel the hearing unless third party interest otherwise warrants a hearing pursuant to 40 CFR 123.44(e).

- (b) If the State Board or Regional Board withdraws its request for a public hearing after EPA has issued the public notice of the hearing, and EPA determines that there is not sufficient third party interest pursuant to 40 CFR 123.44(e), the State Board or Regional Board shall publish a public notice and send a cancellation to everyone on the EPA mailing list.
- (2) Within 30 days after the EPA public hearing, EPA shall:
- (a) Reaffirm, withdraw, or modify the original objection; and
  - (b) Send notice of its action to:
    - o The State Board;
    - o The Regional Board;
    - o The applicant; and
    - o Each party who submitted comments at the hearing.
- (3) If EPA does not withdraw the objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.
- (4) If EPA modifies the objection to require less change to the prenotice draft permit than was required under the original objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.

- (5) EPA may not modify the objection to require more change to the prenotice draft permit than was required by the original objection.
- (6) If the State Board or Regional Board fails to send a revised draft permit to EPA within 30 days of its receipt of the EPA notification, EPA acquires exclusive NPDES authority over the discharge pursuant to 40 CFR 123.44(h)(3).

h. Resolved Objections

- (1) Whenever EPA has filed a formal objection to a prenotice draft permit and the State Board or Regional Board has changed the permit to eliminate the basis of the objection, or EPA has withdrawn the objection, EPA shall send notice to:
  - (a) The State Board;
  - (b) The Regional Board;
  - (c) The applicant; and
  - (d) Every other party who has submitted comments upon the EPA objection.
- (2) EPA shall send the notice within 30 days of its receipt of the revised State permit, or upon its withdrawal of the objection.

D. Public Notice

1. If the State Board or Regional Board does not receive an EPA initial objection within 36 days of the postmark on the individual prenotice draft permit or within 96 days of the postmark of the prenotice draft general permit, the State Board or Regional Board may proceed with the public notice process.
2. The State Board or Regional Board shall issue the public notice and conduct all public

participation activities for NPDES permits in accordance with the provisions of 40 CFR Part 124 applicable to State Programs.

- (a) The Regional Boards and State Board shall make electronic or stenographic recordings of each of the EIR public hearings, pursuant to 23 California Administrative Code Section 847.4(a).
  - (b) The Regional Board or the State Board shall make a copy of all comments, including tapes or transcripts of oral comments presented at Board Hearings, and the Board's written responses to the comments, available to EPA and the public upon request, pursuant to 40 CFR 124.17(a) and (c).
3. All EPA comments upon and objections to a prenotice draft permit, draft permit or both, and all correspondence, public comments and other documents associated with any EPA objections shall become part of the administrative record/permit file and shall be available for public review.

E. Draft Permits

1. The State Board and Regional Boards shall send a copy of each draft permit and its Statement of Basis or Fact Sheet to EPA as part of the public notice process. A copy of each draft general permit, and accompanying fact sheet except those for stormwater point sources, shall be sent to EPA and:

Director  
Office of Water Enforcement  
and Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street SW  
Washington, DC 20460

2. EPA may not object to a draft permit which it had an opportunity to review as a prenotice draft permit, except to the extent that it includes changes to the prenotice draft permit, or the bases of the objection were not reasonably ascertainable during the prior review period (e.g., because of new facts, new science, or new law).

3. If EPA issues an objection to a draft permit, the procedures described under II.C.4. shall apply.

F. Final Permits

1. Final Permits Become Effective Upon Adoption

NPDES permits other than general permits, adopted by the State Board or Regional Boards shall become effective upon the adoption date only when:

- a. EPA has made no objections to the permit;
- b. There has been no significant public comment;
- c. 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
- d. The State Board or Regional Board does not specify a different effective date at the time of adoption.

2. Permit Becomes Effective 50 Days after Adoption

NPDES permits, other than general permits, adopted by the State Board or Regional Board shall become effective on the 50th day after the date of adoption, if 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).

3. Permit Becomes Effective 100 days after Adoption

General permits adopted by the State Board or the Regional Boards shall become effective on the 100th day after the date of adoption, if 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 that draft permit that was sent  
to EPA for review (unless the only changes  
were made to accommodate EPA comments).

4. EPA Review of Adopted Permits

a. Transmittal of Adopted Permits to EPA

The Regional Boards shall send copies of  
the following documents to EPA and the  
State Board, upon adoption of each NPDES  
permit identified under II.A.2:

- (1) Each significant comment made upon  
the draft permit, including a  
transcript or tape of all comments  
made at public hearings;
- (2) The response to each significant  
comment made upon the draft permit;
- (3) Recommendations of any other affected  
states, including any written  
comments prepared by this State to  
explaining the reasons for rejecting  
any other states' written  
recommendations.
- (4) The Executive Officer (or State Board  
Executive Director) summary sheet;
- (5) The Fact Sheet or Statement of Basis,  
if it has been changed; and
- (6) The final permit.

For general permits, except those for  
stormwater point sources, the State  
Board also shall send copies of these  
documents to:

Director  
Office of Water Enforcement  
and Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street SW  
Washington, DC 20460

b. EPA Review Period

EPA shall have 30 days from its receipt of these materials to review and comment upon or object to an NPDES permit which becomes effective 50 days after the date of adoption under II.F.2.

EPA shall have 90 days from its receipt of these materials to review and comment upon or object to a general permit which becomes effective 100 days after the date of adoption under II.F.2.

c. EPA Comments upon Adopted Permits

If EPA comments upon an adopted permit pursuant to II.F.3.b. above, the State Board or Regional Board must either change the permit to accommodate the comments, or respond to the comments as follows:

- (1) If, the State Board or Regional Board changes the permit, the permit will have to be readopted unless the only changes fall within the definition of minor modifications under 40 CFR 122.63, in which case the permit may take effect as originally scheduled (at least 50 days after the date of adoption); or
- (2) If the State Board or Regional Board responds to the EPA comment instead of changing the permit, the permit may take effect as originally scheduled (at least 50 days after the date of adoption).

d. EPA Objection to Adopted Permits

If EPA mails an initial objection to an adopted permit within 30 days of its receipt pursuant to II.F.3.b., the full objection process will have begun, as described under II.C.4. and the permit effective date shall be stayed until the basis of the EPA objection has been eliminated.

e. **Restrictions upon EPA Comments and Objections**

- (1) EPA shall use this review period to make objections which pertain only:
  - (a) To changes made to the draft permit;
  - (b) To comments made upon the permit;
  - (c) To new information that was not reasonably ascertainable during the initial review period; or
  - (d) To objections made by EPA to the draft permit.
- (2) EPA shall not use this review period to file comments or objections which it neglected to file during the prenotice comment period or during the public notice comment period.

G. **Permit Modification**

1. When a Regional Board or State Board decides to modify an NPDES permit, a prenotice draft permit shall be given public notice and issued in accordance with NPDES regulations.
2. Whenever a Regional Board or State Board decides to modify an NPDES permit, the Regional Board or State Board shall follow the EPA review procedures for prenotice draft permits described under II.C. through II.F.
3. Minor permit modifications (not the same as modifications to minor permits) as described under 40 CFR 122.63 may be accomplished by letter, and are not subject to public review prior to their issuance under NPDES. However, they are subject to notice and review provisions under State law. The following protocol shall apply to "minor permit modifications":
  - a. The Regional Boards or State Board, as appropriate, shall send a copy of each

minor permit modification to EPA and the State Board.

- b. If EPA or the State Board notice that a minor modification has been issued (by either a Regional Board or the State Board) which does not conform to the criteria of 40 CFR 122.63, the State Board shall notify the permittee and the Regional Board that the minor modification was improper. The State should initiate promptly any proceedings necessary to void or rescind the modification. The Regional Board or State Board may then initiate a formal permit modification that is subject to public review as specified by NPDES regulations.

4. No NPDES permit shall be modified to extend beyond the maximum term allowed by NPDES regulations. If a Regional Board or State Board decides to extend a permit expiration date to a date more than five years from the date of issuance of the permit, the Board shall revoke and reissue the permit in accordance with NPDES regulations.

#### H. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to Part II.A.1. above, are affected in any manner by administrative or court action, the Regional Board or State Board shall immediately transmit a copy of the permit, with changes identified, to EPA and shall allow 30 days for EPA to make written objections to the changed permit pursuant to Section 402(d)(2) of the CWA.

#### I. Variance Requests

##### 1. State Variance Authority

- a. The State may approve applications for the following variances, subject to EPA objections under Section C.4 above:

- (1) Compliance extension based on delay of a publicly owned treatment works (POTW), under Section 301(i) of the CWA;

- (2) Compliance extension based upon the use of innovative technology, under Section 301(k) of the CWA; and
- (3) Variances from thermal pollution requirements, under Section 316(a) of the CWA.

b. Unless the State denies the variance application, the State shall adopt approved modifications as either formal modifications to active permits or as provisions of reissued permits.

2. State/EPA Shared Variance Authority

a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:

- (1) Variances based upon the presence of fundamentally different factors (FDF), under Section 301(n) of the CWA;
- (2) Variances based upon the economic capabilities of the applicant, under Section 301(c) of the CWA;
- (3) Variances based upon water quality factors, under Section 301(g) of the CWA; and
- (4) Variances based on economic and social costs or upon the economic capabilities of the applicant for achieving EPA promulgated water quality related effluent limitations, under Section 302(b)(2) of the CWA.

b. Unless the State denies the variance application at the outset, the State will subsequently issue an NPDES permit based upon EPA's final decision.

3. Certification and Concurrence in EPA Variance Decisions under Sections 301(h) and 301(m)

a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:

- (1) Variances based upon the quality of coastal marine waters under Section 301(h) of the CWA (these are addressed by a separate agreement.); and
  - (2) Variances based upon the energy and environmental costs of meeting requirements for wood processing waste discharged to the marine waters of Humboldt Bay, under Section 301(m) of the CWA.
- b. If EPA decides to prepare a draft permit on the application for a variance, the State will issue or deny waste discharge requirements under its own authority as part of the concurrence process.
- (1) The State's decision on issuance of waste discharge requirements shall constitute the State's decision on concurrence in the variance. Any amendment or rescission of the waste discharge requirements, and any State Board order finding that a Regional Board's action in issuing the waste discharge requirements was inappropriate or improper, shall constitute a modification of the State's concurrence if the amendment, rescission, or State Board order is issued before EPA issues a final permit authorizing the variance.
  - (2) Waste discharge requirements issued by the State shall require compliance with any condition EPA imposes in the final permit. Any authorization made by the waste discharge requirements to discharge under a variance will be contingent upon issuance of a permit by EPA authorizing the variance.
  - (3) EPA will not issue a final permit until the State issues waste discharge requirements. If the waste discharge requirements are issued by a Regional Board, EPA will not issue a final permit until at least 31 days after the Regional Board's decision.

While any timely petition is still pending before the State Board, EPA will not issue a final permit until after 10 months have passed without State Board action on the petition. After 10 months have passed without State Board action on the petition EPA may issue a 301(h) permit provided that the permit includes a reopener clause allowing EPA to revise the permit consistent with the State Board's order on the petition for review. If the State Board initiates action on the petition within 10 months, by notifying the parties involved that the petition is complete, EPA will not issue a 301 (h) permit until after the state Board has issued an order on the petition for review.

- (4) A permit issued by EPA shall incorporate any condition of the State's concurrence, including any provisions of the waste discharge requirements issued to the discharge, unless EPA substitutes a more stringent requirement.

### III. PRETREATMENT PROGRAM

#### A. General

This Section defines the State Board, the Regional Boards, and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to Sections 307 and 402(b) of the CWA, and as described in Section VI of the "NPDES Program Description, January 1988".

#### B. Roles and Responsibilities

EPA will oversee California Pretreatment Program operations consistent with the requirements of 40 CFR Part 403, this Section of the MOA, and Section VI of the "NPDES Program Description, January 1988".

Consistent with State and federal law, and the State Clean Water Strategy, the State will administer the California Pretreatment Program.

The State Board will have primary responsibility for:

1. Developing, implementing, and overseeing the California Pretreatment Program;
2. Providing technical and legal assistance to the Regional Boards, publicly owned treatment works (POTWs), and industrial users;
3. Developing and maintaining a data management system;
4. Providing information to EPA or other organizations as required and/or requested; and
5. Reviewing and ruling on petitions for review of Regional Board decisions.

The Regional Boards, with the assistance and oversight of the State Board, will have primary responsibility for:

1. Enforcing the National pretreatment standards: prohibited discharges, established in 40 CFR 403.5;
2. Enforcing the National categorical pretreatment standards established by the EPA in accordance with Section 307 (b) and (c) of the CWA, and promulgated in 40 CFR Subchapter N, Effluent Guidelines and Standards;
3. Review, approval, or denial of POTW Pretreatment Programs in accordance with the procedures discussed in 40 CFR 403.8, 403.9, and 403.11;
4. Requiring a Pretreatment Program as an enforceable condition in NPDES permits or waste discharge requirements issued to POTWs as required in 40 CFR 403.8, and as provided in Section 402(b)(8) of the CWA;
5. Requiring POTWs to develop and enforce local limits as set forth in 40 CFR 403.5(c);
6. Review and, as appropriate, approval of POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with 40 CFR

403.7, 403.9, and 403.11, and enforcing related conditions in the POTW's NPDES permit or waste discharge requirements;

7. Overseeing POTW Pretreatment Programs to ensure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES permit or waste discharge requirements;
8. Performing inspection, surveillance, and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit;
9. Providing the State Board and EPA, upon request, copies of all notices received from POTWs that relate to a new or changed introduction of pollutants to the POTW; and
10. Applying and enforcing all other pretreatment regulations as required by 40 CFR Part 403.

C. POTW Pretreatment Program and Removal Credits Approval

Each Regional Board shall review and approve POTW applications for POTW pretreatment program authority and POTW applications to revise discharge limits for industrial users who are, or may in the future be, subject to categorical pretreatment standards. It shall submit its findings together with the application and supporting information to the State Board and EPA for review. No POTW Pretreatment Program or request for revised discharge limits shall be approved by the Regional Boards if the State Board or EPA objects in writing to the approval of such submission in accordance with 40 CFR 403.11(d).

Note: No removal credits can be approved until EPA promulgates sludge regulations under Section 405 of the Clean Water Act.

D. Requests for Categorical Determination

Each Regional Board shall review requests for determinations of whether an industrial user does or does not fall within a particular industrial category or subcategory. The Regional Boards will make a written determination for each request

stating the reasons for the determinations. The Regional Board shall then forward its findings, together with a copy of the request and any necessary supporting information, to the State Board and EPA for concurrence. If the State Board or EPA does not modify the Regional Board's decision within 60 days after receipt thereof, the Regional Board finding is final. A copy of the final determination shall be sent to the requestor, the State Board, and EPA Region 9.

E. Variations From Categorical Standards For Fundamentally Different Factors

Each Regional Board shall make an initial finding on all requests from industrial users for fundamentally different factors variances from the applicable categorical pretreatment standard. If the Regional Board determines that the variance request should be denied, the Regional Board will so notify the applicant and provide reasons for its determination in writing. Where the Regional Board's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the State Board. If the State Board concurs with the Regional Board's finding, it will submit it to EPA for a final determination. The Regional Board may deny but not approve and implement the fundamentally different factor(s) variance request until written approval has been received from EPA.

If EPA finds that fundamentally different factors do exist, a variance reflecting this determination shall be granted. If EPA determines that fundamentally different factors do not exist, the variance request shall be denied and the Regional Board shall so notify the applicant and provide EPA's reasons for the denial in writing.

F. Net/Gross Adjustments to Categorical Standards

If the Regional Board receives a request for a net/gross adjustment of applicable categorical pretreatment standards in accordance with 40 CFR 403.15, the Regional Board shall forward the application to EPA for a determination. A copy of the application will be provided to the State Board. Once this determination has been made, EPA shall

notify the applicant, the applicant's POTW, the Regional Board, and State Board and provide reasons for the determination and any additional monitoring requirements the EPA deems necessary, in writing.

**G. Miscellaneous**

The State Board, with the assistance of the Regional Boards, will submit to the EPA a list of POTWs which are required to develop their own pretreatment program or are under investigation by a Regional Board for the possible need for a local pretreatment program. The State will document its reasons for all deletions from this list. Before deleting any POTW with a design flow greater than five-million gallons per day (mgd), the State will obtain an industrial survey from the POTW and determine: (1) that the POTW is not experiencing pass through or interference problems; and (2) that there are no industrial users of the POTW that are subject either to categorical pretreatment standards or specific limits developed pursuant to 40 CFR 403.5(c). The State will document all such determinations and provide copies to EPA. For deletions of POTWs with flows less than 5 mgd, the State will first determine (with appropriate documentation) that the POTW is not experiencing treatment process upsets, violations of POTW effluent limitations, or contamination of municipal sludge due to industrial users. The State will also maintain documentation on the total design flow and the nature and amount of industrial wastes received by the POTW.

The State Board and EPA will communicate, through the Section 106 Workplan process, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The Section 106 Workplan will contain, at a minimum, the following: (1) a list of NPDES permits or waste discharge requirements to be issued by the Regional Boards to POTWs subject to pretreatment requirements; and (2) the number of POTWs to be audited or inspected on a quarterly basis.

**H. Other Provisions**

Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or

prohibitions established under the CWA or Federal regulations. Nothing in this MOA shall be construed to limit the authority of the EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the CWA (33 U.S.C. Section 1251 et seq).

#### IV. COMPLIANCE MONITORING AND ENFORCEMENT

This Section constitutes the State/EPA Enforcement Agreement. The State Board and EPA will review this section of the MOA each year.

##### A. Enforcement Management Systems (EMS)

The State Board will maintain compliance monitoring and enforcement procedures in the APM which are consistent with the seven principles of the EPA Enforcement Management System Guide (listed below), and this MOA. The APM shall constitute the State Enforcement Management System for the NPDES program, and shall describe criteria for:

1. Maintaining a source inventory (of information about discharges subject to NPDES permits) that is complete and accurate;
2. Processing and assessing the flow of information available on a systematic and timely basis;
3. Completing a preenforcement screening (of compliance-related information coming into the inventory) by reviewing the information as soon as possible after it is received;
4. Performing a more formal enforcement evaluation (of the same information) where appropriate;
5. Instituting formal enforcement action and follow-up wherever necessary;
6. Initiating field investigations based upon a systematic plan; and
7. Using internal management controls to provide adequate enforcement information to all levels of the organization.

These compliance and enforcement-related provisions of the APM shall constitute the framework (within which the circumstances of

noncompliance are reviewed) for making NPDES enforcement decisions, and evaluation of those decisions by others.

**B. Inspections**

**1. State Inspections**

- a. The Regional Boards shall conduct compliance inspections to determine the status of compliance with permit requirements, including sampling and non-sampling inspections.
- b. The State Board will maintain up-to-date procedures in the APM for conducting compliance inspections, which conform to NPDES regulations.
- c. The State is responsible for inspecting annually all major dischargers. To enable this goal to be accomplished EPA may assist the State by inspecting some dischargers. The 106 workplan will specify the number of sampling inspections and the number of reconnaissance inspections to be conducted by the State each year.

**2. EPA Inspections**

- a. EPA retains the authority to perform compliance inspections of any permittee at any time.
- b. For those inspections scheduled more than 15 days in advance, EPA will notify the appropriate Regional Board and the State Board within 15 days in advance. For inspections scheduled less than 15 days in advance, EPA will provide as much advance notice as possible.
- c. EPA will send copies of inspection reports to the Regional Board and State Board within 30 days of the inspection if there are no effluent samples to be analyzed. EPA will usually send copies of inspection results to the State within 60 days of the inspection if there are effluent samples to be analyzed.

3. Inspection Assistance

- a. EPA and the State Board will provide technical assistance to the Regional Boards in their inspection programs whenever staff are available. This assistance may be requested at any time by the Regional Boards.
- b. If neither EPA nor the State Board are able to provide such assistance when it is requested, the State Board shall schedule the assistance at the earliest possible date, and so notify the Regional Board and EPA.

C. Discharger Reports

1. Review of Reports

The Regional Boards shall require each NPDES permittee to send copies of its Discharge Monitoring Reports (DMRs) to EPA and the Regional Boards for review.

- a. Whenever a Regional Board cannot complete the review of DMRs and other compliance reports within 30 days of their arrival, the Regional Board shall follow the "exception procedures" in the APM.
- b. For auditing and reporting purposes Regional Boards (or the State Board if it should undertake DMR review) shall track and document the date of receipt, the date of review, and the review results (i.e., compliance status) of each DMR and compliance report.

2. Quality Assurance Reviews

EPA routinely conducts technical studies of the accuracy of the reported effluent data from NPDES permittees. EPA send check samples to selected permittees for analysis as part of these studies. The permittees are required to return the results to EPA.

a. Delinquent Permittees

- (1) EPA will send the State Board a list of permittees who declined to return

the analytical results of the check samples.

- (2) The State Board shall transmit the list to the Regional Boards and assure that they require the permittee to participate in all subsequent studies.
- (3) The State Board or Regional Board shall take other appropriate enforcement action against NPDES permittees that have failed to return the analytical results of the sample.

**b. Unacceptable Quality of Analysis**

- (1) EPA will send the State Board and Regional Boards a list of permittees who failed the analysis study.
- (2) The Regional Boards will determine whether the causes of failure are due to clerical errors in report preparation or procedural errors in sample analysis.
  - (a) If the problem is due to clerical errors, the Regional Board will clarify the reporting procedures.
  - (b) If the problem is due to analytical errors, the Regional Board will assure that the problems are corrected immediately or that the permittee begins using another laboratory.
  - (c) If the permittee is using in-house laboratory facility, the Regional Board staff shall take action to assure compliance with NPDES requirements.

**c. EPA Technical Assistance**

Within the constraints of available staff time, EPA will provide technical assistance and guidance concerning acceptable analytical procedures.

**D. Public Complaints**

**1. Telephone Complaints**

- a. Telephone complaints received by EPA or the State Board pertaining to a discharge to water of the United States will be referred to the appropriate Regional Board.
- b. The Regional Boards shall maintain written documentation of each telephone complaint and its disposition.

**2. Written Complaints**

- a. Written complaints pertaining to a discharge to waters of the United States may be responded to by telephone or by letter. All telephone responses shall be documented by memo.
- b. Copies of each response prepared by EPA or the State Board shall be sent to the appropriate Regional Board.
- c. The Regional Boards shall retain documentation of each written complaint and its disposition.

**3. Complaint Resolution**

- a. The Regional Boards will investigate complaints and inform the complainant of the investigation results.
- b. The Regional Boards shall place a copy of each NPDES-related complaint and a memo of record describing the investigation results thereof into the permit file or compliance file of the appropriate facility.

**E. State Enforcement**

**1. Basis of EPA/State Relationship**

- a. The Regional Boards pursue enforcement of NPDES permit requirements, and of all other provisions of the NPDES program under State authority.

b. The State Board shall assure that enforcement of the NPDES program is exercised aggressively, fairly, and consistently by all nine Regional Boards. The staff of the State Board will review enforcement practices and inform the Regional Board is not taking appropriate enforcement actions.

(1) The State Board will assure that Federal facilities are treated the same as other NPDES facilities within the constraints of Section 313 of the Clean Water Act.

(2) The State Board will keep a record of all penalties assessed and all penalties collected in NPDES enforcement cases.

c. EPA shall monitor the State's performance, and may take enforcement action under Section 309 of the CWA, whenever the State does not take timely and appropriate enforcement action.

d. EPA shall coordinate its enforcement actions with the State Board and with the appropriate Regional Board as described below.

e. The State Board and EPA will meet periodically to discuss the status of pending and adopted enforcement actions as well as other issues of concern.

2. State Notice to EPA of Enforcement Actions

The State shall send copies of proposed and final enforcement actions, settlements, and amendments thereto, against NPDES facilities to EPA within five working days after the date of signature.

F. EPA Enforcement

1. EPA Initiation of Enforcement Action

EPA will initiate enforcement action:

a. At the request of the State;

- b. If the State response to the violation is not consistent with the APM and EPA policy or is otherwise determined by EPA not to be timely and appropriate; or
- c. If there is an overriding federal interest.

2. EPA Deferral of Enforcement Action

EPA shall defer formal enforcement action whenever the State initiates an enforcement action determined by EPA to be timely and appropriate for the violation, except when there is an overriding federal interest.

G. Enforcement Procedures

If circumstances require EPA to pursue formal enforcement, EPA, and the State shall observe the following procedures:

1. Enforcement Based on the Quarterly Noncompliance Report

- a. EPA shall notify the State Board and the appropriate Regional Boards by letter, of the facilities (the name and NPDES number) for which for which EPA policy requires formal enforcement action.
- b. The State Board shall respond to EPA by letter within 30 days of its receipt of the EPA notice.
- c. The response shall include:
  - (1) The name and NPDES number of:
    - (a) Each facility which has returned to compliance;
    - (b) Each facility for which the Regional Boards have scheduled formal enforcement actions;
    - (c) Each facility for which a Regional Board or the State Board has taken a formal enforcement action, if the

enforcement action was not shown on the QNCR as part of the response to the violation; and

- (d) Each facility against which the State Board will pursue formal enforcement.
  - (2) Identification of the type of each formal enforcement action;
  - (3) A description of how each Regional Board plans to address the violations which have not been corrected by the facilities, and for which they are not pursuing formal enforcement; and
  - (4) A description of the enforcement action State Board staff will recommend to take against any facility.
- e. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.

2. Enforcement Based on Information Other than the Quarterly Noncompliance Report

- a. EPA shall notify the State Board and the appropriate Regional Board of each violation against which EPA intends to pursue formal enforcement. This notice shall include:
  - (1) The name and NPDES number of the facility;
  - (2) An identification of the violations which warrant formal enforcement;
  - (3) The reasons why EPA believes formal enforcement is necessary; and
  - (4) The reasons why past or pending State responses are insufficient.
- b. Within ten working days of the notification by EPA, and after

consultation with the appropriate Regional Boards, the State Board will respond to the EPA notice. The State Board's response will include:

- (1) A discussion of the circumstances of the identified violations;
  - (2) A description of the substance and timing of any past, pending, or planned responses to the violations by the Regional Board or the State Board; including identification of the office and staff responsible for the action;
  - (3) The amounts of any penalties sought or collected; and
  - (4) Whether or not the State Board believes the responses are appropriate and why.
- c. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.
- d. Normal enforcement action until ten working days from the date of the EPA notice have passed.

3. Overriding Federal Interest:

- a. For the purposes of this MOA, an overriding federal interest exists when:
- (1) EPA enforcement can reasonably be expected to expedite the discharger's return to full compliance;
  - (2) EPA enforcement can reasonably be expected to increase program credibility; or
  - (3) The violation has significant implications for the success of the NPDES program beyond the borders of California;

- b. EPA shall notify the State Board and the appropriate Regional Board when there is an overriding federal interest;
- c. Within ten working days of the EPA notice, the State Board will inform EPA of any coordination between the federal action and a State action that the State believes to be appropriate;
- d. EPA shall either:
  - (1) Contact the Regional Board and the State Board to work out the details of coordinating the State and federal enforcement actions. Usually, such coordination will entail the exchange of draft enforcement actions for review. Comments can usually be exchanged by telephone, or in a staff meeting at the Regional Board depending upon the complexity of the enforcement action; or
  - (2) Inform the State Board that such coordination is infeasible;
- e. EPA shall not proceed with its enforcement action until ten working days after the date of the EPA notice; and
- f. In any instance of overriding federal interest and upon request by the State, EPA shall send the State Board and the appropriate Regional Board a brief, written explanation of the reasons for overriding federal interest or the reasons for infeasibility of enforcement coordination.

4. Recovery of Additional Penalties

Nothing in this MOA shall be construed to limit EPA's authority to take direct enforcement action for the recovery of additional penalties, whenever the penalties recovered by the State are less than those prescribed by the EPA penalty policy.

5. EPA Enforcement Without Notice to the State

Notwithstanding the provisions above for prior notification to the State of federal enforcement actions, nothing in this MOA limits EPA's authority to take enforcement action without any prior notice to the State. If EPA does take such an action, it shall send copies of its correspondence with the affected facility to the State Board and the appropriate Regional Board.

V. STATE REPORTING

A. The State will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1	A copy of all permit applications except those for which EPA has waived review	Within 5 days of receipt
2	Copies of all draft NPDES permits and permit modifications including fact sheets except those for which EPA has waived review	When placed on public notice
3	Copies of all public notices	As issued
4	A copy of all issued, draft NPDES permits and permit modifications	As issued
5	A copy of settlements and decisions in permit appeals	As issued

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
6	A list of major facilities of the scheduled for compliance inspections	With submission annual program
7	Proposed revisions to the scheduled compliance inspections	As needed

- |    |                                                                                                                                                                                           |                                                                            |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| 8  | A list of compliance inspections performed during the previous quarter                                                                                                                    | Quarterly                                                                  |
| 9  | Copies of all compliance inspection reports and data and transmittal letters to major permittees                                                                                          | Within 30 days of inspection                                               |
| 10 | Copies of all compliance inspection reports and data transmittal letters to all other permittees                                                                                          | As requested                                                               |
| 11 | For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA guidance                                                            | Quarterly, as specified in 40 CFR 123.45(c)                                |
| 12 | For minor dischargers, an annual noncompliance report as specified in 40 CFR 123.45(b)                                                                                                    | Within 60 days of the end of the calendar as specified in 40 CFR 123.45(c) |
| 13 | Copies of all enforcement actions against NPDES violators (including letters, notices of violation, administrative orders, initial determinations, and referrals to the Attorney General) | As issued                                                                  |

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
14	Copies of correspondence required to carry out the pretreatment program	As issued or received
15	Copies of Discharge Monitoring Report (DMR) and non-	Within 10 days of receipt

compliance notifi-  
cation from major  
permittees

**B. Major Discharger List**

The State annually shall submit to EPA an updated "major dischargers" list. The list shall include those dischargers mutually defined by the State Board and EPA as major dischargers plus any additional dischargers that in the opinion of the State or EPA, have a high potential for violation of water quality standards. The major discharger list for Federal facilities shall be jointly determined by EPA and the State. The schedule for submittal of the major discharger list shall be included in the 106 workplan.

**C. Emergency Notification**

1. The Regional Board shall telephone, or otherwise contact, EPA and the State Board immediately if it discovers a NPDES permit violation or threatening violation:
  - a. That has significantly damaged or is likely to significantly damage the environment or the public health; or
  - b. That has or is likely to cause significant public alarm.
2. The Regional Board will describe the circumstances and magnitude of the violation

**VI. CONFIDENTIALITY OF INFORMATION**

- A. All information obtained or used by the State in the administration of the NPDES program shall be available to EPA upon request without restriction, and information in EPA's files which the State needs to implement its program shall be made available to the State upon request without restriction.
- B. Whenever either party furnishes information to the other that has been claimed as confidential, the party furnishing the information will also furnish the confidentiality claim and the results of any legal review of the claim.

- C. The party receiving the confidential information will treat it in accordance with the provisions of 40 CFR Part 2.
- D. The State and EPA will deny all claims of confidentiality for effluent data, permit applications, permits, and the name and address of any permittee.

VII. PROGRAM REVIEW

- A. To fulfill its responsibility for assuring the NPDES program requirements are met, EPA shall:

- 1. Review the information submitted by the State;
- 2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and automated processes;
- 3. Examine the files and documents of the State regarding selected facilities to determine:  
(a) whether permits are processed and issued consistent with federal requirements; (b) whether the State is able to discover permit violations when they occur; (c) whether State reviews are timely; and (d) whether State selection of enforcement actions is appropriate and effective. EPA shall notify the State in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems.

EPA need not reveal to the State in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;

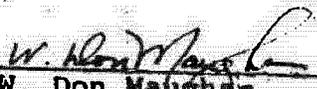
- 4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;
- 5. When appropriate, hold public hearings on the State's NPDES program; and
- 6. Review the State's public participation policies, practices and procedures.

- B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, or form which has been approved by EPA, and prior to the adoption of any statute, regulations, or form, the State shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see 40 CFR 123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).
- C. If an amendment, recision, or repeal of any statute, regulations, or form described in paragraph (B) above shall occur for any reason, including action by the State legislature or a court, the State shall within ten days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.
- D. Prior to the approval of any test method as an alternative to those specified as required for NPDES permitting, the State shall obtain the approval of the Regional Administrator.

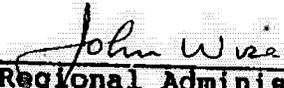
#### VIII. TERM OF THE MOA

- A. This MOA shall become effective upon the date of signature of the Regional Administrator and of the Chair of the State Water Resources Control Board after State Board approval. If it is signed by the two parties on different days, the latter date shall be the effective date.
- B. This MOA shall be reviewed by EPA and the State, and revised as appropriate within five (5) years of its effective date.
- C. Either EPA or the State may initiate action to change this MOA at any time.
  - 1. No change to this MOA shall become effective without the concurrence of both agencies.
  - 2. The STATE REPORTING (V) portion may be changed by the written consent of the Chief, Division of Water Quality, SWRCB, and the Director, Water Management Division, EPA, Region 9. The Director of Permits Division (EN-336) must consent to all substantial changes.

3. All other changes to this MOA must be approved by the State Board and approved by the Regional Administrator, with the prior concurrence of the Director of the Office of Water Enforcement and Permits (EN-335) and the Associate General Counsel for Water for all substantial changes. The Director of the Office of Water Enforcement and Permits and Associate General Counsel for Water shall also determine whether changes should be deemed substantial.
  4. All changes to this MOA determined by EPA to be substantial shall be subject to public notice and comment in accordance with the requirements of 40 CFR 123.62 before being approved.
- D. Either party may terminate this MOA upon notice to other party pursuant to 40 CFR 123.64.
- E. In witness thereof, the parties execute this agreement.

  
W. Don Maughan  
Chairman,  
State Water Resources  
Control Board

Dated: JUN - 8 1989

  
Regional Administrator  
Environmental Protection  
Agency, Region 9

Dated: 22 SEP 1989

# EXHIBIT

## “3”

4837-0090-6752.2

## MEMORANDUM

County Sanitation Districts  
of Los Angeles County

October 7, 20002

**TO:** Vicki Conway  
Head, Monitoring Section

**FROM:** Brian Louie  
Project Engineer, Monitoring Section

**SUBJECT:** **Basis/Data for 1975 Chloride Objective and 1978 and 1994 Revisions to the Chloride Objective for Reaches 5 and 6 of the Santa Clara River**

The purpose of this memo (and enclosed attachments) is to provide a discussion of the basis of the chloride objectives for the Santa Clara River. Attachments 1, 2, 3 and 4 contain tables and supporting data that appear in the 1975, 1978 and 1994 Basin Plans for the Santa Clara River Watershed. Attachment 5 and contains relevant pages from RWQCB Abstracts and Appendices to the Revised Basin Plan (through 1993), while Attachment 6 contains U.S. EPA approval letters of the Basin Plan and subsequent revisions. For the purpose of this discussion, Reach 5 is defined as the reach between the Old Road Bridge, Hwy 99 and the Los Angeles/Ventura County line, while Reach 6 is defined as the reach between Bouquet Canyon Bridge and the Old Road Bridge, Hwy 99. This memorandum focuses on the technical basis and to a lesser extent, the legal basis of the chloride surface water quality objectives for the Santa Clara River.

### ***1975 Water Quality Control Plan (Basin Plan) Objectives and Background Data***

In March of 1975, the Los Angeles Regional Water Quality Control Board (Regional Board) adopted the Water Quality Control Plan (Basin Plan) for the Santa Clara River (SCR) Basin (4A). The 1975 Basin Plan included the chloride surface water quality objectives for the SCR Watershed and provided background water quality data as the basis for these objectives. Table 4-1, pages I-4-10 and I-4-11 of the 1975 Basin Plan (See Attachment 1), set the chloride objectives for various reaches of the Santa Clara River. As seen in Table 4-1, the chloride objectives were set at each station (corresponding to the end of each reach) and were based on a flow-weighted annual average per footnote (a).<sup>1</sup> It should be reiterated that Table 4-1 is explicitly clear that the chloride objectives apply **at each station (corresponding to the end of each reach) as a flow-weighted annual average**. Each of the listed stations corresponds to current (1994) Basin Plan reach designations for Reaches 3 (SCR @ Santa Paula Bridge), 5 (SCR @ Los Angeles and Ventura County Line) and 6 (SCR @ West Pier Highway 99 [The Old Road Bridge]).

As the surface water chloride objective was set based on data from each station, it should also then be mentioned that no WRP effluent discharge data, reflecting surface water quality conditions immediately downstream of the WRP outfalls, were used to characterize background water quality conditions with respect to chlorides.<sup>2</sup> Historic Saugus and Valencia WRP effluent chloride concentrations are shown in Figure 1.

<sup>1</sup> Footnote (a) states: "The objective *at each station* is of the *weighted annual average*. Samples shall be collected at monthly intervals preferably but at least at quarterly intervals. *Flow rate* shall be determined at the time of sampling [emphasis added]."

<sup>2</sup> The background water quality samples at these stations were also not reflective of the variability in chlorides associated with a drought condition, where water supply and subsequent WRP effluent chloride concentrations increased in magnitude significantly.

### Basis of the Chloride Objective

It appears that, instead of basing the objective on the need to protect a specific beneficial use, the Regional Board used the maximum background<sup>3</sup> chloride values as the basis for setting the chloride objectives for the Reaches 3, 5 and 6 of the SCR. Tables 14-3 and 14-9, pages II-14-5 and II-14-15 of Chapter 14 of the 1975 Basin Plan (see Attachment 2) provide the background water quality data that are the basis for the setting of the original objectives for reaches 5 and 6 of the SCR. Table 14-3 provides data for reach 5, while Table 14-9 provides data for reach 6.

### Chloride Objectives for Reach 5

As seen in Table 14-3 of the 1975 Basin Plan (see Attachment 2), a maximum chloride concentration of 75 mg/L was measured on September 15, 1970, while on October 20, 1969 and April 15, 1970, chloride concentrations of 58 and 60 mg/L were measured, respectively. It is unclear how the Regional Board ultimately set a 90 mg/L chloride objective for the end of Reach 5, based on this existing background data published in the 1975 Basin Plan. However, these chloride concentrations are below the recommended chloride thresholds for the protection of agriculture, which was referenced in the 1975 Basin Plan. Thus, the objective was likely based on background water quality conditions, with only these 3 chloride samples (taken over a 12-month period beginning in October 1969) being published in the 1975 Basin Plan.<sup>4</sup> It is quite possible that the Regional Board erroneously applied the chloride concentration observed at the end of Reach 5 to determine the chloride water quality objective for the end of reach 6 (80 mg/L).

### Chloride Objectives for Reach 6

As seen in Table 14-9 of the 1975 Basin Plan (See Attachment 2), a maximum chloride concentration of 89 mg/L (sampled during dry weather flow conditions) was measured at the end of Reach 6. The number of samples taken at this location is unknown, but the samples were taken over a 12-month period beginning in August 1971. It is unclear how the Regional Board ultimately set an 80 mg/L chloride objective for the end of Reach 5, based on this existing background data published in the 1975 Basin Plan. However, as mentioned previously, the chloride concentrations in Table 14-9 are below the recommended chloride thresholds for the protection of agriculture, which was referenced in the 1975 Basin Plan.<sup>5</sup> Thus, the objective was likely based on background water quality conditions, with only these chloride samples (taken over a 12-month period beginning in August 1971) being published in the 1975 Basin Plan. It is quite possible that the Regional Board erroneously applied the chloride concentration observed at the end of Reach 6 to determine the chloride water quality objective for the end of reach 5 (90 mg/L).

<sup>3</sup> The Water Code recognizes that water quality can be changed to some degree without unreasonably affecting beneficial uses. See Water Code §13241. Even the State's Anti-degradation Policy allows deviations from existing background water quality so long as the change is "consistent with maximum benefit to the people of the State." SWRCB Res. No. 68-16 (Oct. 28, 1968). Thus, setting objectives based upon background levels alone is of questionable legal validity.

<sup>4</sup> See University of California Committee of Consultants, *Guidelines for Interpretation of Water Quality for Agriculture*, University of California Cooperative Extension, 1975. The UC Cooperative Extension guidelines recommended a 106 mg/L Cl threshold for crops sensitive to foliar (leaf) absorption; they recommend a 142 mg/L Cl threshold for crops sensitive to root absorption of chloride. These thresholds are well above the chloride objectives set in 1975. Thus, the chloride objectives were likely set to reflect background conditions. The most chloride sensitive crop grown in the Upper SCR Watershed is avocado, which is documented to be sensitive to chlorides via root absorption. Therefore, if the chloride objective had been established to protect the most sensitive agricultural beneficial use, it should have been established at 142 mg/L based on the 1975 UC Cooperative Extension guidelines, though in a 1968 study published by Bingham and Finn, a chronic chloride threshold of 180 mg/L is stated to be protective of avocados, with effects on yield.

<sup>5</sup> Ibid.

**1978 Amendments to the Basin Plan**

In March of 1978, the Regional Board amended the 1975 Basin Plan to revise certain mineral objectives and to add or revise reach designations of the SCR. Attachment 3 includes the revision pages taken from the Regional Board's Administrative Record that discuss the 1978 revisions to the Basin Plan. As seen in Attachment 3, the chloride objectives were revised from 80 and 90 mg/L to 100 mg/L for reaches 5 and 6, respectively, to "correct errors in the Basin Plan made by the original contractor and/or to reflect existing water quality based on more, newer, and better data." The basis/reasoning for all revisions of the Basin Plan were documented in the Administrative Record and are summarized in Table 1. As these revised surface water chloride objective were set based on new data from each station, it should also then be mentioned that no WRP effluent discharge data during the 1975-1977 period, reflecting surface water quality conditions immediately downstream of the WRP outfalls, were used to characterize background water quality conditions with respect to chlorides.<sup>6</sup>

**Table 1. Summary of Changes to 1975/1978 Basin Plans**

Reach	Description	1975 Cl Objective	Basis for 1975 Cl Objective	Reference
5	Santa Clara River at Los Angeles and Ventura County Line	90 mg/L	Maximum chloride concentration rounded upwards (76 mg/L rounded to 80 mg/L) of 3 samples taken 10/20/69 (58 mg/L), 3/5/70 (60 mg/L) and 9/15/70 (76 mg/L) at Blue Cut Gauging Station. Could be error as it appears that Reach 5 data was used to determine Reach 6 objective. <u>Chloride objective likely set to reflect existing conditions for 1975 Basin Plan.</u>	1975 Basin Plan Table 14-3, pg II-14-5  (see Attachment 2)
6	Santa Clara River at West Pier Highway 99	80 mg/L	Maximum chloride concentration rounded upwards (87 mg/L rounded to 90 mg/L) of Dry weather flow samples taken between 8/4/71 and 8/4/72 at West Pier Hwy 99 (The Old Road Bridge). Number of samples taken is unknown. Could be error as it appears that Reach 6 data might have been used to determine Reach 5 objective. <u>Chloride objective likely set to reflect existing conditions for 1975 Basin Plan.</u>	1975 Basin Plan Table 14-9, pg II-14-15  (see Attachment 2)
Reach	Description	1978 Revised Cl Objective	Basis for 1978 Revised Cl Objective	Reference
7	Reach Bounded by West Pier Hwy 99 (The Old Road Bridge) and Blue Cut Gauging Station	100 mg/L	"If the proposed objective would conform with the quality of the natural inflow and outflow."  Regional Board references data in Table 2 (Attachment 3).	Attachment 3
8	Reach Bounded by Bouquet Canyon Bridge and West Pier Hwy 99 (The Old Road Bridge)	100 mg/L	Revised chloride objective "...reflects water quality conditions found to exist at <u>West Pier Hwy 99 and at L.A.-Ventura County Line.</u> "  Regional Board references data in Table 2 (Attachment 3).	Attachment 3

Other pertinent changes in the 1978 Basin Plan Amendment included the following:

- 1) The reaches that were formerly designated/described as particular locations, now included bounded descriptions. The reach designations were changed as follows:

<sup>6</sup> The background water quality samples at these stations were also not reflective of the variability in chlorides associated with a drought condition, where water supply and subsequent WRP effluent chloride concentrations were observed to increase in magnitude significantly.

<b>1975 Basin Plan</b>	<b>1978 Amendments to the Basin Plan</b>
At United States Highway 101	No Reach Designation
At Saticoy Diversion Dam	Reach bounded by Santa Paula Bridge and Saticoy Diversion Dam
Santa Paula Bridge	Reach bounded by A street, Fillmore and Santa Paula Bridge
At A Street, Fillmore	Reach bounded by Los Angeles-Ventura County Line and A street, Fillmore
<b>1975 Basin Plan</b>	<b>1978 Amendments to the Basin Plan</b>
At Los Angeles and Ventura County line	Reach bounded by West Pier Hwy 99 and Los Angeles-Ventura County line
At West Pier Highway 99	Reach bounded by Lang and West Pier Hwy 99
None	Above Lang

- 2) The addition of one reach ("Above Lang") upstream of Reach 6; and
- 3) The station "At United States Highway 101" was given no specific designation.

It is important to note that while the reach designations/description changed, footnote (a) still applied to each reach in the 1978 amendments and thus, the objectives' averaging period did not change. Rather, the 1978 Amendments merely resulted in new reach boundary designations, whereby each of the revised mineral water quality objectives (Chloride, Sulfate, TDS, Boron, SAR and NO<sub>3</sub>-N + NO<sub>2</sub>-N) would be determined as a flow-weighted average at the end of each reach. (i.e., at the receiving water stations where the background data were collected).

Attachment 4 also includes notes taken from the 1978 Basin Plan Administrative Record that had erroneously identified the Valencia WRP as a point source that discharges into Reach 6 as opposed to Reach 5, which is where the Valencia WRP actually discharges.

***1994 Amendments to the Basin Plan***

In 1994, the Regional Board again amended the Basin Plan. In the 1994 amendments, the reaches set forth in the 1978 Basin Plan were formally numbered; however, no changes were made to the numeric water quality objectives for chloride.

The most significant change in the 1994 Basin Plan (which may well have been a typographical error since there was no backup documentation in the administrative record discussing this change) with respect to all the mineral objectives, was the omission of footnote (a), which described the basis of all mineral objectives and how compliance with these objectives would be determined. It should be noted that even up through 1993, the Regional Board acknowledged that the mineral objectives were based on a flow-weighted annual average at the end of each reach at specific receiving water stations.<sup>7</sup> Attachment 4 includes Table 3-8 of the 1994 Basin Plan and its accompanying footnotes. Table 3-8 (1994 Basin Plan) is virtually identical to Table 4-1 (in 1975 and 1978 Basin Plans), with the exception that footnote (a), found in the 1975 and 1978 versions of Basin Plan, was omitted. Again, based on a review of the 1994 Basin Plan administrative record, no explanation or supporting documentation was provided as the basis for the deletion of footnote (a).

This omission of footnote (a) effectively changes the chloride objective itself. The original intent of the Basin Plan as adopted in 1975 and amended in 1978 was for the objective to be a flow-weighted annual average as determined at the furthest downstream end of each reach. Now, with the omission of footnote

<sup>7</sup> See Attachment 5, which contains relevant pages from the Regional Board's *Abstracts and Appendices of 1975 Plans: Santa Clara River Basin (4A) and Los Angeles River Basin (4B)*. As seen in Table 7, footnote (a) still applied for all mineral objectives for the SCR. Also, Table 8, shows that the groundwater chloride objective for groundwater between Bouquet Canyon and Castaic Creek, was set at 150 mg/L. The chloride objective for this groundwater reach appeared to be revised to 100 mg/L in 1994, though the Regional Board then acknowledged in the chloride TMDL Staff Report (page 17) that this revision was "never incorporated into the Basin Plan."

(a), the objective appears to be an instantaneous maximum that has to be met at any given location within the applicable reach. Because of this change, intended or not, Regional Board now interprets the mineral water quality objectives as instantaneous maximums and intends to apply end-of-pipe discharge limits for all water quality objectives listed in Table 3-8 (Attachment 4). It is important to note that historically, as well as when the Districts' permits were re-issued in 1995 (i.e., following the 1994 Basin Plan update), the Water Reclamation Plants that discharge into these reaches have had discharge limits for chloride higher than the chloride objectives shown in Table 3-8. Furthermore, Figure 1 shows that the historical final effluent chloride concentrations for both the Saugus and Valencia WRPs, which both began operating in the mid to late 1960's. The data show that while the Saugus and Valencia WRPs have consistently complied with discharge limits for chloride, both WRPs have also consistently discharged effluent at chloride concentrations to the receiving water at chloride concentrations greater than the 100 mg/L objective that is listed in the 1994 Basin Plan for Reaches 5 and 6. Figure 2 provides some perspective on the 1975 average Saugus and Valencia final effluent chloride concentrations compared to 1975 average chloride concentrations at the LA/VC line and West Pier Highway 99 (The Old Road Bridge). Figure 2 also shows the effluent-dependent nature of Reaches 5 and 6 of the SCR, and the general gradient in chloride concentrations that has always existed between Saugus and Valencia WRP outfalls and West Pier Highway 99 and the LA/VC line, respectively. All of these data underscore the fact that the chloride objectives were never intended to be applied as an instantaneous maximum for any location within the reach, which is how the objectives are currently being applied.

#### ***Implications of 1994 Basin Plan Amendments to 2002 Chloride TMDL***

##### Selection of Numeric Target for SCR Chloride TMDL

In light of the information provided above about the basis of the original chloride objective, it is believed that the 1994 modification of the objective, from a flow-weighted annual average as measured at the end of the reach to an instantaneous maximum applicable at all locations within the reach, is invalid because this modification of the objective was not adopted in accordance with the legal and procedural requirements of, among other things, the Porter-Cologne Water Quality Act and California Administrative Procedures Act. Accordingly, the setting of a numeric target for chloride for the 2002 SCR Chloride TMDL should not be based on the objectives as amended in 1994.

The primary goal of the Basin Plan and water quality objectives is to protect the beneficial use of the water body and to maintain the existing instream uses as determined in 1975.<sup>8</sup> The numeric target to protect the most sensitive beneficial "in-stream" use in the SCR Watershed would be 230 mg/L Cl, which is the threshold to protect aquatic life under chronic exposure conditions. It is questionable whether, water diverted from the surface water of the SCR for irrigation purposes can be considered an "in-stream" use.

As previously stated, it appears that the 100 mg/L chloride objective was not based on protecting a beneficial use, but was established to reflect background conditions.<sup>9</sup> Therefore, the use of this objective for TMDL calculation purposes is questionable. However, even if the objective was based on protecting a beneficial use, for the reasons provided above, the appropriate numeric target for the chloride TMDL would be the chloride objective of 100 mg/L Cl as a flow-weighted annual average measured at the end of each reach, not as an instantaneous maximum value throughout the reach, the adoption of which was never properly noticed or promulgated.

<sup>8</sup> See Water Code §13241; see also 40 C.F.R. § 131.12(a)(1).

<sup>9</sup> The manner by which the Regional Board determined background conditions may also very well be incorrect. The chloride objective was set based on limited data collected at one location, ignoring effluent chloride concentration at the Saugus and Valencia WRP outfalls, and not taking into account the cyclic variation in chloride concentrations due to drought conditions.

# EXHIBIT

## “4”

4837-0090-6752.2

# WATER QUALITY CONTROL PLAN Los Angeles Region

Basin Plan  
for the  
Coastal Watersheds of  
Los Angeles and Ventura Counties



California Regional Water Quality Control Board  
Los Angeles Region (4)

# **WATER QUALITY CONTROL PLAN**

## **Los Angeles Region**

Adopted by

California Regional Water Quality Control Board, Los Angeles Region on June 13, 1994.

Approved by

State Water Resources Control Board on November 17, 1994.

State Office of Administrative Law on February 23, 1995.

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## Introduction

The Clean Water Act (§303) requires states to develop water quality standards for all waters and to submit to the USEPA for approval all new or revised water quality standards which are established for inland surface and ocean waters. Water quality standards consist of a combination of beneficial

uses (designated in Chapter 2) and water quality objectives (contained in this Chapter).

In addition to the federal mandate, the California Water Code (§13241) specifies that each Regional Water Quality Control Board shall establish water quality objectives. The Water Code defines water quality objectives as "the allowable limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." Thus, water quality objectives are intended (i) to protect the public health and welfare and (ii) to maintain or enhance water quality in relation to the designated existing and potential beneficial uses of the water. Water quality objectives are achieved through Waste Discharge Requirements and other programs outlined in Chapter 4, Strategic Planning and Implementation. These objectives, when compared with future water quality data, also provide the basis for identifying trends toward degradation or enhancement of regional waters.

These water quality objectives supersede those contained in all previous Basin Plans and amendments adopted by the Los Angeles Regional Board. As new information becomes available, the Regional Board will review the objectives contained herein and develop new objectives as necessary. In addition, this Plan will be reviewed every three years (triennial review) to determine the need for modification.

## Statement of Policy with Respect to Maintaining High Quality of Waters in California

A key element of California's water quality standards is the state's Antidegradation Policy. This policy, formally referred to as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (State Board Resolution No. 68-16), restricts degradation of surface or ground waters. In particular, this policy protects waterbodies where existing quality is higher than is necessary for the protection of beneficial uses.

**Table 3-8. Water Quality Objectives for Selected Constituents in Inland Surface Waters<sup>a</sup>.**

Reaches are in upstream to downstream order.

WATERSHED/STREAM REACH <sup>b</sup>	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	Boron <sup>c</sup> (mg/L)	Nitrogen <sup>d</sup> (mg/L)	SAR <sup>e</sup> (mg/L)
Miscellaneous Ventura Coastal Streams	<i>no waterbody specific objectives<sup>f</sup></i>					
<b>Ventura River Watershed:</b>						
Above Camino Cielo Road	700	300	50	1.0	5	5
Between Camino Cielo Road and Casitas Vista Road	800	300	60	1.0	5	5
Between Casitas Vista Road and confluence with Weldon Canyon	1000	300	60	1.0	5	5
Between confluence with Weldon Canyon and Main Street	1500	500	300	1.5	10	5
Between Main St. and Ventura River Estuary	<i>no waterbody specific objectives<sup>f</sup></i>					
<b>Santa Clara River Watershed:</b>						
Above Lang gaging station	500	100	50	0.5	5	5
Between Lang gaging station and Bouquet Canyon Road Bridge	800	150	100	1.0	5	5
Between Bouquet Canyon Road Bridge and West Pier Highway 99	1000	300	100	1.5	10	5
Between West Pier Highway 99 and Blue Cut gaging station	1000	400	100	1.5	5	10
Between Blue Cut gaging station and A Street, Fillmore	1300	600	100	1.5	5	5
Between A Street, Fillmore and Freeman Diversion "Dam" near Saticoy	1300	650	80	1.5	5	5
Between Freeman Diversion "Dam" near Saticoy and Highway 101 Bridge	1200	600	150	1.5	-	-
Between Highway 101 Bridge and Santa Clara River Estuary	<i>no waterbody specific objectives<sup>f</sup></i>					
Santa Paula Creek above Santa Paula Water Works Diversion Dam	600	250	45	1.0	5	5
Sespe Creek above gaging station, 500' downstream from Little Sespe Creek	800	320	60	1.5	5	5
Piru Creek above gaging station below Santa Felicia Dam	800	400	60	1.0	5	5
<b>Calleguas Creek Watershed:</b>						
Above Potrero Road	850	250	150	1.0	10	f
Below Potrero Road	<i>no waterbody specific objectives<sup>f</sup></i>					

**Table 3-10. Water Quality Objectives for Selected Constituents in Regional Ground Waters<sup>a</sup> (cont.)**

DWR Basin No. <sup>b</sup>	BASIN	OBJECTIVES (mg/L)			
		TDS	Sulfate	Chloride	Boron
4-4.07	Eastern Santa Clara				
	Santa Clara-Mint Canyon	800	150	150	1.0
	South Fork	700	200	100	0.5
	Placerita Canyon	700	150	100	0.5
	Santa Clara-Bouquet & San Francisquito Canyons	700	250	100	1.0
	Castaic Valley	1,000	350	150	1.0
	Saugus Aquifer	--	--	--	--
4-9	Simi Valley				
	Simi Valley Basin				
	Confined aquifers	1,200	600	150	1.0
	Unconfined aquifers	--	--	--	--
	Gillibrand Basin	900	350	50	1.0
4-10	Conejo Valley	800	250	150	1.0
4-11	Los Angeles Coastal Plain				
	Central Basin	700	250	150	1.0
	West Coast Basin	800	250	250	1.5
	Hollywood Basin	750	100	100	1.0
	Santa Monica Basin	1,000	250	200	0.5
4-12	San Fernando Valley				
	Sylmar Basin	600	150	100	0.5
	Verdugo Basin	600	150	100	0.5
	San Fernando Basin				
	West of Highway 405	800	300	100	1.5
	East of Highway 405 (overall)	700	300	100	1.5
	Sunland-Tugunga area <sup>c</sup>	400	50	50	0.5
	Foothill area <sup>c</sup>	400	100	50	1.0
	Area encompassing RT-Tujunga-Erwin-N. Hollywood-Whithall-LA/Verdugo-Crystal Springs-Headworks-Glendale/Burbank Well Fields	600	250	100	1.5
	Narrows area (below confluence of Verdugo Wash with the LA River)	900	300	150	1.5
	Eagle Rock Basin	800	150	100	0.5
4-13	San Gabriel Valley				
	Raymond Basin				
	Monk Hill sub-basin	450	100	100	0.5
	Santa Anita area	450	100	100	0.5
	Pasadena area	450	100	100	0.5
	Main San Gabriel Basin				
	Western area <sup>d</sup>	450	100	100	0.5
Eastern area <sup>d</sup>	600	100	100	0.5	
	Puente Basin	1,000	300	150	1.0
4-14 8-2 <sup>e</sup>	Upper Santa Ana Valley				
	Live Oak area	450	150	100	0.5
	Claremont Heights area	450	100	50	--
	Pomona area	300	100	50	0.5
	Chino area	450	20	15	--
	Spadra area	550	200	120	1.0
4-15	Tierra Rejada	700	250	100	0.5
4-16	Hidden Valley	1,000	250	250	1.0
4-17	Lockwood Valley	1,000	300	20	2.0
4-18	Hungry Valley and Peace Valley	500	150	50	1.0

**Table 3-10. Water Quality Objectives for Selected Constituents in Regional Ground Waters\* (cont.)**

DWR Basin No. <sup>b</sup>	BASIN	OBJECTIVES (mg/L)			
		TDS	Sulfate	Chloride	Boron
4-19	Thousand Oaks area	1,400	700	150	1.0
4-20	Russell Valley	1,500	500	250	1.0
	Russell Valley	2,000	500	500	2.0
	Triunfo Canyon area	2,000	500	500	2.0
	Lindero Canyon area	2,000	500	500	2.0
	Las Virgenes Canyon area	2,000	500	500	2.0
4-21	Conejo-Tierra Rejada Volcanic area <sup>b</sup>	--	--	--	--
4-22	Santa Monica Mountains--southern slopes <sup>1</sup>	1,000	250	250	1.0
	Camarillo area	1,000	250	250	1.0
	Point Dume area	2,000	500	500	2.0
	Malibu Valley	2,000	500	500	2.0
	Topanga Canyon area	2,000	500	500	2.0
	San Pedro Channel Islands <sup>1</sup>	--	--	--	--
	Anacapa Island	1,100	150	350	--
	San Nicolas Island	1,000	100	250	1.0
	Santa Catalina Island	--	--	--	--
	San Clemente Island	--	--	--	--
	Santa Barbara Island	--	--	--	--

- a. Objectives for ground waters outside of the major basins listed on this table and outlined in Figure 1-9 have not been specifically listed. However, ground waters outside of the major basins are, in many cases, significant sources of water. Furthermore, ground waters outside of the major basins are either potential or existing sources of water for downgradient basins and, as such, objectives in the downgradient basins shall apply to these areas.
- b. Basins are numbered according to Bulletin 118-80 (Department of Water Resources, 1980).
- c. Ground waters in the Pitas Point area (between the lower Ventura River and Rincon Point) are not considered to comprise a major basin, and accordingly have not been designated a basin number by the California Department of Water Resources (DWR) or outlined on Figure 1-9.
- d. The Santa Clara River Valley (4-4), Pleasant Valley (4-6), Arroyo Santa Rosa Valley (4-7) and Las Posas Valley (4-8) Ground Water Basins have been combined and designated as the Ventura Central Basin (DWR, 1980).
- e. The category for the Foothill Wells area in previous Basin Plan incorrectly groups ground water in the Foothill area with ground water in the Sunland-Tujunga area. Accordingly, the new categories, Foothill area and Sunland-Tujunga area, replace the old Foothill Wells area.
- f. All of the ground water in the Main San Gabriel Basin is covered by the objectives listed under Main San Gabriel Basin - Eastern area and Western area. Walnut Creek, Big Dalton Wash, and Little Dalton Wash separate the Eastern area from the Western area (see dashed line on Figure 2-17). Any ground water upgradient of these areas is subject to downgradient beneficial uses and objectives, as explained in Footnote a.
- g. The border between Regions 4 and 8 crosses the Upper Santa Ana Valley Ground Water Basin.
- h. Ground water in the Conejo-Tierra Rejada Volcanic Area occurs primarily in fractured volcanic rocks in the western Santa Monica Mountains and Conejo Mountain areas. These areas have not been delineated on Figure 1-9.
- i. With the exception of ground water in Malibu Valley (DWR Basin No. 4-22), ground waters along the southern slopes of the Santa Monica Mountains are not considered to comprise a major basin and accordingly have not been designated a basin number by the California Department of Water Resources (DWR) or outlined on Figure 1-9.
- j. DWR has not designated basins for ground waters on the San Pedro Channel Islands.

# EXHIBIT

## “5”

4837-0090-6752.2

STATE OF CALIFORNIA

3/30/90  
GEORGE DEUKMEJIAN GOVERNOR



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION  
101 CENTRE PLAZA DRIVE  
MONTEREY PARK, CALIFORNIA 91754-2156  
(31) 266-7500

March 30, 1990

TO: MUNICIPAL SEWAGE TREATMENT PLANTS

EFFECTS OF DROUGHT INDUCED WATER SUPPLY CHANGES AND WATER CONSERVATION MEASURES ON COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

In accordance with administrative procedures this Regional Board, at a public meeting held on March 26, 1990, adopted Resolution No. 90-004 (copy enclosed) on the above subject.

Unless your discharge is in full compliance with chloride limitations in your waste discharge requirements, please notify the Executive Officer by May 1, 1990, if it is your intent to comply with the provisions of Resolution No. 90-004 so that your discharge will not be considered by the Board to be in violation of the chloride requirements.

If you have any questions on this matter, please call me at (213) 266-7520.

*David C. Gildersleeve*  
DAVID C. GILDERSLEEVE  
Chief, Regulatory Section

cc: See attached mailing list

Enclosure

*7/13*  
*J.M. [unclear]*  
*please advise*  
*me*  
*4/5/90*

*CSH/6*  
C. W. CARRY  
*Stall 4/5/90*

March 30, 1990

Mailing List for Resolution No. 90-004

State Water Resources Control Board, Office of Chief Counsel  
ATTN: Jorge Leon  
California Regional Water Quality Control Board, San Diego Region,  
ATTN: Kenneth Theisen  
California Regional Water Quality Control Board, Santa Ana Region  
California Regional Water Quality Control Board, Central Coast  
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Calleguas Municipal Water District  
Camarillo Sanitary District  
Camrosa Water District, ATTN: Gina Manchester  
Central and West Basin Water Replenishment District  
Department of Water Resources, Southern District  
City of Fillmore, ATTN: John Kosar  
City of Glendale  
Las Virgenes Municipal Water District, ATTN: William D. Ruff  
City of Los Angeles, Bureau of Sanitation, ATTN: Delwin A. Biagi  
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Los Angeles County, Dept. of Public Works, ATTN: John Mitchell  
Los Angeles County, Dept. of Public Works, ATTN: Brian Scanlon  
County Sanitation Districts of Los Angeles County  
ATTN: Robert W. Horvath  
Main San Gabriel Basin Watermaster, ATTN: Robert Berlien  
Newhall County Water District  
Ojai Valley Sanitary District  
Orange County Water District, ATTN: Nereus Richardson  
City of San Buenaventura  
City of Santa Paula, ATTN: Norman S. Wilkinson  
Simi Valley County Sanitation District, ATTN: Michael Kleinbrodt  
Stetson Engineers, ATTN: Kevin Smith  
The Metropolitan Water District of Southern California  
City of Thousand Oaks, Utilities Department, ATTN: Jack K. Dudley  
United Water Conservation District  
Upper San Gabriel Valley Water Association  
Upper San Gabriel Valley Municipal Water District  
Ventura County Flood Control District  
Ventura County Waterworks District No. 1 (Moorpark)  
Ventura Regional Sanitation District, ATTN: Kelly M. Polk  
Pacific Water Quality Association, ATTN: Patrick Dalee  
Culligan Water Conditioning, ATTN: Robert S. Thomas  
Patrick Theisen, Water Quality Association, Lisle, Illinois

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

Resolution No. 90-004

EFFECTS OF DROUGHT INDUCED WATER SUPPLY CHANGES AND  
WATER CONSERVATION MEASURES ON COMPLIANCE WITH WASTE DISCHARGE  
REQUIREMENTS WITHIN THE LOS ANGELES REGION

- WHEREAS, each Regional Board shall formulate and adopt water quality control plans for all areas within the region and shall establish such water quality objectives in those water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses, while at the same time recognizing that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses; and
- WHEREAS, this Regional Board has adopted water quality control plans for all areas within the Los Angeles Region, and has established water quality objectives in those plans; and
- WHEREAS, each Regional Board, with respect to its region, shall prescribe waste discharge requirements for disposal of wastes; and
- WHEREAS, it is now clear that 1988 and 1989 have been years of severe drought in California, with no current indication that conditions will improve markedly during 1990; and
- WHEREAS, the concentrations of chlorides and other mineral constituents in waters imported from Northern California have been increasing substantially as the smaller flows through the Sacramento-San Joaquin Delta allow salt waters from San Francisco Bay to encroach much further upstream than normal; and
- WHEREAS, the waste discharge requirements adopted by this Regional Board for many dischargers within the Los Angeles Region include limitations on chloride concentrations in the discharge, and the recent change in the quality of the imported water supply may result in delivery of water to the discharger which already exceeds, or will exceed with the increment added by normal use, the chloride limitations prescribed in the waste discharge requirements; and

-1-

February 26, 1990

WHEREAS, the increase in chloride concentration in the discharge in cases where the discharger has not changed any factors in the waste disposal system is beyond the discharger's control, being due solely to the change in the quality of the water supply; and

WHEREAS, use of the more highly mineralized imported waters over the short term will not affect the long range water quality objectives established in the water quality control plans adopted by this Regional Board for areas within the Los Angeles Region; and

WHEREAS, the Los Angeles Regional Board is already on record as encouraging water conservation and water reclamation to decrease the overall fresh water demand within the Los Angeles Region; and

WHEREAS, a Regional Board may direct the Executive Officer to take action on any water quality matter within its purview;

NOW, THEREFORE BE IT RESOLVED, that the existing waste discharge requirements relative to chlorides shall not be considered by this Board to be violated unless effluent supply concentrations of chlorides exceed 250 mg/l or supply concentrations plus 85 mg/l, whichever is less, with comparable adjustments for mass emission rates in lbs/day, if warranted,

1. for any waste discharger whose water supply has high concentrations of chlorides due solely to the increased mineralization of imported water, or

2. for any sewage treatment plant whose influent has high chloride concentrations due solely to the increased mineralization of imported water or to water conservation measures implemented within the area tributary to the plant, or to some combination thereof; and

BE IT FURTHER RESOLVED, that any waste discharge which exceeds the chloride limitations contained in its waste discharge requirements is in noncompliance with those requirements unless the discharger demonstrates to the satisfaction of the Executive Officer by July 1, 1990, and quarterly thereafter, that the increased chloride concentrations are due solely to:

1. changes in the character of the water supply related to drought conditions, or

2. for a sewage treatment plant discharge, changes in the character of the water supply related to drought conditions or to water conservation measures taken in the plant service area or to some combination thereof; and

-2-

BE IT FURTHER RESOLVED, that every waste discharger in compliance with the above shall also demonstrate to the satisfaction of the Executive Officer not later than October 1, 1990:

1. that the discharge will not cause the appropriate long range chloride objective to be exceeded, and
2. that the historical discharge has not caused the long range chloride objective to be exceeded in the past (provided there is a sufficiently long-term record which includes at least one drought period); and

BE IT FURTHER RESOLVED, that every sewage treatment plant waste discharger in compliance with all of the above shall in addition:

1. by October 1, 1990, identify major sources of chloride in its discharge, including but not limited to water softener regeneration brines; determine the average chloride contribution of each major source; determine the best available options for reducing chloride levels in the discharge; identify any negative effects on the potential for water reclamation that would result from failure to control chloride levels in the discharge; and
2. by January 1, 1991, identify proposed actions, together with their timetable of implementation, to reduce chloride levels in the discharge as necessary to assure that the potential for water reclamation will be realized to the maximum extent practicable; and

BE IT FURTHER RESOLVED, that the Board will reconsider this action within one year after source water supplies return to pre-drought conditions, or within 3 years, whichever is earlier; and

BE IT FURTHER RESOLVED, that the Executive Officer of this Board is authorized, and he is hereby directed, to certify and submit copies of this Resolution to such individuals and governmental agencies as may have need therefor, or as may request same.

I, Robert P. Ghirelli, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, March 26, 1990.

  
\_\_\_\_\_  
Robert P. Ghirelli, D.Env.  
Executive Officer

# EXHIBIT

## “6”

4837-0090-6752.2

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION  
January 27, 1997  
Resolution No. 97-02**

***Amendment to the Water Quality Control Plan to incorporate a  
Policy for Addressing Levels of Chloride in Discharges of Wastewaters***

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region finds that:

1. In 1975, the Regional Board established water quality objectives for chloride in most of the Region's waterbodies based on background concentrations of chloride, in accordance with the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16, commonly known as the *State Antidegradation Policy*) and the federal *Antidegradation Policy* (as set forth in 40 CFR 131.12). Water quality objectives are the basis for limits in Waste Discharge Requirements that are prescribed by the Regional Board.
2. When water quality objectives for chloride were set in accordance with the *State Antidegradation Policy* and the federal *Antidegradation Policy*, the Regional Board assumed that chloride concentrations in imported waters would remain relatively low. Since 1975, however, chloride concentrations in supply waters imported into the Region have been increasing. During the late 1980s, drought in watersheds that are sources of imported supply waters made it difficult for many dischargers in the Los Angeles Region to comply with water quality limits for chloride.
3. In addition to relatively high chloride levels in supply waters, chloride levels in wastewaters in the Region can be affected by salt loading that occurs during beneficial use and treatment of supply waters and wastewaters. In some areas of the Region, a significant amount of loading may occur from the use of water softeners.
4. In 1990, the Regional Board adopted Resolution No. 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region*. This resolution, commonly referred to as the *Drought Policy*, was intended to provide short-term and temporary relief to dischargers who were unable to comply with limits for chloride due to the effects of drought on chloride levels in supply waters imported into the Region.

For those dischargers who applied for relief under the *Drought Policy*, the Regional Board temporarily reset limits on concentrations of chloride at the lesser of: (i) 250 mg/L, or (ii) the chloride concentrations in supply waters plus 85 mg/L. An important condition of this relief was that dischargers demonstrate that high chloride concentrations in their discharges of wastewaters are due to increased salinity levels in supply waters imported into their service areas. Several dischargers provided data that confirm that supply waters imported into the Region are the cause of exceedances of chloride limits in discharges of wastewaters. However, many other dischargers have not yet adequately assessed the source(s) of relatively high levels of chloride in wastewaters and the extent to which exceedances are due to factors such as chloride in supply waters and/or significant chloride loading during beneficial use and treatment of supply waters and wastewaters.

November 15, 1996  
Revised January 10, 1997  
Revised January 14, 1997  
Revised January 27, 1997

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Page Two

5. The drought ended before the *Drought Policy* was due to expire in 1993. However, because water supply reservoirs still had high chloride concentrations in 1993 and because water suppliers estimated that it would take 12 to 18 months for complete replenishment of imported waters in reservoirs, the Regional Board renewed the *Drought Policy* in June 1993 and again in February 1995. The *Drought Policy* currently is due to expire on the earlier of February 27, 1997 or at that point in time when it has been determined that chloride levels in water supplies imported into the Region have returned to pre-drought conditions.
6. Chloride levels in supply waters imported into the Region and in reservoirs are no longer impacted by drought. However, chloride levels in supply waters imported into the Region are generally higher than they were before drought conditions in the late 1980. The higher levels of chloride in imported waters appear to be the result of intensifying demands for and utilization of water resources in watersheds that are the sources of supply waters. In addition, future droughts may affect levels of chloride in supply waters imported into the Region.
7. The Regional Board recognizes the shortage of water in the Region and the need to conserve supplies of fresh water for protection of beneficial uses. Accordingly, the Regional Board supports water reclamation, as described in State Board Resolution No 77-01: *Policy with Respect to Water Reclamation in California*. However, achievements in water conservation and reclamation can increase levels of chloride and other ionic constituents in reclaimed waters and wastewaters that are ultimately discharged to waterbodies in the Region.
8. In order to develop a long-term solution to the chloride compliance problems stemming from elevated levels of chloride in supply waters imported into the Region, the Regional Board has been working with a group of technical advisors, formerly known as the Chloride Subcommittee of the Surface Water Technical Review Committee. This group of technical advisors represents a variety of interests, including: water supply, reclamation, and wastewater management; environmental protection; and water softener industry interests. The group concurs with:
  - (a) an approach to permanently reset water quality objectives for chloride in certain surface waters, using levels of chloride in water supply plus a chloride loading factor,
  - (b) a need to assess long-term loading trends for chloride and other saline constituents.

Furthermore, due to concerns expressed about the potential for future adverse impacts to agricultural resources in Ventura County, the Regional Board proposes to work with a local group of agencies, municipalities, representatives of the agricultural community, and other interested parties in order to clarify chloride objectives needed to protect waters used for irrigation in the Santa Clara River and Calleguas Creek watersheds. In addition, this local group concurs with the need to undertake assessments of significant sources of chloride loading and—contingent upon results—identify methods that could control chloride loading and the costs and effectiveness of the various loading control methods.

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Resolution No. 97-02  
Page Three

9. The Secretary of Resources has certified the basin planning process exempt from certain requirements under the California Environmental Quality Act (CEQA), including preparation an initial study, a negative declaration and environmental impact report (Title 14, California Code of Regulations, Section 15251). As per this certification, an amendment to the *Basin Plan* is considered 'functionally equivalent' to an initial study, negative declaration, and environmental impact report.

Any regulatory program of the Regional Board certified as functionally equivalent, however, must satisfy the documentation requirements of Title 23, California Code of Regulations, Section 377(a), which requires an environmental checklist with a description of the proposed activity, and a determination with respect to significant environmental impacts. On November 15, 1996, the Regional Board distributed information regarding a proposed amendment to the *Basin Plan* to incorporate a *Policy for Addressing Levels of Chloride in Discharges of Wastewaters (Chloride Policy)*. This information included an environmental checklist, a description of the proposed amendment to the *Basin Plan*, and a determination that the proposed amendment could not have a significant effect on the environment.

10. The public has had reasonable opportunity to participate in review of the amendment to the *Basin Plan*. Efforts to solicit public review and comment include: public notification, more than 45 days preceding Board action; public workshops, held on December 2, 1996, December 3, 1996, and January 6, 1997; responses from the Regional Board to oral and written comments received from the public, and a public hearing held on January 27, 1997.
11. In amending the *Basin Plan*, the Regional Board considered factors set forth in section 13241 of the Porter-Cologne Water Quality Control Act (California Water Code, Division 1, Chapter 2, Article 3, et seq., plus others).
12. The amendment is consistent with the State *Antidegradation Policy* (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal *Antidegradation Policy* (40 CFR 131.12).
13. Revision of water quality objectives for chloride is subject to approval by the State Water Resources Control Board, the State Office of Administrative Law, and the US Environmental Protection Agency.

0000371

THEREFORE, BE IT RESOLVED THAT:

1. Water quality objectives for chloride for certain surface waters will be revised as specified below.

Waterbody	New Objective
Los Angeles River—between Sepulveda Flood Control Basin and Figueroa Street (including Burbank Western Channel only)	190 mg/L
Los Angeles River—between Figueroa Street and estuary (including Rio Hondo below Santa Ana Freeway only)	190 mg/L
Rio Hondo—between Whittier Narrows Flood Control Basin and Santa Ana Frwy	180 mg/L
San Gabriel River—between Valley Blvd. and Firestone Blvd. (including Whittier Narrows Flood Control Basin, and San Jose Creek downstream of 71 Frwy only)	180 mg/L

These new objectives are set at the lower of (i) levels needed to protect beneficial uses, or (ii) chloride levels in supply waters imported into the Region plus a chloride loading factor of 85 mg/L. The levels at which the new water quality objectives have been set are expected to accommodate fluctuations in chloride concentrations that may be due to future drought. Although the new water quality objectives do not match background levels of chloride, they nevertheless are expected to be fully protective of drinking water and freshwater aquatic life.

2. Due to concerns expressed about the potential for future adverse impacts to agricultural resources in Ventura County, water quality objectives for chloride in the Santa Clara River and Calleguas Creek watersheds will not be revised at this time. To address compliance problems with chloride limits based on existing water quality objectives, the Regional Board hereby grants variances (interim relief) to existing dischargers identified on Attachment A. The Executive Officer is directed to notify these dischargers that they are subject to surface water interim limits specified below.

Waterbody Segments for which Existing Dischargers Are Subject to Interim Chloride Limits	Interim Chloride Limit
Santa Clara River—between Bouquet Canyon Road Bridge and West Pier Highway 99	190 mg/L
Santa Clara River—between West Pier Highway 99 and Blue Cut gaging station	190 mg/L
Santa Clara River—between Blue Cut gaging station and A Street (Fillmore)	190 mg/L
Arroyo Simi and tributaries—upstream Madera Road	160 mg/L
Arroyo Simi—downstream Madera Road, Arroyo Las Posas, and tributaries	190 mg/L
Calleguas Creek and tributaries—between Potrero Road and Arroyo Las Posas (including Conejo Creek, Arroyo Conejo, and Arroyo Santa Rosa)	190 mg/L

The variance period for interim relief will extend for three years following final approval of the amendment. During this period, the Regional Board expects that the local group of agencies, municipalities, representatives of the agricultural community, and other interested parties which have commented upon this policy will work together to: (i) clarify water quality objectives needed to protect waters used for irrigation in the Santa Clara River and Calleguas Creek

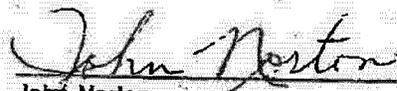
0000372

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Page Six

8. Resolution No. 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region (Drought Policy)*, which was intended to provide short-term and temporary relief to dischargers who were unable to comply with limits for chloride due to the effects of drought on chloride levels in supply waters, is hereby rescinded with the adoption of this resolution.

While this resolution and amendment to the *Basin Plan* are under review by the State Water Resources Control Board, Office of Administrative Law, and the US Environmental Protection Agency, the Regional Board will evaluate compliance consistent with provisions set forth in this resolution.

I, John Norton, Acting Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on January 27, 1997.

  
John Norton  
Acting Executive Officer

IWP

0000374

# EXHIBIT

“7”

4837-0090-6752.2

# California Regional Water Quality Control Board

## Los Angeles Region



Gray Davis  
Governor

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ental  
action

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640  
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To: Interested Parties  
From: Elizabeth Erickson  
Assoc. Eng. Geologist, TMDL Unit  
Los Angeles Regional Water Quality Control Board  
Melinda Becker  
Unit Chief, TMDL Unit

Date: June 26, 2000

Subject: Notice of Continued Public Hearing for a proposed amendment to the California Regional Water Quality Control Plan for the Los Angeles Region, for Water Quality Objective (Chloride) Changes at Santa Paula and Santa Clarita Reaches of the Santa Clara River

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) will continue the hearing to consider a proposed amendment to the California Regional Water Quality Control Plan for the Los Angeles Region, to incorporate revised water quality objectives for chloride in the reaches at Santa Paula and Santa Clarita of the Santa Clara River.

*A Public Hearing will be held on July 27, 2000  
at 9 a.m. at the Richard H. Chambers U.S. Court of Appeals Building  
125 South Grand Avenue  
Pasadena, California*

### Background:

The Santa Clara River is located in Los Angeles and Ventura Counties, California. It extends from McGrath State Beach to east of the town of Santa Clarita.

The Regional Board previously determined that the level of chloride in the reaches between the Los Angeles/Ventura County line and Bouquet Canyon of the Santa Clara River exceeded water quality standards (WQS). This determination was made after reviewing data collected by Regional Board staff, other agencies, and from NPDES receiving water monitoring reports. Based upon Regional Board staff findings, the Santa Clara River was listed on California's 1998 Clean Water Act (CWA) Section 303(d) list as water quality impaired due to chloride.

The proposed Basin Plan amendment was developed after assessing the impairments described in the 1998 303(d) list. The draft amendment proposes to revise the chloride objective from 80 mg/l to 100 mg/l for the reach at Santa Paula and from 100 mg/l to 143 mg/l for the reaches between the Los Angeles/Ventura county line and Bouquet Canyon.

If adopted, the Basin Plan would be amended to add a footnote to Table 3-8 Water Quality Objectives for Selected Constituents in Inland Surface Waters, Recommended Objective for Beneficial Use Categories. The footnote would read "crop sensitivity to chloride varies so that objectives set to be protective of agriculture may be higher than the lowest recommended objective of 100 mg/l."

The Basin Plan would also be amended to add a footnote to Table 3-8 Water Quality Objectives for Selected Constituents in Inland Surface Waters. The footnote would read "compliance with this objective may be measured as an instantaneous maximum or as a rolling 12 month average."

**California Environmental Protection Agency**



*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

- 2 -

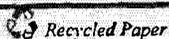
The proposed Basin Plan amendment was first presented to the Board on April 13, 2000. Additional information on the cost of the proposed action was requested by the Regional Board and the item was continued. In addition, new information became available on water rights and endangered species which will be presented for the Board's consideration.

Attached is an addendum to the staff report for this amendment to be considered at the July 27, 2000 hearing.

**Attachments:**

- (a) Addendum to the Staff Report for the Basin Plan Amendment for Chloride Standards Change in the Santa Clarita and Santa Paula Reaches of the Santa Clara River
- (b) California Environmental Quality Act Checklist and Determination with Respect to Significant Environmental Impacts

***California Environmental Protection Agency***



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# EXHIBIT

## “8”

4837-0090-6752.2

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# Staff Report Addendum

## ***Basin Plan Amendment to Modify the Chloride Objective for Reaches at Santa Clarita and at Santa Paula of the Santa Clara River***

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### **Synopsis**

Board members will recall from the April 13, 2000 Board meeting that the interim chloride limits of 190 mg/L will expire in January 2001. These limits were intended to provide temporary relief to dischargers while the issue was researched in detail. At the time, these increasing levels were thought to be due to increasing levels of chloride in imported water, primarily the result of prolonged drought conditions. In 1997, the Board instructed staff to assess chloride objectives in the Santa Clara and Calleguas Creek watersheds. Agricultural water supply is a designated beneficial use in these watersheds, and depending on the crops grown, this beneficial use can be especially sensitive to chloride. Staff's presentation at the April 13 Board meeting was

in response to the Board's earlier directive, and represents the results of nearly 2 years of meetings with stakeholders and supporting studies.

During the April 13, 2000 Board meeting staff recommended that the existing chloride objectives for reaches at Santa Clarita be increased from 100 mg/L to 143 mg/L, and that the objective for the reach at Santa Paula be increased from 80 mg/L to 100 mg/L. Compliance with the objectives was to be based on a rolling 12-month average. In addition, a maximum, not-to-exceed concentration of 180 mg/L would apply to both the Santa Clarita and Santa Paula reaches. At that meeting, the Board directed staff to review in more detail the cost implications of the recommended actions.

Staff's review confirmed the earlier findings that the cost of meeting the proposed objectives in the Santa Clarita and Santa Paula reaches is affordable. This is in part due to the low sewage rates currently enjoyed by area residents.<sup>1</sup> Staff also found that although it will be more expensive to meet the existing objectives, these costs also are affordable for the Santa Clarita reach communities, but less so for Santa Paula. In addition, staff identified treatment strategies that may be less costly than those proposed by the Los Angeles County Sanitation District (LACSD).

Santa Paula's average sewage rates will soon be increasing to \$14 per month to pay for plant upgrades unrelated to the chloride objective. Should additional treatment be required to meet the existing or proposed chloride objectives, rates could increase to levels that are relatively high when compared to other cities in California and other western states. When assessing the affordability, it is important to note that the median income of ratepayers in Santa Paula is lower than in the Santa Clarita reach communities.

It is possible that the Santa Paula POTW will meet the proposed objective of 100 mg/L without additional treatment. The discharge is located downstream from the confluence with Sespe Creek. If the permit allows for a mixing zone, it is likely that Santa Paula will be able to meet the proposed objective without chloride removal. It is uncertain whether a mixing zone will be allowed in future permits.

---

<sup>1</sup> The average sewage rate for the Santa Clarita reach communities is approximately \$9 per month.

Since the April 13, 2000 Board meeting the following new information has become available:

- Questions Regarding Assimilative Capacity Estimates. Testimony before the Public Utilities Commission and a recent Superior Court ruling (County of Ventura vs. County of Los Angeles et al., issued on May 31) raises questions regarding whether sufficient water supplies exist to support the proposed Newhall Ranch project. Overdrafts of the groundwater aquifers could reduce the surface water flow in the Santa Clara River and thus its capacity to assimilate chloride loading. This was one of the underlying assumptions of the initial staff recommendations.
- New Finding of an Endangered Species. On May 30, 2000 the United States Forest Service (USFS) confirmed the presence of an endangered species, the unarmored three-spine stickleback, in the lower part of Bouquet Canyon. Neither staff nor the stickleback experts consulted, identified any salt-tolerance work for this sub-species. Therefore, at this time any impacts from raising the objective are unknown.
- Required Change in Designated Beneficial Use. The State Water Resources Control Board (SWRCB) staff and counsel have advised the Regional Board staff that, in their opinion, a change in the chloride objective to 143 mg/L in the Santa Clarita reaches would necessitate a change in the designated beneficial use in the *Basin Plan* to "Restricted Agricultural Water Supply." This would be a new designated beneficial use category in the *Basin Plan*. This would require an additional Basin Plan amendment for the initial staff recommendation to be approved.

### **Recommendations**

Staff recommends that the Board still consider changing the chloride *Basin Plan* objective at Santa Clarita from 100 mg/L to 143 mg/L, and at Santa Paula from 80 mg/L to 100 mg/L when the interim objectives expire next January. These objectives would be based on a rolling 12-month average. In addition, a maximum, not-to-exceed chloride concentration of 180 mg/L would be applied to both the Santa Clarita and Santa Paula reaches.

Alternative actions that the Board may wish to consider include:

- No Action. The result of this alternative will be that the existing objectives of 80 mg/L for the Santa Paula reach and 100 mg/L for the Santa Clarita reaches will be effective when the Chloride Policy expires in January 2001.
- Maintain the existing objective of 100 mg/L at the Santa Clarita reaches and adopt the proposed objective of 100 mg/L at the Santa Paula reach.

The likely consequences associated with the existing and proposed chloride objectives are summarized in Table 1 and Table 2 for the Santa Clarita reaches and the Santa Paula reach, respectively.

**Table 1**  
**Alternatives for Santa Clarita Reaches**

Alternatives	Pros	Cons	Further Work Required
Revise Objective to 143 mg/l	Supports Agriculture Beneficial Use with existing practices.	Does not support direct use of surface water for agriculture, unless soils are periodically leached with an alternate water supply with a lower chloride concentration.	Need to develop restricted agricultural beneficial use and "downgrade" beneficial use.
	Minimal treatment costs to control short periods of high discharge concentration.	Only a temporary solution in the event that groundwater volume and resultant surface water flows decrease due to growth.	
	Increased sewage rates are below statewide average.		
Maintain Existing Objective 100 mg/l	Supports direct use of surface water for agriculture.	Treatment will require an increase in sewage rates.	TMDL will need to be completed (although most of the work has been done).
	Increased sewage rates are close to statewide average.		

**Table 2**  
**Alternatives for Santa Paula Reach**

Alternatives	Pros	Cons	Further Work Required
Revise Objective to 100mg/l	Supports direct use of surface water for agriculture. No additional treatment costs.		
Maintain Existing Objective 80mg/l	Supports direct use of surface water for agriculture.	Increase in sewage rates to among the highest in California.	TMDL will need to be developed (although most of the work has been done).

**Cost Analysis**

Per the Board's direction on April 13, 2000, staff conducted a more detailed economic analysis. Based on new information received since the Board meeting (see pages 14-16 herein), staff now believes that chloride removal will be required in the future due to the impacts of growth. Therefore, the new cost analysis includes estimates for near-term and delayed chloride removal treatment. The exact year by which chloride removal will be required is unknown. However, the need for treatment will be influenced by the overdrafts of groundwater aquifers that are in communication with the Santa Clara River. Although there is no clear agreement as to when an overdraft of groundwater aquifers will occur, the year 2015 was selected for the delayed treatment cost analysis.

Verification of the Sanitation Districts' Cost Estimates

The cost estimates provided by the dischargers were verified by comparison with those reported for existing reverse osmosis plants in California and those reported in a three-year Metropolitan Water District (MWD) salinity management study completed in 1998. The capital costs varied with plant flow, cost to dispose of the brine, and to a lesser extent, salinity of the influent. Actual costs may be less because of potential alternative funding sources (e.g., MWD) and revenues from the sale of the treated effluent which were not considered here.

### Alternative Treatment Cost Analysis

In an attempt to think "outside of the box," staff identified alternatives to the conventional reverse osmosis treatment process, on which LACSD based its costs analysis. First, staff considered the various sources of chloride in the POTWs' effluent. As shown in Figure 1, these sources include imported water; brine from home water softeners; chlorides contained in soaps, detergents, and other cleaning products; and disinfection of effluent with sodium hypochlorite and other reagents containing chlorine (identified as "treatment" in Figure 1).

Recognizing the large chloride contribution from home water softeners, staff initially focused on a means for eliminating this source. A method for "softening" water supplies before distribution was evaluated. It was theorized that if optimally conditioned water was available at the tap, residents would have no incentive to invest in the expense of installing new water softeners. Furthermore, with an education campaign and an aggressive rebate program, water districts could effectively remove many in-place water softeners. However, due to the expense of constructing a piping system to bring the supply water to a central treatment facility, the cost of softening the water supply made this approach more costly than other alternatives.

Other approaches, including moving the outfall in an attempt to secure an effective mixing zone and blending of water supplies, were not considered to be viable. These approaches were found to have limited applications and/or to be more costly. Moving the outfall of Santa Paula to below the point of agricultural diversion was not particularly costly, but success in ensuring compliance through mixing was not assured. Furthermore, in the case of Santa Clarita, maintaining stream flow for protection of aquatic species and riparian habitat precludes moving the outfall to the ocean or to downstream tributaries. Blending of water from groundwater supplies was not considered to be a viable alternative. The groundwater in Santa Paula is very hard, and the groundwater in Santa Clarita is already allocated.

Ultra-violet (UV) disinfection of the discharge, which eliminates the chloride contribution from some traditional chlorine disinfection processes, would likely result in near-term compliance with the proposed objective (143 mg/L), but not the existing objective (100 mg/L) in Santa Clarita.

# EXHIBIT “9”

4837-0090-6752.2

**Agenda Item #10**

**Basin Plan Amendment  
for the  
Santa Clara River  
Public Hearing**

**Dec. 7, 2000**

DOC #999223

1 CHAIRMAN NAHAI: I shall.

2 Would all those who are going to provide  
3 testimony in connection with this matter please rise and  
4 repeat after me:

5 I do solemnly swear.

6 ALL PERSONS: I do solemnly swear.

7 CHAIRMAN NAHAI: That the testimony I'm about  
8 to give.

9 ALL PERSONS: That the testimony I'm about to  
10 give.

11 CHAIRMAN NAHAI: Will be the truth.

12 ALL PERSONS: Will be the truth.

13 CHAIRMAN NAHAI: The whole truth.

14 ALL PERSONS: The whole truth.

15 CHAIRMAN NAHAI: And nothing but the truth.

16 ALL PERSONS: And nothing but the truth.

17 CHAIRMAN NAHAI: Under penalty of perjury.

18 ALL PERSONS: Under penalty of perjury.

19 CHAIRMAN NAHAI: Thank you.

20 We have the staff presentation.

21 MR. BISHOP: Good morning, board members. My  
22 name is Jonathan Bishop. I'm the Chief of the Regional  
23 Program Section of the Regional Board.

24 Items 10.1 and 10.2 are closely related items  
25 that deal with longstanding solidity issues in our  
26 region. Up until a couple of days ago, staff was fully  
27 intending to recommend an increase in the chloride  
28 objectives for the Santa Clara reach -- Santa Clarita

30

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1 reach of the Santa Clara River from 100 milligrams per  
2 liter to 143 milligrams per liter and believed there was  
3 a firm, scientific and legal basis for this  
4 recommendation.

5           On November 29th, we received a letter from the  
6 United Water Conservation District which supported in  
7 general the proposed modification of the chloride  
8 objective but stated that the sample they had collected  
9 in September recorded a chloride concentration of 137  
10 milligrams per liter in the reach directly downstream of  
11 the Santa Clarita reach. The chloride objective in this  
12 reach, which is between Santa Clarita and Santa Paula  
13 reaches, is 100 milligrams per liter and was not being  
14 considered for change.

15           The information was a concern to staff. Staff  
16 followed up with United Water Conservation District and  
17 requested additional data that they had collected over  
18 the past two years. After careful review of this data,  
19 which I will cover later in the presentation, staff must  
20 now reconsider the recommendation to increase the  
21 objective in the Santa Clarita reach.

22           I'd like to spend a few minutes to describe the  
23 history of this issue before we get into the new  
24 information.

25           Okay. To orient you, here's a map depicting  
26 the Santa Clara River Watershed. The watershed spans  
27 across both Ventura and Los Angeles County. See the  
28 County Line right here.

31

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1 April.

2 As you recall, staff proposed to increase the  
3 chloride objective in the Santa Clara reaches from 100  
4 milligrams per liter to 143 and in the Santa Paula  
5 reaches increase the objective from 80 to 100 milligrams  
6 per liter. The new objective were to be the average  
7 concentration in the river measured based on a rolling  
8 12-month average. In addition, a maximum not to exceed  
9 a limit of 180 milligrams per liter would apply.

10 These limits were justified as the absolute  
11 maximum that could be allowed and still support the most  
12 sensitive beneficial uses, which is downstream  
13 agriculture supply. It was determined that the local  
14 crops grown, avocados and strawberries, were the most  
15 sensitive.

16 The consensus among the agricultural experts  
17 consulted was that these crops require irrigated water  
18 with a maximum chloride concentration of between 100 and  
19 120 milligrams per liter. However, in the Santa Clarita  
20 reaches there are and have never been avocado or  
21 strawberries grown. The intermediate reaches do have  
22 sensitive crops, but this proposal assumes that the  
23 intermixing of groundwater provides enough assimilative  
24 capacity to reduce concentration to 100 milligrams per  
25 liter prior to use by agriculture. The recent  
26 information brings this assumption into question.

27 In Santa Paula, however, the surface water is  
28 being used directly within the reach. Therefore, the

35

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1 the accompanying resolution to extend the interim limits  
2 for chloride contained in this accompanying resolution  
3 to allow time for the development of the TMDL.

4 And I'm happy to answer any questions and try  
5 and explain issues.

6 CHAIRMAN NAHAI: Thank you, Jon. And I think  
7 I'd like to comment that the tremendous effort and  
8 outreach that has accompanied this debate on the part of  
9 the board staff is very much appreciated by the Board,  
10 and I'm sure it's appreciated by the community as well.

11 Do you have any comments, questions for Jon at  
12 this time?

13 MS. CLOKE: I just had a question about the  
14 difference.

15 MR. LEON: Miss Cloke, hello. I'm sorry. For  
16 the board members in general, I had a comment -- a  
17 couple of comments during the break that some of the  
18 audience members particularly could not hear the board  
19 members. If you would make an effort to get closer to  
20 the mic. Okay. Thank you.

21 MS. CLOKE: How's that? Can you hear me in the  
22 back? If you can't, do this or something and I'll get  
23 the message.

24 All right. In one of the slides that you  
25 showed us you had a seventies average and eighties  
26 average and nineties average. Can you describe to us or  
27 explain to us what you think made or what staff knows  
28 made the change in those numbers?

44

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1 MR. BISHOP: Yeah. I don't think that there is  
2 one answer to say it's been the increase -- it's been a  
3 number of things. It's been increase in population,  
4 which means we have increase in imported water and  
5 increase in sewage, treated sewage.

6 I think we also have a change that we've had a  
7 large aquifer system that's been the buffer for this  
8 chloride over a long period of time, and you look at the  
9 earlier data and it looks very -- it's variable but it  
10 keeps going up and down. I think you're going to hear a  
11 lot about things haven't really changed over time.

12 But, in my view, if you look at that data in  
13 that way, in the seventies, eighties and nineties, there  
14 is a change, and what that change shows to me is that  
15 the assimilative capacity is no longer there. The  
16 groundwater is slowly being saturated with more salts  
17 and that feeds back and forth between the surface and  
18 groundwater.

19 MS. CLOKE: And the other question I have on  
20 this is can you put a value on what -- how much of this  
21 comes from water softeners?

22 MR. BISHOP: I can only give you an estimate  
23 that 40 percent of the chloride load in the waste water  
24 treatment effluent is from residential, and a portion of  
25 that residential load is from water softeners. But how  
26 much of that, I can't give you.

27 MS. CLOKE: And if that -- if you could take  
28 even a portion of that 40 percent out, would that bring

45

BARNEY, UNGERMANN & ASSOCIATES, INC. (888) 326-5900

# EXHIBIT

## “10”

4837-0090-6752.2

**SANTA CLARA RIVER  
CHLORIDE REDUCTION ORDINANCE OF 2008**

The Board of Directors of the Santa Clarita Valley Sanitation District of Los Angeles County ordains as follows:

1. **AUTHORIZATION**

This Ordinance is enacted pursuant to authority contained in the County Sanitation District Act, California Health and Safety Code Sections 4700 *et seq.*, and exercises authority conferred by law including, but not limited to, Chapter 5, Part 12, Division 104 of the California Health and Safety Code, and Article 4, Chapter 1, Part 1, Division 2 beginning with Section 53069.4 of the Government Code.

2. **SHORT TITLE**

This Ordinance shall be known and referred to as the *Santa Clara River Chloride Reduction Ordinance of 2008*.

3. **PURPOSE**

The purpose of this Ordinance is to limit the discharge of chlorides to the Santa Clara River thereby improving the potential for the Santa Clarita Valley Sanitation District of Los Angeles County to comply with requirements of the California Regional Water Quality Control Board, Los Angeles Region. It is also the purpose of this Ordinance to reduce the expenditure of public funds and mitigate rate increases by lessening the need for new capital facilities.

4. **DEFINITIONS**

The following definitions shall apply to the terms used in this Ordinance:

(a.) "District" means the Santa Clarita Valley Sanitation District of Los Angeles County. The District owns and operates a sewer system that conveys wastewater to the Saugus and Valencia Water Reclamation Plants.

(b.) "Person" means any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the state, the federal government, and any of the agencies and political subdivisions of such entities.

(c.) "Plants" means the District's Saugus and Valencia Water Reclamation Plants.

(d.) "Community Sewer System" means the network of facilities owned and operated by the District or that are tributary to the District-owned and operated facilities that convey wastewater from within the District's service area to the Plants.

(e.) "Regional Board" means the California Regional Water Quality Control Board, Los Angeles Region, created and exercising its powers pursuant to the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000 *et seq.*

(f.) "Brine" means a heavily saturated salt solution containing chloride.

DOC #1035050

I

(g.) "Residence" means a structure that is, or is intended to be, in whole or in part, a place of dwelling, whether occupied or not, whether fully constructed or not, and includes, without limitation, homes, whether attached to another structure or not, apartments, condominiums, and mobile homes.

(h.) "Residential self-regenerating water softener" and/or "appliance" means residential water softening or conditioning appliances that discharge Brine into the Community Sewer System. Residential self-regenerating water softeners are also more commonly known as "automatic" water softeners. Residential self-regenerating water softeners only include water softening or conditioning devices that renew their capability to remove hardness from water by the on-site application of a chloride solution to the active softening or conditioning material contained therein, followed by a subsequent rinsing of the active softening or conditioning material.

## 5. FINDINGS

The Board of Directors of the District finds and declares the following:

- a) The Santa Clara River is one of the only remaining natural rivers in Southern California, supporting fish and wildlife, recreation and agriculture in Los Angeles and Ventura Counties.
- b) The District's Plants discharge to the Santa Clara River.
- c) Use of residential self-regenerating water softeners installed prior to 2003 is the most significant controllable source of chloride entering the Community Sewer System and the Plants. Residential self-regenerating water softeners use salt to renew their capacity to remove hardness, and then discharge Brine to the Community Sewer System. Residential self-regenerating water softeners account for approximately 30% of all chloride in the Plant's discharge. Although wastewater is treated to a high level at the District's Plants, the Plants are not designed to remove chloride.
- d) The Regional Board has determined that chloride levels in the Santa Clara River must be reduced, and pursuant to a Total Maximum Daily Load ("TMDL") for chloride established by the Regional Board for Reaches 5 and 6 of the Santa Clara River in Los Angeles County, which became effective May 4, 2005, has required the District to reduce the chloride levels in its Plants' discharge.
- e) The District has adopted and is enforcing regulatory requirements that limit the volume and concentrations of chloride discharges from non-residential sources to the Community Sewer System to the extent technologically and economically feasible.
- f) The District has adopted and is enforcing an ordinance prohibiting the prospective installation of residential self-regenerating water softeners pursuant to Health & Safety Code Section 116786.
- g) To further reduce chloride in the Plants' discharge, the District must either reduce sources of chloride in wastewater discharged to the Community Sewer System, remove chloride from wastewater at the Plants through construction and operation of expensive and energy-intensive advanced treatment facilities, or both. Construction and operation of advanced treatment facilities for chloride removal at the Plants will result in the production of Brine, which will also require disposal. If residential self-regenerating water softeners are not removed, the incremental present worth of construction and operation of advanced treatment

and Brine disposal facilities to remove chloride contributed by residential self-regenerating water softeners is approximately \$73 million.

- h) Reducing chloride levels by requiring the removal of all remaining installed residential self-regenerating water softeners discharging to the Community Sewer System will cost the District approximately \$2-3 million.
- i) Reducing chloride levels by requiring the removal of all installed residential self-regenerating water softeners would save the District's ratepayers approximately \$70 million, based on the difference between the cost of residential self-regenerating water softener removal and the incremental cost of new advanced treatment and Brine disposal facilities to remove the same amount of chloride.
- j) Removal of residential self-regenerating water softeners within the District is estimated to take approximately one year after the effective date of this Ordinance. Under the TMDL, the District must perform environmental review, permitting, design and construction of new advanced treatment and Brine disposal facilities for the removal of chloride by May 4, 2016. Therefore, removing residential self-regenerating water softeners will reduce chloride in discharges to the Santa Clara River sooner than installing advanced treatment and Brine disposal facilities to achieve an equivalent level of chloride reduction.
- k) The removal of all installed residential self-regenerating water softeners is a necessary and cost-effective means of achieving timely compliance with a TMDL issued by the Regional Board for the Santa Clara River.
- l) Residents within the District will maintain the ability to soften or condition their water by using water softening or conditioning devices that do not discharge Brine to the Community Sewer System. Among these are portable exchange water softeners, which use a removable tank to soften water. These tanks are serviced by facilities located outside the District's service area that are permitted to treat and dispose of the Brine used to regenerate them. Based on available information, sufficient capacity to treat Brine exists in Los Angeles County, and therefore, portable exchange water softeners remain available as a water softening option for residents affected by this Ordinance.
- m) Based on available information, the adoption and implementation of this Ordinance will avoid or significantly reduce the costs associated with advanced treatment for chloride removal and Brine disposal that otherwise would be necessary to meet the TMDL.
- n) The District has established a voluntary program to compensate owners of residential self-regenerating water softeners within its service area for 100% of the reasonable value of each removed residential self-regenerating water softener and the reasonable cost of the removal and disposal of that residential self-regenerating water softener. This program shall remain in effect until the Effective Date of this Ordinance. The program is expected to result in the removal of 3,300 self-regenerating water softeners. The reduction in chloride levels resulting from the voluntary program is expected to be 4,400 pounds per day.
- o) On and after the Effective Date of this Ordinance, the District will continue a program to compensate owners of residential self-regenerating water softeners within its service area for 75% of the reasonable value of each removed residential self-regenerating water softener and the reasonable cost of the removal and disposal of that residential self-regenerating water

softener. Approximately 3,200 self-regenerating water softeners are expected to be removed. The potential reduction in chloride levels expected as a result of the program is 4,300 pounds per day.

**6. REQUIREMENT FOR REMOVAL OF RESIDENTIAL SELF-REGENERATING WATER SOFTENERS**

Every person who has a residential self-regenerating water softener that is installed upon his or her property or premises, and every person occupying or leasing the property or premises of another who has a residential self-regenerating water softener installed thereon, that discharges into the Community Sewer System shall remove and dispose of the installed residential self-regenerating water softener within 180 days after the Effective Date of this Ordinance.

**7. ADMINISTRATIVE ENFORCEMENT**

- a) The Chief Engineer and General Manager of the District ("Chief Engineer") shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Chief Engineer may be delegated to persons acting in the beneficial interest of or in the employ of the District. The Chief Engineer shall enforce this Ordinance by (1) performing public outreach to inform residents of the terms of this Ordinance and to encourage voluntary compliance, (2) withholding administrative enforcement actions until 180 days after the Effective Date of the Ordinance have passed to allow all affected residents adequate time to remove their installed residential self-regenerating water softeners, (3) monitoring flows within the Community Sewer System to determine the locations of residential self-regenerating water softeners, and/or (4) conducting inspections upon reasonable notice of any residence that discharges to the Community Sewer System.
- b) The Chief Engineer may issue a Notice of Violation to any Person who fails to remove a residential self-regenerating water softener as required by this Ordinance. A Notice of Violation shall allow a period of 60 days to correct the violation and to remove and dispose of the installed residential self-regenerating water softener. Any Person violating this Ordinance after issuance of Notice of Violation and the subsequent 60-day period shall pay an administrative fine to the District in an amount not to exceed \$1,000.00 for such violation.
- c) Any Person who has received a Notice of Violation may within 30 days request a hearing and review by a hearing officer of the District. The hearing shall be held within 30 days of the request. Following the hearing, the District's hearing officer may dismiss the violation or issue an Administrative Order for the imposition of an administrative fine and the removal of any installed appliance. Service of the Administrative Order may be made by personal delivery or by first class mail addressed to the Person at the address listed in the notice. An Administrative Order may be appealed in accordance with the provisions of Government Code Section 53069.4.
- d) The owner of a residential self-regenerating water softener subject to administrative enforcement under this section may elect to have the District remove the residential self-regenerating water softener from the residence. The owner retains the right to compensation for 75% of the reasonable value of the residential self-regenerating water softener.

8. **VIOLATION**

Any Person who violates any of the provisions of this Ordinance following the issuance of a final Administrative Order under Section 7 is guilty of a misdemeanor punishable by a fine of not to exceed \$1,000.00 or by imprisonment not to exceed 30 days or by both such fine and imprisonment. The amount of any such fine shall be first allocated to pay the District's costs of enforcement.

9. **SEVERABILITY**

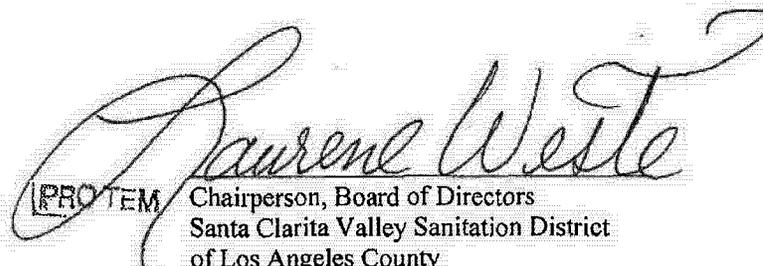
If any provision of this Ordinance or the applicability thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid portion or application, and to that end the provisions of this Ordinance are severable.

10. **REFERENDUM**

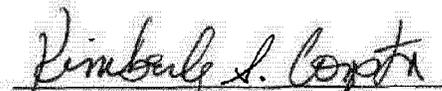
Pursuant to California Health & Safety Code Section 116787(b), this Ordinance shall not be effective until it is approved by a majority vote of the qualified votes cast in a regularly scheduled election, held in the District's service area, in a referendum in accordance with applicable provisions of the Elections Code.

11. EFFECTIVE DATE

This Ordinance shall become effective 30 days from the date of final passage by the Board of Directors and subsequent approval by the voters pursuant to referendum, but no earlier than January 1, 2009.

  
PRO TEM Chairperson, Board of Directors  
Santa Clarita Valley Sanitation District  
of Los Angeles County  
JUN 1 1 2008

ATTEST:

  
Clerk, Board of Directors  
Santa Clarita Valley Sanitation District  
of Los Angeles County

PASSED AND ADOPTED by the Board of Directors of the Santa Clarita Valley Sanitation District of Los Angeles County on June 11, 2008 by the following vote:

AYES: Directors Burke and Weste

NOES: None

ABSENT: Director Kellar

ABSTAIN: None

  
Secretary of the Board of Directors  
Santa Clarita Valley Sanitation District  
of Los Angeles County

# EXHIBIT “11”

4837-0090-6752.2

## **Attachment 4.3.2-2**

*Memorandum Dated October 12, 2000, from Sheila Vassey (Office  
of Chief Counsel, SWRCB) to Jon Bishop (LARWQCB),  
Re: "Agricultural Beneficial Use in the Santa Clara River."*



Winston H. Bicker  
Secretary for  
Environmental  
Protection

## State Water Resources Control Board

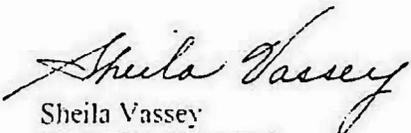
### Office of Chief Counsel

901 P Street • Sacramento, California 95814 • (916) 657-2154  
Mailing Address: P.O. Box 100 • Sacramento, California 95812-0100  
FAX (916) 653-0428 • Internet Address: <http://www.swrcb.ca.gov>



Gray Davis  
Governor

TO: Jon Bishop  
Section Chief, Regional Programs  
Los Angeles RWQCB

FROM:   
Sheila Vassey  
Senior Staff Counsel  
OFFICE OF CHIEF COUNSEL

DATE: October 12, 2000

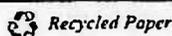
SUBJECT: AGRICULTURAL BENEFICIAL USE IN SANTA CLARA RIVER

This memorandum confirms our telephone discussion on October 3, 2000, regarding the Los Angeles Regional Water Quality Control Board's proposed water quality control plan amendment for the Santa Clara River. In that conversation I concluded that the proposed chloride objective of 143 milligrams per liter (mg/l) for the Santa Clarita reach will protect the existing agricultural use for that stretch of the Santa Clara River. The reasons are explained below.

The evidence in the record apparently indicates that water from the Santa Clarita reach of the Santa Clara River is not currently used to irrigate salt-sensitive crops, such as avocados and strawberries. Nor has it been used in the past for this purpose. Also, chloride levels in the Santa Clarita reach have apparently not changed for the past 25 years or so. They are approximately 143 mg/l. Based on this information, I conclude that the proposed chloride objective of 143 mg/l is protective of the existing agricultural beneficial use. Therefore, it is unnecessary to adopt a subcategory of the agricultural use, such as a "restricted agricultural use".

My previous conclusion that the proposed objective would not be protective of the existing designated agricultural use was based on the assumption that waters from the Santa Clarita reach are used, or were used in the past, to irrigate salt-sensitive crops. Information in the staff report indicates that irrigation waters with a chloride level of 143 mg/l could damage these crops, unless certain measures are taken to avoid the damaging effects. For these reasons, I concluded that the proposed objective would protect only a "restricted agricultural use."

California Environmental Protection Agency



# EXHIBIT "12"

4837-0090-6752.2

State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R02-018

October 24, 2002

Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region  
to Incorporate a Total Maximum Daily Load for Chloride in the Upper Santa Clara River

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to develop water quality standards which include beneficial use designations and criteria to protect beneficial uses for each water body found within its region.

The Regional Board carries out its CWA responsibilities through California's Porter-Cologne Water Quality Control Act and establishes water quality objectives designed to protect beneficial uses contained in the Water Quality Control Plan for the Los Angeles Region (Basin Plan).

3. Section 303(d) of the CWA requires states to identify and to prepare a list of water bodies that do not meet water quality standards and then to establish load and waste load allocations, or a total maximum daily load (TMDL), for each water body that will ensure attainment of water quality standards and then to incorporate those allocations into their water quality control plans.
4. The Upper Santa Clara River was listed on California's 1998 section 303(d) list, due to impairment for chloride, which is present at levels that exceed the water quality standard and do not protect the most sensitive beneficial uses of the water body.
5. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete TMDLs for all the Los Angeles Region's impaired waters within 13 years.
6. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (e.g., USEPA, 1991). A TMDL is defined as "the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background" (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at "levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations

October 24, 2002

9-149

- and water quality" (40 CFR 130.7(c)(1)). The provisions in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters.
7. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Basin Plan and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
  8. The Santa Clara River is located in Los Angeles and Ventura Counties, California. The proposed TMDL addresses documented chloride water quality impairments in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA303(d) list Reach 8) of the Santa Clara River that are located upstream of the United States Geological Survey Blue Cut Gauging Station near the Los Angeles/Ventura County line.
  9. The Regional Board's goal in establishing the above-mentioned TMDL is to restore and maintain the agricultural supply (AGR) and groundwater recharge (GWR) beneficial uses of the Santa Clara River as established in the Basin Plan. Literature studies have documented a relationship between agricultural supply water quality and chloride concentration. At a public hearing on December 7, 2000, the Regional Board considered modifying the water quality objective for chloride of 100 milligrams per liter (mg/L) above the Blue Cut Gauging Station in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA303(d) list Reach 8). The Regional Board maintained the water quality objective of 100 mg/L (measured instantaneously).
  10. Interested persons and the public have had reasonable opportunity to participate in review of the amendment to the Basin Plan. Efforts to solicit public review and comment include twelve public workshops held between January 1999 and September 2002; public notification 45 days preceding the Board hearing; and responses from the Regional Board staff to oral and written comments received from the public. Additionally, Regional Board staff distributed a preliminary draft of the Staff Report for the Upper Santa Clara River Chloride TMDL on July 19, 2002 to interested parties. A public meeting was held in Santa Clarita on August 1, 2002, where staff received comments on the preliminary draft and answered questions for interested parties and the public. A final draft of the Upper Santa Clara River Chloride TMDL along with a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on October 24, 2002 to consider adoption of the Upper Santa Clara River Chloride TMDL.
  11. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
  12. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act (CEQA) requirements for preparing environmental documents

(Public Resources Code, section 21000 et seq.) and as such, the required environmental documentation and CEQA environmental checklist have been prepared.

13. The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.
14. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
15. The Basin Plan amendment incorporating a TMDL for chloride at the Upper Santa Clara River must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA. A Notice of Decision will be filed.

**THEREFORE**, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:

Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region to incorporate the elements of the Upper Santa Clara River Chloride TMDL as set forth in Attachment A hereto.

2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
3. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.
4. If during its approval process the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on October 24, 2002.



Dennis A. Dickerson  
Executive Officer



Winston H. Hickox  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board Los Angeles Region

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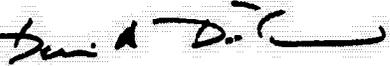
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**TO:** Stan Martinson, Chief  
Division of Water Quality  
State Water Resources Control Board

**FROM:** Dennis A. Dickerson   
Executive Officer

**DATE:** January 16, 2003

**SUBJECT:** MINOR MODIFICATIONS TO THE BASIN PLAN AMENDMENT  
INCORPORATING A TOTAL MAXIMUM DAILY LOAD FOR CHLORIDE  
IN THE UPPER SANTA CLARA RIVER

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) has received comments from your staff concerning issues of clarity in the above-referenced basin planning action. Pursuant to Regional Board Resolution No. R02-018, I make the following non-substantive changes as detailed below to the amendment language for clarity and ask that the State Water Resources Control Board and the Office of Administrative Law incorporate these changes into the administrative record for this basin plan amendment.

1. Page 5. The statement "The following table summarizes the key elements of this TMDL" lacks clarity in that it indicates that additional unspecified regulatory requirements exist in another document. The statement should be deleted.

The statement is deleted to provide clarity.

2. Page 5, Table 7-6.1, Numeric Target. The actual numeric target was omitted from this section.

The numeric target is added to provide clarity.

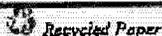
3. Page 5, Table 7-6.1, Numeric Target. The initialization "CSDLAC" should be spelled out.

CSDLAC is "County Sanitation Districts of Los Angeles County." CSDLAC is spelled out for clarity.

4. Page 8, Table 7-6.2, Implementation Tasks. The following sentence lacks clarity: "a) Should the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water

### California Environmental Protection Agency

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Mr. Stan Martinson  
Division of Water Quality  
State Water Resources Control Board

- 2 -

January 16, 2003

quality objective of 100 mg/L, measured as a rolling twelve month average, for three months of any 12 months, the discharger will be responsible for providing an alternative water supply that meets the irrigation requirements of Camulos Ranch and/or other impacted agricultural diversions. . .". Elsewhere in this amendment the 100 mg/L water quality objective is declared an "instantaneous maximum".

4.1 As written, the above implementation language (100 mg/L, as a rolling twelve month average) is not consistent with the objective.

This inconsistency is addressed by inserting the phrase "for the purposes of this TMDL " after the word "measured".

4.2 The amendment indicates that there are two wastewater treatment plants discharging to the river. The above language lacks clarity in that it does not state how the responsible discharger will be identified and when the alternative supply is to be provided.

This statement is changed by adding the phrase "identified by the Regional Board Executive Officer" after the word "discharger".

4.3 The phrase "and/or" allows the discharger the choice of supplying water to the specified ranch or to an alternative ranch. There is no requirement that the affected ranch be supplied with the alternative supply.

The intent of the requirement is clarified by deleting the words "of Camulos Ranch and/or other" so that the phrase reads: ". . . an alternative water supply that meets the irrigation requirements of impacted agricultural diverters . . .".

5. Page 8, Table 7-6.2, Implementation Tasks. The following sentence lacks clarity: "b) should the instream concentration ~ exceed 230 mg/L more than two times in a three year period, the discharger shall be required to submit a work plan within ninety days for an accelerated schedule to reduce chloride discharge."

The amendment is clarified by inserting the phrase "identified by the Regional Board Executive Officer", after the word "discharger" and modifying the final phrase to read "shall be required to submit a work plan for an accelerated schedule to reduce chloride discharge within ninety days of a request by the Regional Board Executive Officer." The above changes are made to the amendment for clarity.

6. Page 8, Table 7-6.2, Implementation Tasks. The following sentence lacks clarity: "3. Groundwater/Surface Water Interaction Model: County Sanitation Districts of Los Angeles

**California Environmental Protection Agency**

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Mr. Stan Martinson  
Division of Water Quality  
State Water Resources Control Board

- 3 -

January 16, 2003

(CSDLAC) will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review and report results." The purpose or subject of the proposal, data collection, etc. is not given. We suggest that a sentence is added regarding the model's purpose.

The following sentence is added for clarity: "The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality."

7. Page 8, Table 7-6.2, Implementation Tasks, Task 3. The following sentence lacks clarity: "The impact of source waters and reclaimed water plans on the WQO and beneficial uses..."

The sentence has been replaced with the following sentence. "The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for chloride management in the watershed will be developed for Regional Board consideration."

The changes discussed in this memorandum appear in the revised basin plan amendment provided in Attachment A hereto. These changes are not substantive and are included to provide clarity.

If you have any questions or require additional information, please call me at (213) 576-6605

Attachments: Attachment A to Resolution R02-018

cc: Regional Board Members  
Joanne Cox, State Water Resources Control Board  
Michael Lauffer, Office of Chief Counsel, State Water Resources Control Board

*California Environmental Protection Agency*

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-4

**Attachment A to Resolution No. R02-018**

**Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region**

**To Incorporate a Total Maximum Daily Load for Chloride in the**

**Upper Santa Clara River**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles Region on October 24, 2002.

**Amendments**

**Table of Contents**

Add:

**Chapter 7. Total Maximum Daily Loads (TMDLs) Summaries**

**7-6 Upper Santa Clara River Chloride TMDL**

**List of Figures, Tables, and Inserts**

Add:

**Chapter 7. Total Maximum Daily Loads (TMDLs)**

**Tables**

**7-6 Upper Santa Clara River Chloride TMDL**

**7-6.1. Upper Santa Clara River Chloride TMDL: Elements**

**7-6.2. Upper Santa Clara River Chloride TMDL: Implementation Schedule**

**Chapter 7. Total Maximum Daily Loads (TMDLs) Summaries**

**Upper Santa Clara River TMDL**

**This TMDL was adopted by:**

**The Regional Water Quality Control Board on October 24, 2002.**

**This TMDL was approved by:**

**The State Water Resources Control Board on [Insert Date].**

**The Office of Administrative Law on [Insert Date].**

**The U.S. Environmental Protection Agency on [Insert Date].**

Element	<p><b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b></p> <p style="text-align: center;"><b>Santa Clara River Chloride</b></p>
<i>Problem Statement</i>	<p>Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River. This objective was set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive and are not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River. Irrigation of salt sensitive crops such as avocados and strawberries with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater are also rising.</p>
<i>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</i>	<p>This TMDL has a numeric target of 100 mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use. These objectives are set forth in Chapter 3 of the Basin Plan.</p> <p>The numeric target for this TMDL pertains to Reaches 5 and 6 of the Santa Clara River and is based on achieving the existing water quality objective of 100 mg/L, measured instantaneously, throughout the impaired reaches. A subsequent Basin Plan amendment will be considered by the Regional Board to adjust the chloride objective based on technical studies about the chloride levels, including levels that are protective of salt sensitive crops, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River, provided that County Sanitation Districts of Los Angeles County choose to submit timely and complete studies in accordance with tasks 2 through 6 of Table 7.6.2.</p>
<i>Source Analysis</i>	<p>The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus Water Reclamation Plant (WRP) and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6.</p>
<i>Linkage Analysis</i>	<p>Linkage between chloride sources and the in-stream water quality was established through a statistical analysis of the WRP effluent and water quality data at Blue Cut and Highway 99. The analysis</p>

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<p><b>Element</b></p>	<p><b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b></p> <p style="text-align: center;"><b>Santa Clara River Chloride</b></p>
	<p>shows that additional assimilative capacity is usually added to Reaches 5 and 6 from groundwater discharge, but the magnitude of the assimilative capacity is not well quantified. Consequently, the Implementation Plan includes a hydrological study (Surface Water/Groundwater Interaction) of the upper reaches of the Santa Clara River.</p>
<p><i>Waste Load Allocations (for point sources)</i></p>	<p>The numeric target is based on the water quality objective for chloride. The proposed waste load allocations (WLAs) are 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP. The waste load allocations are expressed as a concentration limit derived from the existing WQO, thereby accommodating future growth. Other NPDES discharges contribute a minor chloride load. The waste load allocation for these point sources is 100 mg/L.</p>
<p><i>Load Allocation (for non point sources)</i></p>	<p>The source analysis indicates nonpoint sources are not a major source of chloride. The load allocations for these nonpoint sources is 100 mg/L.</p>
<p><i>Implementation</i></p>	<p>Refer to Table 7-6.2</p> <p>The implementation plan proposes that during the period of TMDL implementation, compliance for the WRP effluent will be evaluated in accordance with interim limits based on 2000 - 2001 performance (i.e., effluent chloride concentration at the Valencia and Saugus WRPs). Using the USEPA protocol described in Table 5-1 of the Technical Support Document for Water Quality-based Toxics Control (USEPA, 1991), the average monthly interim limits are 200 mg/L and 187 mg/L, and the maximum daily limits are 218 mg/L and 196mg/L for the Saugus and Valencia WRPs, respectively. Notwithstanding anything to the contrary contained in this Basin Plan Amendment, the foregoing monthly and daily interim limits for chloride shall expire 2-1/2 years from the effective date of this Basin Plan Amendment, whereupon the existing water quality objective of 100 mg/L shall continue in effect. At its discretion, the Regional Board can review the results from Tasks 2 through 6 after 2 and 1/2 years from the effective date of the TMDL and consider reissuing interim limits.</p>
<p><i>Margin of Safety</i></p>	<p>An implicit margin of safety is incorporated through conservative</p>

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Element	<p><b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b></p> <p style="text-align: center;"><b>Santa Clara River Chloride</b></p>
	<p>model assumptions and statistical analysis.</p>
<p><i>Seasonal Variations and Critical Conditions</i></p>	<p>Three critical conditions are identified for this TMDL. The driest six months of the year is the first critical condition for chloride because less surface flow is available to dilute effluent discharge, pumping rates for agricultural purposes are higher, groundwater discharge is less, poorer quality groundwater may be drawn into the aquifer and evapotranspiration effects are greater in warm weather. During drought, the second critical condition, reduced surface flow and increased groundwater extraction continues through several seasons with greater impact on groundwater resource and discharge. The third critical condition is based on the recent instream chloride concentration increases such as those that occurred in 1999, a year of average flow, when 9 of 12 monthly averages exceeded the objective. Data from all three critical conditions were used in the statistical model described. Hydrological modeling will be completed to evaluate whether additional loading will impact the WQO or beneficial uses during non-critical conditions.</p>

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<p><b>Table 7-6.2. Upper Santa Clara River Chloride TMDL:                      Implementation</b></p>	<p><b>Completion                      Date</b></p>
<p><b>Implementation Tasks</b></p> <p><b>1. Alternative Water Supply</b></p> <p>a) Should the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water quality objective of 100 mg/L, measured for the purposes of this TMDL as a rolling twelve month average, for three months of any 12 months, the discharger identified by the Regional Board Executive Officer will be responsible for providing an alternative water supply that meets the irrigation requirements of impacted agricultural diverters, which may be identified during Task III of the implementation plan, until such time as the in-river values do not exceed the water quality objective.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in a three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit a work plan for an accelerated schedule to reduce chloride discharges within ninety days of a request by the Regional Board Executive Officer.</p> <p>2. Progress reports will be submitted by CSDLAC and Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 3, 4, 5 and 6.</p>	<p><b>Effective Date                      of TMDL</b></p>
<p><b>3. Groundwater/Surface Water Interaction Model: County Sanitation Districts of Los Angeles (CSDLAC) will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for chloride management in the watershed developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.</b></p> <p><b>4. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: CSDLAC will quantify sources, execute pilot outreach programs, assess pilots, develop and implement source</b></p>	<p><b>2 years after                      Effective Date                      of TMDL</b></p>

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<p><b>Table 7-6.2. Upper Santa Clara River Chloride TMDL:                      Implementation</b></p> <p><b>Implementation Tasks</b></p>	<p><b>Completion                      Date</b></p>
<p>reduction/pollution prevention and outreach program, and report results.</p> <p>5.Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: CSDLAC will convene a technical advisory committee in cooperation with the Regional Board, review literature, develop methodology for assessment, execute methodology, and report results.</p> <p>6.Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: CSDLAC will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results</p>	
<p>7.Reconsideration of Interim Limit for the Chloride TMDL for the Upper Santa Clara River by the Regional Board at Regional Board discretion.</p>	<p>2.5 years after Effective date of TMDL</p>
<p>8.Develop Site Specific Objectives (SSO) for Chloride for Sensitive Agriculture: CSDLAC will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p> <p>9.Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: CSDLAC will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p>	<p>3 years after Effective Date of TMDL</p>
<p>10.Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p>	<p>3.5 years after Effective Date of TMDL</p>
<p>11.Reconsideration of the Chloride TMDL for the Upper Santa Clara River by the Regional Board.</p>	<p>4 years after Effective Date of TMDL</p>
<p>12.Analysis of Feasible Compliance Measures to Meet Load Allocations from Revised TMDL, if necessary. CSDLAC will assess and report on feasible implementation actions to meet the chloride objective in place after Task 7.</p>	<p>5 years after Effective Date of TMDL</p>
<p>13. Planning, Design, Construction of Advanced Treatment Facilities: CSDLAC will prepare CEQA documents, obtain permits, acquire easements, design system, and construct.</p>	<p>13 years after Effective Date of TMDL</p>

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<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL: Implementation</b>	Completion Date
<b>Implementation Tasks</b> 14. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved.	2.5 years after Effective Date of TMDL or as directed by the Regional Board based on review of Tasks 1-6.

# **EXHIBIT**

## **“13”**

4837-0090-6752.2

STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2003 - 0014

REMANDING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR  
THE LOS ANGELES REGION TO INCORPORATE A TOTAL MAXIMUM  
DAILY LOAD FOR CHLORIDE IN THE UPPER SANTA CLARA RIVER

WHEREAS:

1. The Los Angeles Regional Water Quality Control Board (Regional Board) adopted a revised Basin Plan for the Los Angeles Region on June 13, 1994 which was approved by the State Water Resources Control Board (SWRCB) on November 17, 1994 and by the Office of Administrative Law (OAL) on February 23, 1995.
2. On October 24, 2002, the Regional Board adopted Resolution No. R02-018 (Attachment 1) amending the Basin Plan to incorporate a Total Maximum Daily Load (TMDL) for chloride in the Upper Santa Clara River.
3. SWRCB finds that provisions of the amendment as adopted warranted minor clarification of the language of various provisions.
4. Regional Board Resolution No. R02-018 delegated to the Regional Board Executive Officer authority to make minor, non-substantive corrections to the adopted amendment if needed for clarity or consistency. The Regional Board Executive Officer has made the necessary corrections to the amendment.
5. Regional Board staff prepared documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act, scientific peer review, and other State laws and regulations.
6. SWRCB finds that the amendment as corrected does not adequately resolve issues regarding the appropriateness of the compliance time schedules for implementation tasks.
7. A Basin Plan amendment does not become effective until approved by SWRCB and until the regulatory provisions are approved by OAL.

THEREFORE BE IT RESOLVED THAT:

SWRCB:

1. Remands the amendment to the Basin Plan to incorporate a TMDL for chloride for the Upper Santa Clara River as adopted under Regional Board Resolution No. R02-018 as corrected by the Regional Board Executive Officer (Attachment 2).
2. Directs the Regional Board to consider:
  - (a) Expansion of the current phased-TMDL approach so that County Sanitation Districts of Los Angeles County can complete their implementation tasks by Regional Board-specified dates sequentially and within 13 years of the effective date of the TMDL. If advanced treatment facilities and disposal facilities are found to be necessary for compliance with the TMDL, the Regional Board may consider extending the implementation schedule as necessary to account for events beyond the control of the County Sanitation Districts of Los Angeles County.

- (b) Extension of the interim effluent limits beyond the currently proposed 2½ years so that these limits may remain in effect during the planning construction and execution portions of the TMDL's implementation tasks.
- (c) Whether provision of a long-term alternate water supply to agricultural diverters of surface water by the County Sanitation Districts of Los Angeles County would be appropriate; and consider re-evaluation of the agricultural water quality objective and the agricultural beneficial use designation if such alternate supply is provided. The reevaluation of the alternative water supply should consider re-examining and modifying the trigger and compliance schedule for providing the alternative water supply. The Regional Board's re-evaluation of the objective should consider accounting for the beneficial use(s) to be protected, the quality of the imported water supply to the Upper Santa Clara River watershed and the impacts of periods of drought or low rainfall.
- (d) An integrated solution, which may be a single comprehensive TMDL, for all water quality pollutants in the Santa Clara River basin listed on the Clean Water Act section 303(d) list.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 19, 2003.

  
Maureen Marché  
Clerk to the Board

# EXHIBIT “14”

4837-0090-6752.2

**State of California  
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R03-008**

**July 10, 2003**

**Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Chloride in the Upper Santa Clara River**

**WHEREAS:**

1. The California Regional Water Quality Control Board Los Angeles Region (Regional Board) adopted a revised Basin Plan for the Los Angeles Region on June 13, 1994 which was approved by the State Water Resources Control Board (SWRCB) on November 17, 1994 and by the Office of Administrative Law (OAL) on February 23, 1995.
2. Section 303(d) of the Clean Water Act requires states to identify and to prepare a list of water bodies that do not meet water quality standards and then to establish load and waste load allocations, or a total maximum daily load (TMDL), for each water body that will ensure attainment of water quality standards and then to incorporate those allocations into their water quality control plans. Two reaches of the Santa Clara River near the City of Santa Clarita ("Upper Santa Clara River") were listed on California's 1998 section 303(d) list, due to impairment by chloride, which is present at levels that exceed the water quality objective.
3. Regional Board staff prepared a TMDL analysis and the associated documents to address the chloride impairment of the Upper Santa Clara River. The documents were issued for peer and public review. At a public hearing on October 24, 2002, the Regional Board adopted Resolution No. R02-018 amending the Basin Plan to incorporate a TMDL for chloride in the Upper Santa Clara River.
4. A Basin Plan amendment does not become effective until approved by the SWRCB and until the regulatory provisions are approved by the OAL and USEPA.
5. On February 19, 2003, the SWRCB adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") finding that the Regional Board staff prepared the documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act, scientific peer review, and other State laws and regulations to develop a TMDL.

July 24, 2003

6. In the Remand Resolution, the SWRCB also found that provisions of the amendment as adopted by the Regional Board warranted minor clarification of the language of various provisions. Regional Board Resolution No. R02-018 delegates to the Regional Board Executive Officer authority to make minor, non-substantive corrections to the adopted amendment if needed for clarity or consistency. The Regional Board Executive Officer made the necessary corrections to the amendment.
7. In the Remand Resolution, the SWRCB further found that the amendment as corrected does not adequately resolve issues regarding the appropriateness of the compliance time schedules for implementation tasks. Consequently, the SWRCB remanded to the Regional Board the amendment to the Basin Plan to incorporate a TMDL for chloride for the Upper Santa Clara River.
8. The Remand Resolution directed the Regional Board to consider:
  - a. Expansion of the current phased TMDL approach so that County Sanitation Districts of Los Angeles County can complete their implementation tasks by Regional Board-specified dates sequentially and within 13 years of the effective date of the TMDL. If advanced treatment facilities and disposal facilities are found to be necessary for compliance with the TMDL, the Regional Board may consider extending the implementation schedule as necessary to account for events beyond the control of the County Sanitation Districts of Los Angeles County.
  - b. Extension of the interim effluent limits beyond the currently proposed 2½ years so that these limits may remain in effect during the planning, construction and execution portions of the TMDL's implementation tasks.
  - c. Whether provision of a long-term alternate water supply to agricultural diverters of surface water by the County Sanitation Districts of Los Angeles County would be appropriate; and consider re-evaluation of the agricultural water quality objective and the agricultural beneficial use designation if such alternate supply is provided. The re-evaluation of the alternative water supply should consider re-examining and modifying the trigger and compliance schedule for providing the alternative water supply. The Regional Board's re-evaluation of the objective should consider accounting for the beneficial use(s) to be protected, the quality of the imported water supply to the Upper Santa Clara River watershed and the impacts of periods of drought or low rainfall.
  - d. An integrated solution, which may be a single comprehensive TMDL, for all water quality pollutants in the Santa Clara River basin listed on the Clean Water Act section 303(d) list.

9. Regional Board staff considered the State Board recommendations contained in the Remand Resolution and evaluated options for amending the Implementation Plan in consideration of the remand. The evaluations and recommendations of Regional Board staff are provided in a memo to file entitled, "Options Considered for Revision of Remanded Upper Santa Clara River Chloride TMDL" dated March 27, 2003. The results of Regional Board staff evaluation are shown in the redline version of Attachment A.
  
10. Since adoption of the Upper Santa Clara Chloride TMDL, the Regional Board, County Sanitation Districts of Los Angeles County, and the City of Santa Clarita have been proactively pursuing chloride source reduction. Specifically, the agencies have conducted extensive public outreach and County Sanitation Districts of Los Angeles County has enacted an ordinance banning the installation of self-regenerating water softeners.
  
11. At a public hearing on July 10, 2003, the Regional Board reconsidered Resolution No. R02-018 in light of the Remand Resolution.
  - a. The Regional Board expanded the phased-TMDL approach adopted by the Regional Board in Resolution R02-018 to allow County Sanitation Districts of Los Angeles County (CSDLAC) to complete the implementation tasks sequentially and within 13 years. Specifically, the due date of Task 9, (Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses) is extended to 4 years after the effective date of the TMDL. This will allow the results of studies to be conducted under tasks 3, 4 and 5 of the Implementation Plan (Ground/Surface Water Interaction Model, Chloride Source Identification/Reduction Pollution Prevention and Public Outreach Plan, and Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection) to be considered before Task 9 is completed. The issues of beneficial uses, quality of imported water and impacts of periods of drought or low rainfall will be analyzed in Tasks 3, 4 and 5, which are due two years after the effective date of the TMDL. Table 7-6.2 was revised to reflect these schedule modifications.
  
  - b. The Regional Board extended the currently proposed 2-1/2 years period for interim effluent limits so that the interim limits may remain in effect during the planning, construction, and execution portions of the TMDL's implementation tasks. Further, the Regional Board evaluated recent discharge data and a revision of the interim limit proposed by CSDLA, but did not find sufficient change in the performance data to justify a revision of the interim limit value. Table 7-6.1 was revised to explicitly state that the interim limit remains in effect during the planning, construction, and execution portion of the TMDL's implementation tasks, a period not to extend beyond 13 years from the effective date of the TMDL. Table 7-6.2, was modified to remove the 2-1/2 year period for interim effluent limits.

- c. The Regional Board considered whether a long-term alternate water supply to agricultural diverters would be appropriate. The Regional Board modified the task for Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses to include this assessment. Task 9 of Table 7-6.2 has been modified to reflect this additional analysis.
- d. The Regional Board chose not to incorporate the chloride TMDL into a single comprehensive TMDL addressing all water quality impairments of the Santa Clara River on the 303(d) list. The forthcoming nutrient TMDL for the Santa Clara River has undergone extensive development work and is scheduled to be finalized in 2003. The chloride and forthcoming nitrogen TMDLs address most of the water quality impairments on the 303(d) list for the Santa Clara River.
12. In all other respects, the findings and provisions of Regional Board Resolution R02-018 remain valid and are carried forward. The revisions to the Basin Plan Amendment to incorporate a TMDL for chloride in the Upper Santa Clara River adopted by Resolution R02-018 are shown in attachment A.
13. The revisions proposed to address the Remand Resolution do not alter the environmental analysis, necessity conclusion, and de minimis findings of Regional Board Resolution R02-018.

**THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:**

1. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region to incorporate the elements of the Upper Santa Clara River Chloride TMDL as set forth in Attachment A hereto.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
3. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.

4. If during its approval process the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on July 10, 2003.



Dennis A. Dickerson  
Executive Officer

**State of California  
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R4-2006-016**

**August 3, 2006**

**Amendment to the Water Quality Control Plan for the Los Angeles Region through  
revision of the Implementation Plan for the Upper Santa Clara River Chloride  
TMDL, Resolution 04-004**

**WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:**

- 1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.**
- 2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years.**
- 3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).**
- 4. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.**
- 5. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San**

Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

6. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303d list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the County Sanitation Districts of Los Angeles County (CSDLAC), are two major point sources that discharge to the USCR.
7. At a public meeting on October 24, 2002, the Regional Board considered amending the Basin Plan to include a TMDL for chloride in the USCR. The proposed TMDL included interim waste load allocations for chloride for the WRPs. These interim waste load allocations provide the discharger the necessary time to implement chloride source reduction, complete site specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
8. The Regional Board considered the entire record, including written and oral comments received from the public and the Regional Board staff's response to the written comments. Resolution 02-018, the TMDL for chloride in the USCR, was adopted by Regional Board on October 24, 2002. Resolution 02-018 assigned waste load allocations (WLAs) to major publicly owned treatment works (POTWs), minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River.
9. At a public workshop on February 4, 2003, the State Board considered the TMDL for chloride in the USCR, the entire record, including written and oral comments received from the public and the State Board staff's response to the written comments. At a public meeting on February 19, 2003 the State Board adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board.

10. In response to the Remand Resolution, Regional Board staff revised the TMDL Implementation Plan to address issues identified in the Remand Resolution. On July 10, 2003, the Regional Board adopted Resolution 03-008 to revise the Basin Plan to include a TMDL in the USCR. Resolution 03-008 contained interim waste load allocations for the Saugus and Valencia WRPs and assigned waste load allocations (WLA) to major POTWs, minor point sources, and MS4s permittees discharging to specified reaches of the Santa Clara River.
11. During the time that the State and Regional Boards were considering the chloride TMDL, the National Pollutant Discharge Elimination System (NPDES) permits for the Valencia and Saugus Water Reclamation Plants (WRPs) were under consideration for renewal by the Regional Board. The NPDES permits also included interim discharge limits for chloride which differed from the TMDL interim waste load allocations. The NPDES interim limits are based on the chloride concentration of the water served from Castaic Lake for municipal supply in the Santa Clarita Valley plus a loading factor of 134 mg/L for the Valencia WRP and 114 mg/L for the Saugus WRP, measured as a twelve month rolling average. The loading values are the highest measured at each plant in the last 5 years.
12. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan in attachment A of Resolution No. 04-004 supersedes the Implementation Plan contained in Resolution No. 03-008.
13. The Implementation Plan as specified in attachment A of Resolution No. 04-004 requires the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
14. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," was reviewed and largely corroborated by a Technical Advisory Panel (TAP) that issued a "Critical Review Report" of the LRE.
15. The LRE found that the best estimate of a chloride hazard concentration for avocado crops falls within the range of 100 to 117 mg/L. A similar range of 100 to 120 mg/L was found by the TAP. The existing WQO of 100 mg/L is within the recommended range for the reasonable protection of salt-sensitive crops.

16. In addition to the LRE special study, a collaborative report entitled "Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan (Chloride Source Report)," was completed in November of 2005. This report, led by the CSDLAC, identifies sources of chloride in the USCR as well as strategies for reducing those sources. The potable water supply was identified as the largest source of chloride loading to the USCR. Self-Regenerating Water Softeners (SRWS) in the Saugus and Valencia service area were identified as the second largest source of chloride loading.
17. The second special study required by the Implementation Plan is the "Groundwater/Surface Water Interaction (GSWI) Model." The Regional Board and CSDLAC are working in cooperation to complete this model. Under existing TMDL, the GSWI is due May 4, 2007.
18. At a public hearing on November 3, 2005, the Regional Board was provided with an update on the status of the chloride TMDL and the results of the LRE study. The Board directed staff to evaluate whether revising the TMDL Implementation Plan is appropriate, and to consider the possible impacts of the high chloride level in surface water to groundwater quality.
19. Based on the conclusions of the LRE and the chloride source report, staff proposes four alternatives for the amendment to the Upper Santa Clara River Chloride TMDL: (1) a no-action alternative in which the Regional Board takes no action to revise the schedule, (2) an alternative that does not revise the 13-year TMDL implementation schedule but includes implementation milestones in years 6-13 of the TMDL schedule, (3) an alternative that extends the 13-year schedule, and (4) an alternative that accelerates the 13-year schedule. Staff recommends Alternative 4. Under this alternative, the Regional Board will consider a TMDL amendment to both accelerate the final compliance date and include time-certain tasks for tasks related to the design and treatment of chloride removal processes to reduce chloride loading if deemed necessary. Staff notes there is potential for additional chloride loading of 4 million to 7 million lbs per year while the interim limit (approximately 200 mg/L) is in effect instead of discharge at the WQO (100 mg/L). Staff however believes this discharge can be mitigated by accelerating the TMDL schedule.
20. The Remand Resolution directed the Regional Board to consider a phased approach so that the Districts can complete their implementation tasks by Regional Board specified dates sequentially and within 13 years. This direction was born of concerns expressed by stakeholders to the State Board that they should not be required to expend resources planning and constructing new technologies that the special studies could render unnecessary. The Regional Board, therefore, readopted the TMDL with a 13 year implementation plan. That 13-year period included five years for special studies, feasibility analysis and WQO revisions, if warranted, followed by

eight years for planning, design, and construction of the selected remedy. The eight year time schedule for planning, design, and construction was based on comments submitted by the Districts on October 7, 2002, with a supporting engineering study (Cost Impacts for Compliance with a 100 mg/L Instantaneous Chloride Discharge Limit at the Santa Clara Valley Water Reclamation Plants, Prepared by MWH, October 2002), that eight years is required to plan, design and construct advanced treatment for chloride.

21. With completion of the LRE, and the anticipated completion of the GSWI model by November 20, 2007, the Board finds that sufficient information will be available such that there is no prejudice to the Districts in initiating the feasibility tasks when the GSWI model is completed. Specifically, the LRE studies reveal that at most the WQO could be relaxed up to 117 mg/L, from 100mg/L. These results, coupled with the results of the GSWI modeling, will demonstrate whether the AGR and GWR beneficial uses could still be protected with SSOs that are sufficiently less stringent such that construction of advanced treatment systems would not be necessary. Subsequent TMDL tasks, such as development of SSOs, development of the antidegradation analysis, development of a preplanning report on conceptual measures to meet different hypothetical final wasteload allocations, and preparation and consideration of a Basin Plan Amendment to revise the chloride objective by the Regional Board, can be accomplished in a shorter timeframe than originally contemplated because the range of chloride values identified by the LRE as necessary to protect AGR and GWR is significantly smaller than the potential range of chloride objectives contemplated during development of the TMDL schedule. This action does not require the Districts to complete the planning and design tasks before the Regional Board considers revision of the chloride WQO, preserves the current eight year schedule for planning, design and construction that is currently contained in the TMDL, and also preserves the requirements for the Board to reconsider the schedule twice during the planning, design and construction phase. The Board finds the proposed action complies with State Board Resolution 2003-0014.
22. The Staff Report, as well as a Notice of Exemption, and tentative Basin Plan Amendment were released for public comment on May 5, 2006. The revised Implementation Plan is proposed in Attachment A to this resolution.
23. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the revisions of the Implementation Plan for the Upper Santa Clara River Chloride TMDL do not include revisions to WQOs, and are intended to shorten the time until compliance with standards. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
24. The proposed amendment results in no potential for adverse environmental effects (de minimis finding), either individually or cumulatively, on wildlife

because shortening the time to implementation will not result in different processes from those already contemplated, but will merely advance those processes.

25. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
26. The Basin Plan amendment incorporating a revision for the Implementation Plan in the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. Environmental Protection Agency (U.S. EPA). The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.

Therefore, be it resolved that:

Pursuant to Section 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan by replacing the Implementation Plan contained in Resolution 04-004 with the revised Implementation Plan in Attachment A of this Resolution.

2. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region to incorporate the revisions of the Implementation Plan in the Upper Santa Clara River Chloride TMDL, Table 7-6.2, Implementation Section as set forth in Attachment A hereto.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law (OAL) and the United State Environmental Protection Agency (U.S. EPA).
5. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

7. The text in the Basin Plan, Plans and Policies (Chapter 5), is hereby amended to add:

**"Resolution No. 06-0XX. Adopted by the Regional Water Quality Control Board on August 3, 2006.**

**'Amendment to revise the Implementation Plan in the TMDL for Chloride in the Upper Santa Clara River, Resolution 04-004'.**

**The resolution proposes revisions to the Implementation Plan for the Upper Santa Clara River Chloride TMDL."**

**I, Jonathan Bishop, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on August 3, 2006.**



**Jonathan Bishop  
Executive Officer**

# EXHIBIT “15”

4837-0090-6752.2

State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2006-016  
August 3, 2006

Amendment to the Water Quality Control Plan for the Los Angeles Region through  
revision of the Implementation Plan for the Upper Santa Clara River Chloride  
TMDL, Resolution 04-004

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years.
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
4. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
5. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San

Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

6. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303d list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the County Sanitation Districts of Los Angeles County (CSDLAC), are two major point sources that discharge to the USCR.
7. At a public meeting on October 24, 2002, the Regional Board considered amending the Basin Plan to include a TMDL for chloride in the USCR. The proposed TMDL included interim waste load allocations for chloride for the WRPs. These interim waste load allocations provide the discharger the necessary time to implement chloride source reduction, complete site specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
8. The Regional Board considered the entire record, including written and oral comments received from the public and the Regional Board staff's response to the written comments. Resolution 02-018, the TMDL for chloride in the USCR, was adopted by Regional Board on October 24, 2002. Resolution 02-018 assigned waste load allocations (WLAs) to major publicly owned treatment works (POTWs), minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River.
9. At a public workshop on February 4, 2003, the State Board considered the TMDL for chloride in the USCR, the entire record, including written and oral comments received from the public and the State Board staff's response to the written comments. At a public meeting on February 19, 2003 the State Board adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board.

10. In response to the Remand Resolution, Regional Board staff revised the TMDL Implementation Plan to address issues identified in the Remand Resolution. On July 10, 2003, the Regional Board adopted Resolution 03-008 to revise the Basin Plan to include a TMDL in the USCR. Resolution 03-008 contained interim waste load allocations for the Saugus and Valencia WRPs and assigned waste load allocations (WLA) to major POTWs, minor point sources, and MS4s permittees discharging to specified reaches of the Santa Clara River.
11. During the time that the State and Regional Boards were considering the chloride TMDL, the National Pollutant Discharge Elimination System (NPDES) permits for the Valencia and Saugus Water Reclamation Plants (WRPs) were under consideration for renewal by the Regional Board. The NPDES permits also included interim discharge limits for chloride which differed from the TMDL interim waste load allocations. The NPDES interim limits are based on the chloride concentration of the water served from Castaic Lake for municipal supply in the Santa Clarita Valley plus a loading factor of 134 mg/L for the Valencia WRP and 114 mg/L for the Saugus WRP, measured as a twelve month rolling average. The loading values are the highest measured at each plant in the last 5 years.
12. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan in attachment A of Resolution No. 04-004 supersedes the Implementation Plan contained in Resolution No. 03-008.
13. The Implementation Plan as specified in attachment A of Resolution No. 04-004 requires the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
14. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," was reviewed and largely corroborated by a Technical Advisory Panel (TAP) that issued a "Critical Review Report" of the LRE.
15. The LRE found that the best estimate of a chloride hazard concentration for avocado crops falls within the range of 100 to 117 mg/L. A similar range of 100 to 120 mg/L was found by the TAP. The existing WQO of 100 mg/L is within the recommended range for the reasonable protection of salt-sensitive crops.

16. In addition to the LRE special study, a collaborative report entitled "Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan (Chloride Source Report)," was completed in November of 2005. This report, led by the CSDLAC, identifies sources of chloride in the USCR as well as strategies for reducing those sources. The potable water supply was identified as the largest source of chloride loading to the USCR. Self-Regenerating Water Softeners (SRWS) in the Saugus and Valencia service area were identified as the second largest source of chloride loading.
17. The second special study required by the Implementation Plan is the "Groundwater/Surface Water Interaction (GSWI) Model." The Regional Board and CSDLAC are working in cooperation to complete this model. Under existing TMDL, the GSWI is due May 4, 2007.
18. At a public hearing on November 3, 2005, the Regional Board was provided with an update on the status of the chloride TMDL and the results of the LRE study. The Board directed staff to evaluate whether revising the TMDL Implementation Plan is appropriate, and to consider the possible impacts of the high chloride level in surface water to groundwater quality.
19. Based on the conclusions of the LRE and the chloride source report, staff proposes four alternatives for the amendment to the Upper Santa Clara River Chloride TMDL: (1) a no-action alternative in which the Regional Board takes no action to revise the schedule, (2) an alternative that does not revise the 13-year TMDL implementation schedule but includes implementation milestones in years 6-13 of the TMDL schedule, (3) an alternative that extends the 13-year schedule, and (4) an alternative that accelerates the 13-year schedule. Staff recommends Alternative 4. Under this alternative, the Regional Board will consider a TMDL amendment to both accelerate the final compliance date and include time-certain tasks for tasks related to the design and treatment of chloride removal processes to reduce chloride loading if deemed necessary. Staff notes there is potential for additional chloride loading of 4 million to 7 million lbs per year while the interim limit (approximately 200 mg/L) is in effect instead of discharge at the WQO (100 mg/L). Staff however believes this discharge can be mitigated by accelerating the TMDL schedule.
20. The Remand Resolution directed the Regional Board to consider a phased approach so that the Districts can complete their implementation tasks by Regional Board specified dates sequentially and within 13 years. This direction was born of concerns expressed by stakeholders to the State Board that they should not be required to expend resources planning and constructing new technologies that the special studies could render unnecessary. The Regional Board, therefore, readopted the TMDL with a 13 year implementation plan. That 13-year period included five years for special studies, feasibility analysis and WQO revisions, if warranted, followed by

eight years for planning, design, and construction of the selected remedy. The eight year time schedule for planning, design, and construction was based on comments submitted by the Districts on October 7, 2002, with a supporting engineering study (Cost Impacts for Compliance with a 100 mg/L Instantaneous Chloride Discharge Limit at the Santa Clara Valley Water Reclamation Plants, Prepared by MWH, October 2002), that eight years is required to plan, design and construct advanced treatment for chloride.

21. With completion of the LRE, and the anticipated completion of the GSWI model by November 20, 2007, the Board finds that sufficient information will be available such that there is no prejudice to the Districts in initiating the feasibility tasks when the GSWI model is completed. Specifically, the LRE studies reveal that at most the WQO could be relaxed up to 117 mg/L, from 100mg/L. These results, coupled with the results of the GSWI modeling, will demonstrate whether the AGR and GWR beneficial uses could still be protected with SSOs that are sufficiently less stringent such that construction of advanced treatment systems would not be necessary. Subsequent TMDL tasks, such as development of SSOs, development of the antidegradation analysis, development of a preplanning report on conceptual measures to meet different hypothetical final wasteload allocations, and preparation and consideration of a Basin Plan Amendment to revise the chloride objective by the Regional Board, can be accomplished in a shorter timeframe than originally contemplated because the range of chloride values identified by the LRE as necessary to protect AGR and GWR is significantly smaller than the potential range of chloride objectives contemplated during development of the TMDL schedule. This action does not require the Districts to complete the planning and design tasks before the Regional Board considers revision of the chloride WQO, preserves the current eight year schedule for planning, design and construction that is currently contained in the TMDL, and also preserves the requirements for the Board to reconsider the schedule twice during the planning, design and construction phase. The Board finds the proposed action complies with State Board Resolution 2003-0014.
22. The Staff Report, as well as a Notice of Exemption, and tentative Basin Plan Amendment were released for public comment on May 5, 2006. The revised Implementation Plan is proposed in Attachment A to this resolution.
23. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the revisions of the Implementation Plan for the Upper Santa Clara River Chloride TMDL do not include revisions to WQOs, and are intended to shorten the time until compliance with standards. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
24. The proposed amendment results in no potential for adverse environmental effects (de minimis finding), either individually or cumulatively, on wildlife

because shortening the time to implementation will not result in different processes from those already contemplated, but will merely advance those processes.

25. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
26. The Basin Plan amendment incorporating a revision for the Implementation Plan in the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. Environmental Protection Agency (U.S. EPA). The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.

**Therefore, be it resolved that:**

Pursuant to Section 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan by replacing the Implementation Plan contained in Resolution 04-004 with the revised Implementation Plan in Attachment A of this Resolution.

2. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region to incorporate the revisions of the Implementation Plan in the Upper Santa Clara River Chloride TMDL, Table 7-6.2, Implementation Section as set forth in Attachment A hereto.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law (OAL) and the United State Environmental Protection Agency (U.S. EPA).
5. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

7. The text in the Basin Plan, Plans and Policies (Chapter 5), is hereby amended to add:

“Resolution No. 06-0XX. Adopted by the Regional Water Quality Control Board on August 3, 2006.

‘Amendment to revise the Implementation Plan in the TMDL for Chloride in the Upper Santa Clara River, Resolution 04-004’.

The resolution proposes revisions to the Implementation Plan for the Upper Santa Clara River Chloride TMDL.”

I, Jonathan Bishop, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on August 3, 2006.



Jonathan Bishop  
Executive Officer

**Attachment A to Resolution No. ~~04-004~~ R4-2006-016**

**Revision of the Implementation Plan  
for the TMDL for Chloride in the Upper Santa Clara River, Resolution ~~04-0043-008~~**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles  
Region on ~~May-August 3, 2006~~, 2004.

**Amendments**

**Table of Contents**

**Add:**

**Chapter 7. Total Maximum Daily Loads (TMDLs)**

**7-6 Upper Santa Clara River Chloride TMDL**

**List of Figures, Tables, and Inserts**

**Add- Chapter 7. Total Maximum Daily Loads (TMDLs) Tables**

**7-6.1. Upper Santa Clara River Chloride TMDL: Elements**

**7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule (Revised)**

**Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL**

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.

This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003

This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6,  
2004.

This TMDL was approved by: The State Water Resource Control Board on July 22, 2004

The Office of Administrative Law on November 15, 2004

The U.S. Environmental Protection Agency on April 28, 2005

This TMDL was revised and adopted by: The Regional Water Quality Control Board on August  
3, 2006.

<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>	
<b>Element</b>	<b>Santa Clara River Chloride</b>
<b><i>Problem Statement</i></b>	Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River. This objective was set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River. Irrigation of salt sensitive crops such as avocados and strawberries with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater are also rising.
<b><i>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</i></b>	<p>This TMDL has a numeric target of 100mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use. These objectives are set forth in Chapter 3 of the Basin Plan.</p> <p>The numeric target for this TMDL pertains to Reaches 5 and 6 of the Santa Clara River and is based on achieving the existing water quality objective of 100 mg/L, measured instantaneously, throughout the impaired reaches. A subsequent Basin Plan amendment will be considered by the Regional Board to adjust the chloride objective based on technical studies about the chloride levels, including levels that are protective of salt sensitive crops, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River, provided that County Sanitation Districts of Los Angeles County choose to submit timely and complete studies in accordance with tasks 2 through 6 of Table 7.6.2.</p>
<b><i>Source Analysis</i></b>	The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus Water Reclamation Plant (WRP) and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6.
<b><i>Linkage Analysis</i></b>	Linkage between chloride sources and the in-stream water quality was established through a statistical analysis of the WRP effluent and water quality data at Blue Cut and Highway 99. The analysis shows that additional assimilative capacity is usually added to Reaches 5 and 6 from groundwater discharge, but the magnitude of the assimilative capacity is not well quantified. Consequently, the Implementation Plan includes a hydrological study (Surface Water/Groundwater Interaction? Of the upper reaches of the Santa Clara River.
<b><i>Waste Load Allocations (for</i></b>	The numeric target is based on the water quality objective for chloride. The proposed waste load allocations (WLAs) are 100 mg/L for Valencia

<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>	
<b>Element</b>	<b>Santa Clara River Chloride</b>
<i>point sources</i>	WRP and 100 mg/L Saugus WRP. The waste load allocations are expressed as a concentration limit derived from the existing WQO, thereby accommodating future growth. Other NPDES discharges contribute a minor chloride load. The waste load allocation for these point sources is 100 mg/L.
<i>Load Allocation (for non point sources)</i>	The source analysis indicates nonpoint sources are not a major source of chloride. The load allocations for these nonpoint sources is 100 mg/L.
<i>Implementation</i>	<p>Refer to Table 7-6.2.</p> <p>The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluents will be evaluated in accordance with interim waste load allocations.</p> <p>Saugus WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average. At no time shall the interim wasteload allocation exceed 230mg/L.</p> <p style="padding-left: 40px;">Interim Waste Load Allocation=Treated Potable Water Supply + 114 mg/L, not to exceed 230 mg/L.</p> <p style="padding-left: 40px;">(114 mg/L is the maximum difference in chloride concentration between the State Water Project treated water and the Saugus WRP treated effluent over the last five years.)</p> <p>Valencia WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average. At no time shall the interim wasteload allocation exceed 230 mg/L.</p> <p style="padding-left: 40px;">Interim Waste Load Allocation=Treated potable Water Supply + 134 mg/L, not to exceed 230 mg/L.</p> <p style="padding-left: 40px;">(134 mg/L, is the maximum difference in chloride concentration between the State Water Project treated water and the Valencia WRP treated effluent over the last five years.)</p>
<i>Margin of Safety</i>	An implicit margin of safety is incorporated through conservative model assumptions and statistical analysis.
<i>Seasonal Variations and Critical Conditions</i>	Three critical conditions are identified for this TMDL. The driest six months of the year is the first critical condition for chloride because less surface flow is available to dilute effluent discharge, pumping rates for agricultural purposes are higher, groundwater discharge is less, poorer

<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>	
<b>Element</b>	<b>Santa Clara River Chloride</b>
	<p>quality groundwater may be drawn into the aquifer and evapotranspiration effects are greater in warm weather. During drought, the second critical condition reduced surface flow and increased groundwater extraction continues through several seasons with greater impact on groundwater resource and discharge. The third critical conditions is based on the recent instream chloride concentration increases such as those that occurred in 1999, a year of average flow, when 9 of 12 monthly averages exceeded the objective. Data from all three critical conditions were used in the statistical model described. Hydrological modeling will be completed to evaluate whether additional loading will impact the WQO or beneficial uses during non-critical conditions.</p>

<p>Table 7-6.2. Upper Santa Clara River Chloride TMDL                      Implementation                      Implementation Tasks – Alternative 4</p>	<p>Completion                      Date</p>
<p>1. Alternate Water Supply</p> <p>a) Should (1) the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water quality objective of 100mg/L, measured for the purposes of this TMDL as a rolling twelve month average, for three months of any 12 months, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and County Sanitation Districts of Los Angeles County (CSDLAC) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provide photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then CSDLAC will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between CSDLAC and the agricultural diverter at the direction of the Regional Water Quality Control Board until such as time as the in-river chloride concentrations do not exceed the water quality objective.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in <u>the</u> a three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p> <p>2. Progress reports will be submitted by CSDLAC to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4,6, and 7, and on an annual basis for Task 5.</p>	<p>Effective Date of                      TMDL                      (05/04/2005)</p>
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, CSDLAC will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by CSDLAC, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in controlling chloride. CSDLAC shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.</p>	<p>6 months after                      Effective Date of                      TMDL                      (11/04/2005)</p>

<p><b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b>  <b>Implementation Tasks – Alternative 1</b></p>	<p><b>Completion Date</b></p>
<p>4. CSDLAC will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.</p>	<p>12 months after Effective Date  <u>(05/04/2006)</u></p>
<p>5. Groundwater/Surface Water Interaction Model: CSDLAC will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.</p>	<p>2.5 years after Effective Date of TMDL  <u>(11/20/2007)</u></p>
<p>6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: CSDLAC will prepare and submit a report on endangered species protection thresholds. CSDLAC will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.</p>	<p>2.5-3 years after Effective Date of TMDL  <u>(11/20/2007)</u></p>
<p>7. Develop Site Specific Objectives (SSO) for Chloride for Sensitive Agriculture: CSDLAC will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p>	<p>2.84 years after Effective Date of TMDL  <u>(02/20/2008)</u></p>
<p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: CSDLAC will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p>	

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks – <u>Alternative 4</u>	Completion Date
<p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final wasteload allocations. CSDLAC shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride water quality objectives and final wasteload allocations.</p>	
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: CSDLAC will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Wasteload Allocations for Proposed Chloride Objective. CSDLAC will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p><del>35</del> years after Effective Date of TMDL  <u>(05/04/2008)</u></p>
<p>11. <u>a) Implementation of Compliance Measures, Planning: CSDLAC to submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Facilities Plan and EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Facilities Plan and EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision.</u></p> <p><u>b) Implementation of Compliance Measures, Planning: CSDLAC to provide a schedule of related tasks and subtasks related to Task 11a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Facilities Plan and EIR.</u></p>	<p><u>5 years after Effective Date of TMDL (05/04/2010)</u></p> <p><u>5 years after Effective Date of TMDL (05/04/2010)</u></p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks – <u>Alternative 4</u>	Completion Date
<p><del>11.12.</del> The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet Final Wasteload Allocations adopted pursuant to Task 10 d) and the schedule for Task <del>132</del>. The Regional Board, at a public meeting will consider extending the completion date of Task <del>132</del> and reconsider the schedule to implement control measures to meet Final Wasteload Allocations adopted pursuant to Task 10 d). CSDLAC will provide the justification for the need for an extension to the Regional Board executive Officer at least 6 months in advance of the deadline for this task.</p>	<p><del>69</del> years after Effective Date of TMDL  <u>(05/04/2011)</u></p>
<p><del>12.13.</del> a) <u>Implementation of Compliance Measures. Complete Environmental Impact Report:</u> CSDLAC shall have complete a <u>Facilities Plan and Environmental Impact Report for advanced treatment facilities to comply with final effluent permit limits for chloride.</u></p> <p>b) <u>Implementation of Compliance Measures. Engineering Design:</u> CSDLAC will begin the engineering design of the recommended project.</p> <p>c) <u>Implementation of Compliance Measures. Engineering Design:</u> CSDLAC will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition CSDLAC will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project.</p> <p>d) <u>Implementation of Compliance Measures. Construction:</u> CSDLAC shall have applied and received all appropriate permits and have completed construction of the recommended project.</p>	<p>6 years after Effective Date of TMDL  <u>(05/04/2011)</u></p> <p>6 years after Effective Date of TMDL  <u>(05/04/2011)</u></p> <p>7 years after Effective Date of TMDL  <u>(05/04/2012)</u></p> <p>11 years after Effective Date of TMDL  <u>(05/04/2016)</u></p>
<p><del>12.14.</del> The interim effluent limits for chloride shall remain in effect for no more than <del>113</del> years after the effective date of the TMDL. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the CSDLAC.</p>	<p><del>13</del> 11 years after Effective Date of TMDL  <u>(05/04/2016)</u></p>

# EXHIBIT "16"

4837-0090-6752.2

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013  
 (213)576-6600 • Fax (213)576-6660  
<http://www.waterboards.ca.gov/losangeles/>

**ORDER NO. R4-2009-0074**  
**NPDES NO. CA0054216**

**WASTE DISCHARGE REQUIREMENTS  
 FOR THE SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY,  
 VALENCIA WATER RECLAMATION PLANT  
 DISCHARGE TO SANTA CLARA RIVER**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	Santa Clarita Valley Sanitation District of Los Angeles County
<b>Name of Facility</b>	Valencia Water Reclamation Plant
<b>Facility Address</b>	28185 The Old Road
	Santa Clarita, CA 91355
	Los Angeles County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board (Regional Water Board) have classified this discharge as a major discharge.	

The discharge by the Santa Clarita Valley Sanitation District of Los Angeles County from the discharge points identified below is subject to waste discharge requirements as set forth in this Order:

**Table 2. Discharge Location**

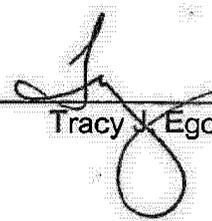
<b>Discharge Point</b>	<b>Effluent Description</b>	<b>Discharge Point Latitude</b>	<b>Discharge Point Longitude</b>	<b>Receiving Water</b>
001	Tertiary treated effluent	34 °, 25', 49.6" N	118°, 35',33.37" W	Santa Clara River
002	Tertiary treated effluent	34 °, 25', 48.27" N	118°, 35',31.95" W	Santa Clara River

February 25, 2009  
 Revised: 04/07/09, 4/20/09, 5/14/09, and 6/4/09

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Board on:	June 4, 2009
This Order shall become effective on:	July 24, 2009
This Order shall expire on:	May 10, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date (Title 40, Code of Federal Regulations, part 122.21(d))

I, Tracy J. Egoscue, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Board, Los Angeles Region, on June 4, 2009.

  
\_\_\_\_\_  
Tracy J. Egoscue, Executive Officer

February 25, 2009  
Revised: 04/07/09, 4/20/09, 5/14/09, and 6/4/09

## **7. Compliance Schedules**

The compliance schedules and the interim limit in Section IV.A.2.a of this Order are authorized under TMDLs (Basin Plan Amendments) which have been adopted by the Regional Water Board and approved by USEPA. However, interim limits and compliance schedules may be provided in an administratively issued Time Schedule Order if the permit effective date precedes the TMDL effective date.

## **8. TMDL Tasks**

The discharger shall comply with the applicable TMDL-related tasks, and future revisions thereto, in Attachment K of this Order.

## **VII. COMPLIANCE DETERMINATION**

Compliance with the effluent limitations contained in section IV of this Order will be determined as specified below:

### **A. General.**

Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined in the MRP and Attachment A of this Order. For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Discharger shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL).

### **B. Multiple Sample Data**

When determining compliance with a measure of central tendency (arithmetic mean, geometric mean, median, etc.) of multiple sample analyses and the data set contains one or more reported determinations of "Detected, but Not Quantified" (DNQ) or "Not Detected" (ND). In those cases, the Discharger shall compute the median in place of the arithmetic mean in accordance with the following procedure:

1. The data set shall be ranked from low to high, ranking the reported ND determinations lowest, DNQ determinations next, followed by quantified values (if any). The order of the individual ND or DNQ determinations is unimportant.
2. The median value of the data set shall be determined. If the data set has an odd number of data points, then the median is the middle value. If the data set has an even number of data points, then the median is the average of the two values around the middle unless one or both of the points are ND or DNQ, in which case the median value shall be the lower of the two data points where DNQ is lower than a value and ND is lower than DNQ.

# **EXHIBIT**

# **“17”**

4837-0090-6752.2

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013  
 (213)576-8600 • Fax (213)576-8660  
<http://www.waterboards.ca.gov/losangeles/>

**ORDER NO. R4-2009-0075**  
**NPDES NO. CA0054313**

**WASTE DISCHARGE REQUIREMENTS  
 FOR THE SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY,  
 SAUGUS WATER RECLAMATION PLANT  
 DISCHARGE TO SANTA CLARA RIVER**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	Santa Clarita Valley Sanitation District of Los Angeles County
<b>Name of Facility</b>	Saugus Water Reclamation Plant
<b>Facility Address</b>	26200 Springbrook Avenue
	Santa Clarita, CA 91350
	Los Angeles County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.	

The discharge by the Santa Clarita Valley Sanitation District of Los Angeles County from the discharge point identified below is subject to waste discharge requirements as set forth in this Order:

**Table 2. Discharge Location**

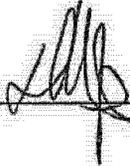
Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Tertiary treated effluent	34 <sup>o</sup> 25'23" N	-118 <sup>o</sup> 32'24" W	Santa Clara River

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	June 4, 2009
This Order shall become effective on:	July 24, 2009
This Order shall expire on:	May 10, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date (Title 40, Code of Federal Regulations, part 122.21(d))

Adopted: June 4, 2009

I, Tracy J. Egoscue, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on June 4, 2009.

  
\_\_\_\_\_  
Chief Deputy EO  
Tracy J. Egoscue, Executive Officer  
fe

Adopted: June 4, 2009

- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through K are also incorporated into this Order.
- E. California Environmental Quality Act (CEQA).** Under California Water Code (CWC) section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at part 122.44, title 40 of the Code of Federal Regulations, require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Secondary Treatment Standards at part 133 and Best Professional Judgment (BPJ) in accordance with Part 125.3. A detailed discussion of the technology-based effluent limitations development is included in the Fact Sheet (Attachment F).
- G. Water Quality-Based Effluent Limitations.** Section 301(b) of the CWA and part 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. This Order contains requirements for BOD and TSS, expressed as a technology equivalence requirement, more stringent than secondary treatment requirements that are necessary to meet applicable water quality standards. The rationale for these requirements, which consist of tertiary treatment, is discussed in the Fact Sheet.

Part 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective for the pollutant, water quality-based effluent limitations (WQBELs) must be established using: (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in Part 122.44(d)(1)(vi).

- H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (hereinafter Basin Plan) on June 13, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters

## 7. Compliance Schedules

The compliance schedules and the interim limit in Section IV.A.2.a of this Order are authorized under TMDLs (Basin Plan Amendments) which have been adopted by the Los Angeles Regional Water Board and approved by USEPA. However, interim limits and compliance schedules may be provided in an administratively issued Time Schedule Order if the permit effective date precedes the TMDL effective date.

8. The discharger shall comply with the applicable TMDL-related tasks, and future revisions thereto, in Attachment K of this Order.

## VII. COMPLIANCE DETERMINATION

Compliance with the effluent limitations contained in section IV of this Order will be determined as specified below:

### A. General.

Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined in the MRP and Attachment A of this Order. For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Discharger shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL).

### B. Multiple Sample Data

When determining compliance with a measure of central tendency (arithmetic mean, geometric mean, median, etc.) of multiple sample analyses, if the data set contains one or more reported determinations of "Detected, but Not Quantified" (DNQ) or "Not Detected" (ND), the Discharger shall compute the median in place of the arithmetic mean in accordance with the following procedure:

1. The data set shall be ranked from low to high, ranking the reported ND determinations lowest, DNQ determinations next, followed by quantified values (if any). The order of the individual ND or DNQ determinations is unimportant.
2. The median value of the data set shall be determined. If the data set has an odd number of data points, then the median is the middle value. If the data set has an even number of data points, then the median is the average of the two values around the middle unless one or both of the points are ND or DNQ, in which case the median value shall be the lower of the two data points where DNQ is lower than a value and ND is lower than DNQ.

# EXHIBIT "18"

4837-0090-6752.2

**VARIANCE APPLICATION  
 FOR THE SAUGUS AND VALENCIA WATER RECLAMATION PLANTS (WRPS)  
 OCTOBER 21, 2003**

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### **3.6 Saugus and Valencia WRPs' Chloride Effluent Levels**

During 2001, the Saugus and Valencia WRPs collectively discharged approximately 16.9 MGD of tertiary effluent to the Santa Clara River with an average chloride concentration of 168 mg/L. In 2002, the Saugus and Valencia WRPs collectively discharged approximately 18 MGD of tertiary effluent to the Santa Clara River with an average chloride concentration of 183 mg/L. Chloride concentrations discharged from these two WRPs for the period January 1971 through December 2001 are shown in Figure 3.6-1 along with the corresponding surface water chloride objectives and the numeric effluent chloride limits.

As shown in Figure 3.6-1, effluent chloride concentrations are highly variable from month to month and year to year. These variations can be caused by a number of factors including the concentration of chloride in the drinking water supply (both local groundwater and imported surface water and the resulting blending ratios), loadings from the residential, commercial and industrial sectors, and by contributions from the use of chemicals in the wastewater treatment process. As described in the following section, the Districts can regulate discharges of chloride from industrial and commercial sources and to a lesser degree, residential sources. The Districts have no authority to regulate chloride levels in potable water supplies, which constitutes a major portion of the WRPs' influent chloride load. In the past several years the Districts have eliminated the use of chloride containing chemicals to the maximum extent possible to reduce treatment plant loadings. The in-plant reductions are discussed in more detail in Section 3.7.1.5. At present the only chloride added during the treatment process is sodium hypochlorite for disinfection purposes, which contributes on average approximately 7 mg/L to effluent chloride concentrations. It should be noted that the current treatment processes at these two WRPs do not have the capability of removing chloride from the wastewater.

### **3.7 Source Control and Local Restrictions on Self-Regenerating Water Softeners**

#### **3.7.1 History of Districts' Source Control Efforts in the SCVJSS**

The Districts have undertaken extensive efforts to limit the discharge of chlorides to wastewater in the SCVJSS. These efforts were summarized in two submittals to the Regional Board (see Attachment 3.7-1). A summary of some of the highlights of these efforts is provided below.

##### *3.7.1.1 Source Control of Chloride from Residences*

Source control of chlorides from residences in the SCVJSS began in 1961 with adoption of resolutions by the Districts that prohibited the connection of laterals or other sewer lines to the Districts' sewerage system that included salt brines produced by the regeneration of water softeners (e.g., self-regenerating water softeners or SRWS). The prohibition applied to all users of the sewerage system including residential, commercial and industrial users. However, in 1997 the portions of the resolutions applicable to residences were invalidated based on the outcome of several lawsuits that impacted the ability of local agencies to control residential SRWS. In particular, the California Courts of Appeals ruled in two different districts that local ordinances restricting the use of residential SRWS were not allowed due to superceding state statutes. The Court suggested that state statutes be amended if local control of SRWS was desired.

---

limits in the TSOs prevail, which do not provide protection from third party lawsuits seeking to enforce the underlying final limits contained in the permits themselves. The liability for noncompliance with final limits over an extended period of time is considerable, and unacceptable, given that the Regional Board is itself acknowledging that a given period of time will be necessary before compliance with final limits will be possible.

In response, Senate Bill 1006 was enacted in 1999. It amended the California Health and Safety Code (Section 116786) to establish conditions under which a local agency could regulate the installation of new residential SRWS. It did not provide authority to regulate SRWS installed before the effective date of a new local ordinance, and required that certain stringent conditions be met prior to passage of any ordinance. These conditions include non-compliance with an NPDES permit or water reclamation requirements, limitation of the saline discharges from non-residential sources to the extent technologically and economically feasible, determination that restrictions on residential SRWS is the only available means of achieving compliance with permit or water reclamation requirements, and completion of an independent study to quantify all sources of salinity to the sewer system. The provisions of Senate Bill 1006 became effective on January 1, 2003. A more thorough discussion of the history of the legal and legislative actions can be found in Attachment 3.7-2.

The Districts began preparation to enact ordinances restricting the use of residential SRWS in early 2001. To prepare a report on sources of chloride in the SCVJSS, extensive sampling of wastewater from residential, commercial, industrial, and hauled waste sources began in February 2001 and continued throughout the year. This effort involved collection and analysis of over two thousand chloride samples. A study was also conducted on a residential SRWS to quantify salt discharges from the unit. A comprehensive report on sources of chloride in the SCVJSS was released in October 2002 (See Attachment 3.7-3).

During preparation of the report, the Districts initiated public outreach efforts to reduce the usage of residential SRWS. The Districts hired a public relations firm to develop an outreach program and to test the program in two pilot areas. Elements of the program included two mailings of letters, plus frequently-asked-questions sheets to all 500 residents of the two pilot neighborhoods. An additional letter, authored by the Regional Board, was also mailed to the pilot-area residents. Opinion leaders in the community, such as elected officials and environmental group leaders, also received the mailings. Real estate agents were mailed information on the environmental impacts of SRWS, and asked to share the information with new homebuyers. An Internet web site was developed on chloride and SRWS. Pre- and post- outreach surveys were conducted of the target residents, to determine the effectiveness of the program, in August 2002 and February 2003, respectively. The program was found to be successful in increasing awareness of the environmental impacts of SRWS and in influencing the decisions of people who had not yet purchased water conditioning systems. It was not successful, however, at convincing residents with existing SRWS to remove them.

In early 2003, the Districts undertook final preparations to enact an ordinance to prohibit the installation of SRWS in the SCVJSS. In early February 2003, notices were mailed to every residence with a sewer connection in the SCVJSS regarding a public hearing on a rate increase. Included in the mailing was notification that the Districts also would be considering ordinances banning the installation of SRWS. The ordinances were introduced by the Boards of Sanitation District Nos. 26 and 32 on February 12, 2003 and adopted on February 25, 2003. The ordinances took effect on March 27, 2003. (See Attachment 3.7-4)

Several press releases were issued about the ordinances, resulting in local news coverage as well as coverage in the *Los Angeles Times*. The Districts were the first agency in the state to restrict SRWS under the provisions of Senate Bill 1006. Developers, plumbers, contractors, water conditioning companies, and realtors were all informed about passage of the ordinances. A letter was also sent to every residence in the SCVJSS informing them of the ordinances. A brochure was printed about the ordinances; over fifteen hundred copies have been distributed to date. Additionally, all eight of the local retailers selling SRWS agreed to voluntarily stop selling the units. The chloride web site was updated to include information on the SRWS ordinances.

Public outreach about the environmental impacts of SRWS continues in the SCVJSS service area. The Districts have hired a social marketing firm to conduct a three-year program in the SCVJSS to encourage residents to move away from the use of SRWS. The firm is currently in the process of developing outreach messages and strategies for the social marketing program, and plans to test its ideas with focus groups in November and December 2003. In the meantime, the Districts have participated in several environmental fairs in the area to pass out educational information and the Districts continue to field calls from Santa Clarita Valley residents with questions about the SRWS ordinances.

Because the pilot-scale public outreach project indicated that outreach alone was not sufficient to convince residents to give up their existing SRWS, the Districts are currently investigating incentives and disincentives that could be used in addition to public outreach. Options being investigated include rebates, buy-back programs, implementation of a differential rate structure, and demonstration projects. A consulting firm was hired to conduct a quantitative analysis of the various options available and make recommendations as to which options could be implemented based on legal and technical feasibility, and plans to conduct focus groups in November 2003 to explore the options in more depth. The analysis will build upon a study conducted earlier this year by the National Water Research Institute, with funding from the Districts and several other organizations, to explore consumer behavior toward different types of incentive programs to reduce salinity contributions to wastewater from water softener usage.

### *3.7.1.2 Source Control of Chloride at Industrial Facilities*

Since the Santa Clarita Valley is primarily a bedroom community, it hosts only a limited amount of industry. The Districts regulate approximately sixty industrial wastewater dischargers<sup>36</sup> in the SCVJSS, including several cosmetics manufacturers, eight metal finishers, four printers, two correctional facilities, a large theme park, and a hospital.

The Districts began source control of chloride at industrial facilities in 1961 with the adoption of resolutions prohibiting the discharge to the sewerage system of salt brines produced by the regeneration of water softening units. This prohibition is still in place and is strictly enforced. Although two industries in the SCVJSS have on-site regenerable water softeners, the brines are removed for off-site disposal or evaporated on-site. On-site inspections and manifest reviews are used to verify proper brine disposal.

The Districts supplemented the salinity source control program beginning in the mid-1990s by imposing numerical limitations on total dissolved solids (TDS) and non-volatile TDS at industrial dischargers in the SCVJSS. These limitations were applied as existing permits were renewed and as new permits were issued. Limits for these two parameters were set at 1,000 mg/L, which is equivalent to the limitations for TDS in the Saugus and Valencia NPDES permits.<sup>37</sup> In the late 1990s, chloride limitations of 180 mg/L were imposed on industrial dischargers as their permits were issued or renewed. This limit was based on the interim chloride water quality objective then in effect for the Santa Clara River to protect designated agricultural beneficial uses in the receiving waters downstream of the Districts' SCVJSS treatment plants.

In April 2001, the Districts alerted all industrial users about upcoming chloride limitations that would be imposed, pending the finalization of the Chloride TMDL and the imposition of new permit requirements for the Saugus and Valencia WRPs. In September 2002, all industrial dischargers in the SCVJSS were assigned a chloride limit or required to develop a chloride reduction work plan, or both. The target chloride limit for every industry is 100 mg/L, which is currently the most stringent water quality objective

<sup>36</sup> The SCVJSS currently has a total of 65 industrial wastewater connections to the sewerage system.

<sup>37</sup> It is important to point out that any local limit implemented by a publicly owned treatment works (POTW) must be technically based. One means of setting a technically based local limit, particularly when a stringent discharge limit has to be met at the POTW, is to make the industrial discharge limit equivalent to the POTW discharge limit. This assures that industrial dischargers will not cause or contribute to POTW limit exceedances.

for the Upper Santa Clara River. As this concentration is only 40 to 50 mg/L above the long-term average potable water supply chloride concentration, it also represents a concentration at which no significant saline discharges can be present. A 100 mg/L chloride limitation was imposed on the 31 industrial waste sewer connections that had chloride discharge concentrations at 100 mg/L or below. The purpose of the limit is to ensure that these industries maintain their current discharge levels. The 34 industrial connections with chloride concentrations above the 100 mg/L target were required to submit a Chloride Reduction Workplan detailing the steps necessary to reach the target chloride concentration of 100 mg/L. Each facility has been required to implement all technologically and economically feasible means of reducing chlorides. Ten of these industrial waste connections currently have an interim chloride limit of 230 mg/L, which will automatically convert to a 100 mg/L limit in November 2003. The remaining 24 facilities either have been or will be assigned a site-specific chloride limit that takes into account implementation of all technologically and economically feasible means of reducing chloride discharges.

### *3.7.1.3 Source Control of Chloride at Commercial Facilities*

Numerous commercial businesses serve the SCVJSS, such as restaurants, movie theaters, and dry cleaners. Source control for chloride at these businesses began in 1961 with passage of resolutions prohibiting the discharge of brines from SRWS. These resolutions are still in effect for commercial businesses.

Until 2002, the focus of chloride source control efforts at commercial businesses was enforcement of the SRWS brine prohibition. Starting in 1997, the Districts began increased inspections of commercial business in the SCVJSS to ensure that no SRWS were used. Over 400 such inspections have been conducted to date, including inspection of every restaurant using non-disposable serving utensils and every hotel in the SCVJSS in early 2003. Letters reminding businesses of the SRWS prohibition were sent to restaurants, dry cleaners, gyms, car washes, and beauty salons during the 1999-2001 period, regardless of whether or not the facility had a water softening system currently in place. Facilities with SRWS were required to remove the systems immediately, and the Districts have conducted follow-up inspections to confirm removal of all SRWS.

The Districts have continued to review business listings in the SCVJSS to identify new businesses or existing businesses under new ownership that might not be aware of the prohibition on SRWS. When a new business or existing business under new ownership in a sector of concern<sup>38</sup> is identified, the business is provided with information on the SRWS ban and a Districts' Industrial Waste Inspector visits the facility, notifies the business owner/site manager of the brine discharge prohibition, and conducts an inspection of the premises. In August 2002, the scope of notification was broadened and letters were sent to all commercial businesses in the SCVJSS, regardless of business type, to remind them of the prohibition on the discharge of SRWS brines.

In 2002, the Districts began efforts to further reduce chloride discharges from commercial businesses. The Districts used a contractor to investigate available means of reducing saline discharges at commercial businesses to the extent technologically and economically feasible. The investigation found that the only technologically and economically feasible means of reducing saline discharges from commercial businesses was to require best management practices (BMPs) to be implemented for swimming pool operation. The investigation also identified voluntary BMPs for chloride reduction that could be employed for sanitizing, laundering, and janitorial cleaning.

In December 2002, the Districts sent a letter to all commercial businesses in the SCVJSS, to encourage the use of voluntary BMPs for sanitizing, laundering, and janitorial cleaning. The letter also informed pool owners that mandatory BMPs would be issued, and reminded businesses of the prohibition on use of

<sup>38</sup> Including restaurants, car washes, hotels, and laundromats.

SRWS. In January 2003 letters were sent to all potential owners of swimming pools,<sup>39</sup> requiring implementation of BMPs to reduce chloride in swimming pool discharges. BMP certifications have now been completed for all 249 regulated swimming pools.

#### *3.7.1.4 Source Control of Chlorides at the Saugus Liquid Waste Disposal Station*

In addition to wastewater directly discharged to the sewerage system from industrial, commercial, and residential sources, the Districts accept a small amount of wastewater in the SCVJSS that is delivered by truck (hailed waste). The Districts operate the Saugus Liquid Waste Disposal Station (LWDS), which accepts trucked loads of portable toilet, septic tank, and cesspool wastes. Wastes brought to the station are treated at the Saugus WRP and only contribute less than 1% of the chloride loading to the effluent chloride concentration. Nevertheless, the Districts have undertaken chloride source control efforts for this facility.

Chemical toilet waste generally has significantly higher chloride concentrations than septic waste, so source control efforts for chloride at the LWDS have focused on reduction of chemical toilet waste acceptance. In June 2001 all haulers using the Saugus Liquid Waste Disposal Station were notified by letter regarding additional restrictions on the use of the disposal station. Chemical toilet services using the deodorizer Para dichlorobenzene were informed that they could no longer bring chemical waste to the station if they continued to use this chemical, as the resulting liquid waste contained excessive concentrations of Para dichlorobenzene. The haulers were also informed that chemical toilet loads would no longer be accepted at the station when the NPDES permits for the Saugus and Valencia WRPs were reissued to include chloride limits. As a result of the chloride and Para dichlorobenzene notifications, most chemical toilet services in the area elected to stop using the Saugus LWDS. Only two chemical toilet services continue to use the station.

#### *3.7.1.5 Source Control of In-Plant WRP Sources of Chloride*

There are two primary in-plant sources of chlorides to the SCVJSS WRPs: disinfection and chemical addition to enhance treatment. Historically, chloride was added to wastewater at the Saugus and Valencia WRPs from the use of chlorine gas ( $\text{Cl}_2$ ) and later sodium hypochlorite ( $\text{NaOCl}$ ) for disinfection of final effluent.<sup>40</sup> Chlorine gas/sodium hypochlorite has also been periodically used in the operation of the primary sedimentation bio-scrubbers, although the chloride contribution from this process is very small. In addition, chloride was added at both plants from the use of ferric chloride ( $\text{FeCl}_3$ ) for primary sedimentation (to enhance settling). At the Valencia WRP,  $\text{FeCl}_3$  was used to enhance the dewatering of biosolids (filter press coagulation) and maintain odor control. Ferrous chloride ( $\text{FeCl}_2$ ) has also been used in the operation of the anaerobic digesters. Finally, the Valencia WRP utilized a self-regenerating water softening system for the water feed to the boilers used for the anaerobic digestion process. This system had a small brine wastestream that was discharged to the headworks of the Valencia WRP.

Due to concerns over the in-plant loading of chloride from WRP chemical usage, in 2000, the Districts initiated a study to evaluate the use of ferric sulfate ( $\text{FeSO}_4$ ) as an alternative to  $\text{FeCl}_3$ . The study showed that in terms of performance,  $\text{FeSO}_4$  could successfully replace  $\text{FeCl}_3$ . In May 2000,  $\text{FeCl}_3$  was replaced with  $\text{FeSO}_4$  for primary sedimentation at the Saugus WRP. In November 2000,  $\text{FeCl}_3$  was replaced with  $\text{FeSO}_4$  for primary sedimentation and biosolids processing/odor control at the Valencia WRP. In August 2001, the Valencia WRP also replaced the self-regenerating water softening system that was necessary to reduce scale formation in the hot water boilers used for the anaerobic digestion process. The Valencia

<sup>39</sup> Except those owned by individual households and those permitted under the Industrial Wastewater Discharge program.

<sup>40</sup> The use of chlorine gas was discontinued in 1998 for safety reasons. The NPDES permits for the two WRPs require compliance with a final effluent coliform limit of less than 2.2/100 mL based on a seven-day median.

WRP now uses a water softening service that replaces the spent ion-exchange media with new media, and regenerates the spent media off-site.

#### **4.0 BASIS FOR VARIANCE REQUEST**

As noted in Section 1.3, both the State and EPA guidance provides that an applicant submitting a variance request must demonstrate that attaining the water quality standard is not feasible because of one or more of the use attainability factors as discussed in 40 CFR §131.10 (g). Of the six factors listed in Section 1.3, the following three use attainability factors are considered in this variance application:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use [40 CFR §131.10 (g)(1)];
- (2) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place [40 CFR §131.10 (g)(3)]; and
- (3) Controls more stringent than those required by §301 (b) and §306 of the Act would result in substantial and widespread economic and social impact [40 CFR §131.10 (g)(6)].

Each of these factors and the scientific and technical evidence supporting the need for the variance are discussed more extensively in Section 4.1. Further evidence as recommended by State and EPA guidance documents is also provided in Sections 4.2, 4.3, 4.4 and 4.5 in support of this variance application.

#### **4.1 Justification for the Exception per 40 CFR §131.10 (g)(1-6)**

##### **4.1.1 Naturally Occurring Pollutant Concentrations Prevent Attainment of Water Quality Standard [40 CFR §131.10 (g)(1)]**

The Districts believe that naturally occurring pollutant concentrations, namely the increased chloride concentrations that occur in the imported State Water Project (SWP) water during drought and/or drier-than-normal conditions, prevent the attainment of the 100 mg/L chloride objectives for Reaches 4, 5 and 6 of the Santa Clara River. The Districts believe that this conclusion is justified for the following reasons:

- 1) Past Drought Policies enacted by the Regional Board during the last two state-wide droughts set a precedent acknowledging that the existing chloride water quality standards were unattainable during drought conditions; and
- 2) Analyses of historic chloride data in the imported SWP and blended water supply in the Santa Clarita Valley during drought and/or drier than normal conditions, show that the potable water supply can exceed the 100 mg/L objective, thus preventing attainment of this water quality standard.

##### *4.1.1.1 Past Drought Policies*

During the last two major statewide droughts in 1976-77 and 1987-1991, the Regional Board enacted policies to provide regulatory relief to POTWs in meeting TDS and chloride limits, respectively, during drought conditions, acknowledging that the water quality standard for chloride is unattainable during these conditions. For example, on September 26, 1977, the Regional Board unanimously passed a motion not to bring enforcement actions against POTWs that failed to meet TDS effluent requirements because of drought-related circumstances (See Attachment 3.3-2).<sup>41</sup> In 1990, after two years of severe drought and

<sup>41</sup> Drought-related circumstances included: "where the sole reason for the increased mineral content is the change in water supply [due to drought conditions]," as well as "when the reason for increased mineral content is a decrease in

# EXHIBIT "19"

4837-0090-6752.2

## **ORDINANCE PROHIBITING THE INSTALLATION OF CERTAIN WATER SOFTENING APPLIANCES**

The Board of Directors of County Sanitation District No. 32 of Los Angeles County ordain as follows:

### **1. AUTHORIZATION**

This Ordinance is enacted pursuant to authority contained in the County Sanitation District Act, California Health and Safety Code Sections 4700 et seq. and exercises authority conferred by law including, but not limited to, Chapter 5, Part 12, Division 104 of the California Health and Safety Code.

### **2. PURPOSE**

The purpose of this Ordinance is to protect the quality of the waters of the State including, but not limited to, protecting beneficial uses of the Santa Clara River downstream of the County Sanitation District No. 32 of Los Angeles County's Valencia Water Reclamation Plant.

### **3. DEFINITIONS**

The following definitions shall apply to the terms used in this Ordinance:

(a) "District" means County Sanitation District No. 32 of Los Angeles County.

(b) "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the state, the federal government and any of the agencies and political subdivisions of such entities.

(c) "Regional Board" means the California Regional Water Quality Control Board, Los Angeles Region, created and exercising its powers pursuant to the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000 et seq.

(d) "Residence" means a structure which is or is intended to be, in whole or in part, a place of dwelling, whether occupied or not, whether fully constructed or not, and includes, without limitation, homes, whether attached to another structure or not, apartments, condominiums and mobile homes.

(e) "Residential self-regenerating water softening appliance" means a water softening device located within or adjacent to a residence located within the District or which discharges into a community sewer system that is tributary to the sewer system owned and operated by the District, whereby the capability of the appliance to remove hardness from water is renewed by the on-site application of a chloride salt-containing brine solution to the active softening or conditioning material contained therein, followed by a subsequent rinsing of the active softening or conditioning material.

#### **4. FINDINGS**

(a) The state legislature has found and declared that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society.

(b) The District is not in compliance with waste discharge requirements issued by the Regional Board pursuant to Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code.

(c) Limiting the availability, or prohibiting the installation, of self-regenerating water softening appliances is the only available means of achieving compliance with waste discharge requirements issued by the Regional Board.

(d) The District has adopted and is enforcing regulatory requirements that limit the volumes and the concentrations of saline discharges from nonresidential sources in the community waste disposal system to the extent technologically and economically feasible.

Findings 4 (b), (c), and (d) have been substantiated by an independent study of discharges from all sources of salinity, including, but not limited to, residential water softening or conditioning appliances, residential consumptive use, industrial and commercial discharges, and seawater or brackish water infiltration and inflow into the sewer collection system. This study has been made in accordance with the requirements of Section 116786(c) of the California Health and Safety Code. A copy of said study is on file at the District's Joint Administration Office, 1955 Workman Mill Road, Whittier, California 90601-1400.

#### **5. PROHIBITION**

No person shall install or in any manner assist in the installation of a residential self-regenerating water softening appliance that discharges into the community sewer system owned and operated by the District or that discharges into a community sewer system that is tributary to the sewer system owned and operated by the District.

#### **6. VIOLATION**

A violation of this Ordinance, is a misdemeanor punishable by a fine not to exceed \$1,000, imprisonment not to exceed thirty days, or both.

#### **7. ENFORCEMENT**

The Chief Engineer and General Manager of the District shall administer, implement and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Chief Engineer and General Manager may be delegated to persons acting in the beneficial interest of or in the employ of the District.

**8. SEVERABILITY**

If any provision of this Ordinance or the applicability thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid portion or application, and to that end the provisions of this Ordinance are severable.

**9. EFFECTIVE DATE**

This Ordinance shall become effective thirty days from the date of final passage and shall be prospective in nature.



Chairperson, Board of Directors  
County Sanitation District No. 32  
of Los Angeles County

ATTEST:



Clerk, Board of Directors  
County Sanitation District No. 32  
of Los Angeles County

**PASSED AND ADOPTED** by the Board of Directors of County Sanitation District No. 32 of Los Angeles County on February 25, 2003, by the following vote:

**AYES:** Directors Weste and Smyth

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Director Burke

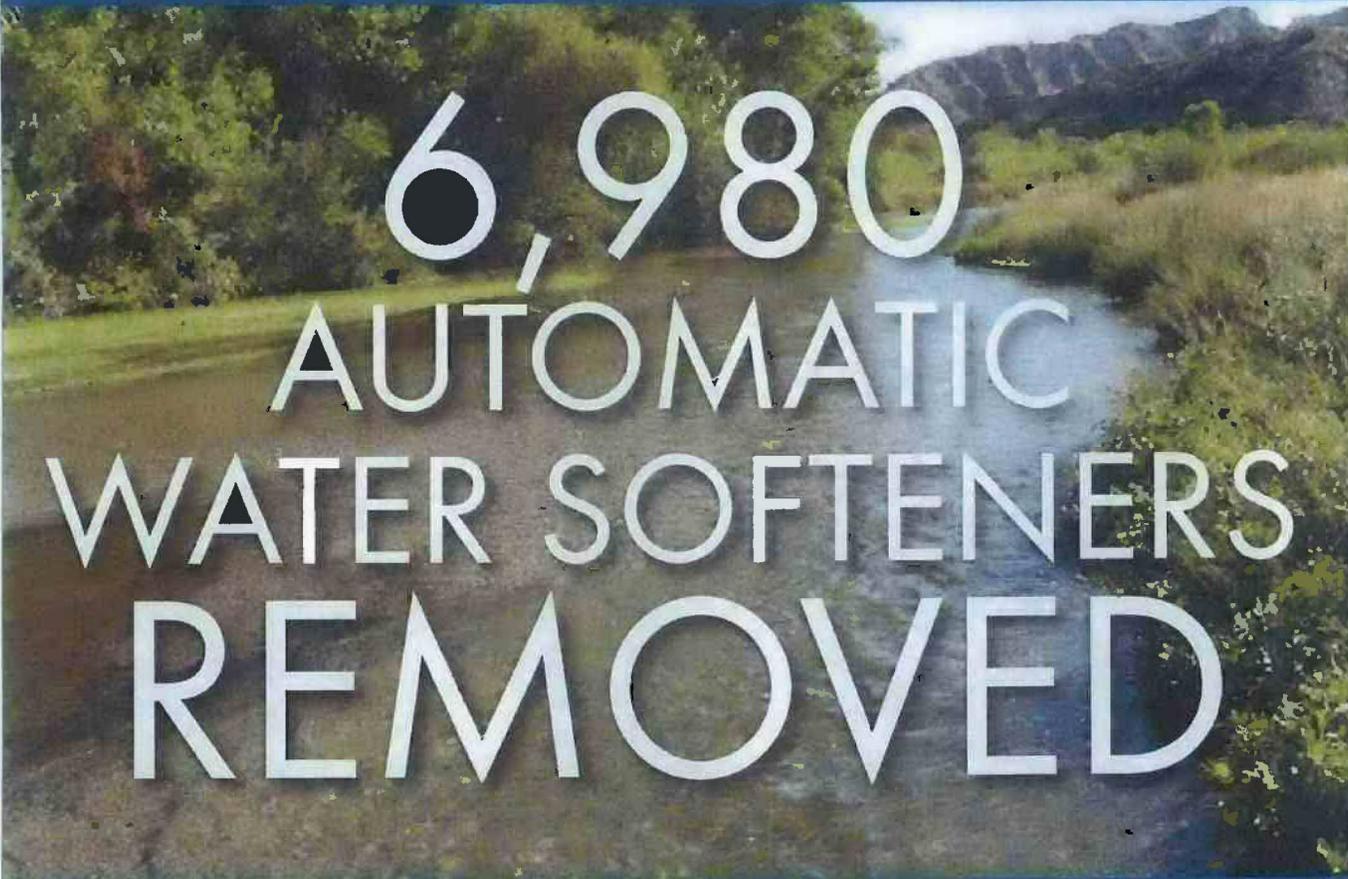


Secretary of the Board of Directors of  
County Sanitation District No. 32  
of Los Angeles County

# EXHIBIT “20”

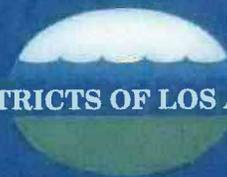
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2010 CHLORIDE SOURCE  
IDENTIFICATION/REDUCTION,  
POLLUTION PREVENTION,  
AND PUBLIC OUTREACH PLAN



6,980  
AUTOMATIC  
WATER SOFTENERS  
REMOVED

NOVEMBER 2010



SANITATION DISTRICTS OF LOS ANGELES COUNTY

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## **Section 1. Executive Summary**

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### **EXECUTIVE SUMMARY**

#### **1.1 Introduction**

The purpose of this report is to address measures taken and planned to be taken by the Santa Clarita Valley Sanitation District (District) to quantify and control sources of chloride in the Santa Clarita Valley from July 2009 to June 2010. The District operates two water reclamation plants (WRPs) in the Santa Clarita Valley, the Saugus and Valencia WRPs, along with more than thirty miles of District's operated trunk lines and one pumping plant.

The Saugus and Valencia WRPs discharge treated wastewater into the upper reaches of the Santa Clara River. The District is currently facing significant water quality and regulatory challenges regarding the concentration of chloride being discharged to the river from the Saugus and Valencia WRPs. The discharges contain chloride in excess of the water quality objective for the upper Santa Clara River of 100 mg/L, which was established by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) in 1978 to reflect existing water quality conditions.

To address chloride in the upper reaches of the Santa Clara River, the Regional Board adopted Resolution 04-004 on May 6, 2004. This resolution is known as the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL), and it sets forth a comprehensive Implementation Plan for evaluating and attaining the water quality objective for the upper Santa Clara River. It became effective May 4, 2005. One of the tasks required under the TMDL Implementation Plan, Task 3, requires a plan to be submitted annually addressing measures that have been taken, and are planned, to quantify and control sources of chloride in the District's sewerage system. This report was prepared in accordance with the requirements under Task 3 of the Upper Santa Clara River Chloride TMDL Implementation Plan.

#### **1.2 Sources of Chloride Loadings**

This report addresses chloride sources from July 2009 to June 2010. Chloride loadings from 2001 to mid-2009 were fully characterized in previous reports by the District, *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2006*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2008*; and the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*. The last report, the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*, contained information for the first half of 2009. In this report data have been updated to reflect the entire 2009 calendar year (January 2009 to December 2009) and information from the first half of the current year, January 2010 to June 2010. This report builds upon the methodologies established in the previous six reports. The reader should bear in mind that the data presented herein are, in many cases, estimates based on numerous assumptions and best professional judgment. Many inputs are difficult to quantify and this analysis represents the best available information at this time.

The primary source of chloride in the District's sewerage system is chloride present in potable water served to the community. Potable water in the area is derived from two sources: imported water delivered under the State Water Project (SWP) and local groundwater. The chloride concentration in these two sources varies depending on a number of factors, most notably precipitation patterns. To

## **Section 1. Executive Summary**

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estimate chloride loading in the potable water supply, water quality and quantity data from the local water suppliers were used.

The residential sector also contributes a substantial chloride loading. The flow volume for residential discharges was estimated using a differential method, whereby other known flow volumes were subtracted from the total system flow volume to obtain the residential wastewater flow rate. This method was validated in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*, in which residential flow volumes were determined using both this differential method and a rigorous modeling technique based on extensive field data collection. There was excellent agreement between the two methods. The chloride loading contributed from self-regenerating water softeners (SRWS) was also estimated using a differential method, whereby all other chloride loadings were subtracted from the total chloride loading and the difference was assumed to be contributed by SRWS. Residential non-SRWS chloride contributions were estimated using concentration data taken from the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*.

Other sources of chloride in the District's sewerage system include disinfection at the WRPs, the industrial sector, the commercial sector, and hauled waste. Chloride introduced at the Saugus and Valencia WRPs during disinfection of wastewater using sodium hypochlorite and use of ferrous chloride in the raw sludge line at Valencia WRP was quantified using the District's operational records. Industrial loadings of chloride were estimated using chloride sampling data from industrial dischargers, combined with flow information from District's permit and surcharge records. Commercial loadings of chloride were estimated using concentration data taken from the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*, along with flow information taken from the District's service charge records. The contribution of chloride from hauled waste was determined using sample data to characterize concentration and waste manifests to determine volume.

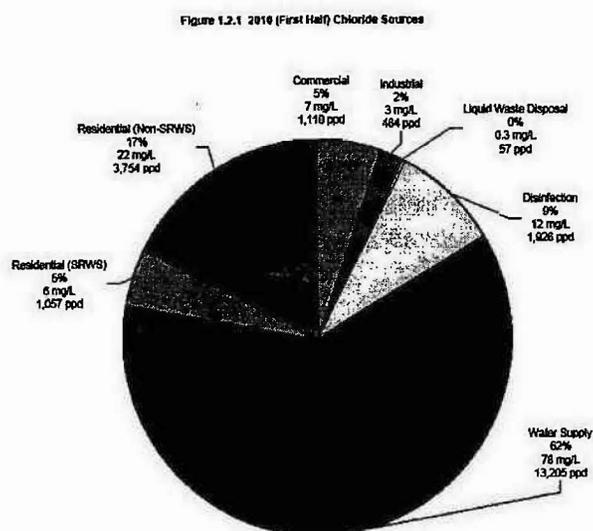
The results of the updated quantification of chloride sources in the District's sewerage system from July 2009 to June 2010 indicate that the largest source of chloride in the system continues to be the potable water supply. The estimated chloride from water supply peaked in 2009 at 13,219 pounds per day of chloride, representing 78 mg/L chloride in the system effluent. The 2009 peak coincided with drought conditions in both northern and southern California contributing to high chloride content in the SWP and the Alluvial Aquifer. In the first half of 2010, the potable water supply contributed 13,205 pounds per day of chloride, representing 78 mg/L in the effluent, and 62 percent of the chloride load in the District's sewerage system.

The chloride loading from SRWS peaked in 2003/2004 at about 9,000 pounds per day, representing 59 mg/L in the system effluent. This coincided with enactment of the prohibition on installation of SRWS in the District in 2003. The SRWS contribution maintained a downward trend in the first half of 2010, as the Automatic Water Softener Rebate Program – Phase II, Santa Clara River Chloride Reduction Ordinance of 2008 (Ordinance), and community-wide public education and outreach effort convinced residents to remove existing SRWS. For the first half of 2010, the chloride loading from SRWS was approximately 1,057 pounds per day, representing about 6 mg/L in the system effluent.

Based on the SRWS chloride loading for the first half of 2010, there are an estimated 800 SRWS still active in the community. This represents a 88 percent decrease from a maximum of about 6,500 units in the 2002-2004 timeframe. This dramatic decrease highlights the success of the District's residential source control program.

## Section 1. Executive Summary

A graphical depiction of the breakdown in chloride sources for the first half of 2010 is presented in Figure 1.2-1.



The District will continue to monitor and quantify chloride sources on an on-going basis. Continued efforts will include collection of data on industrial chloride concentrations and flowrates, industrial self-monitoring of chloride concentrations, quantification of commercial flowrates, tracking of treatment plant sodium hypochlorite and ferrous chloride use, tracking of volumes of wastes accepted at the Saugus Liquid Waste Disposal Station, collection of groundwater chloride data from local water purveyors, and monitoring of chloride concentrations and flowrates at the Saugus and Valencia WRPs. An update of the chloride sources will be submitted to the Regional Board each year as part of the annual progress report required under the Upper Santa Clara River Chloride TMDL Implementation Plan, Task 3.

### 1.3 Chloride Source Control Measures

The District has conducted a ground breaking, nationally recognized source control program for chloride in the Santa Clarita Valley. Because SRWS have been the largest controllable source of chloride, the source control efforts from July 2009 to June 2010 have continued to focus on the removal of these units. However, efforts to reduce chloride sources have also focused on the industrial sector, commercial sector, hauled waste, and treatment plant operations. Chloride in water supply is also being examined.

From July 2009 to June 2010, the District continued the Automatic Water Softener Rebate Program – Phase II and the community-wide public outreach program to encourage residents to remove SRWS. The Ordinance required all residential SRWS to be removed by June 30, 2009. Therefore, the multimedia public education and outreach program was pared down in July 2009. A brief summary of these programs is discussed below.

The Ordinance appeared as Measure S on the November 4, 2008 ballot. Voters overwhelmingly approved Measure S, with almost two-thirds of them voting in favor. Measure S received 55,502 votes, 64 percent, in favor, and 31,192 votes, 36 percent, against. The District is the first and only agency in California to have adopted such an ordinance.

## **Section 1. Executive Summary**

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In accordance with the provisions of Section 116787 of the California Health and Safety Code, the Ordinance took effect on January 1, 2009. The Ordinance required the removal and disposal of all existing SRWS installed in the District's service area by June 30, 2009, 180 days after the effective date of the Ordinance. Violations of the Ordinance following the issuance of a final Administrative Order is a misdemeanor punishable by a fine of not to exceed \$1,000.00 or by imprisonment not to exceed thirty days or by both such fine and imprisonment.

The District launched the Automatic Water Softener Rebate Program – Phase II on May 1, 2007. The program provides compensation for the reasonable value of the SRWS and removal and disposal of the SRWS at no cost to the resident if specific plumbers are used (and residents that remove the units themselves receive \$50 for removal). The reasonable value of the SRWS is determined based on the sales price, installation date of the unit, and a 12-year average service life expectancy for a unit. In order to be eligible for a rebate, the SRWS must have been installed prior to the March 27, 2003 effective date of the District's SRWS installation ban ordinance.

On January 1, 2009, the rebate amount was lowered from 100 percent to 75 percent of the reasonable value of the SRWS consistent with terms of the California Health and Safety Code Section 116787 and the Ordinance. The District is currently providing rebates of \$206 to \$2,000 for the removal and disposal of SRWS.

From May 1, 2007 to June 30, 2010, the District received 6,085 Automatic Water Softener Rebate Program – Phase II Application Forms and removed 6,547 SRWS from the Santa Clarita Valley.<sup>1</sup> As a result of the Automatic Water Softener Rebate Program – Phase I and II, 6,980 SRWS have been removed from the District's service area from November 30, 2005 to June 30, 2010. Approximately 60 percent of the total SRWS removed were removed between January 1, 2009, the effective date of the Ordinance, and June 30, 2010.

The District conducted a major multimedia community-wide public education and outreach campaign from March 25, 2004 to June 30, 2009. The program consisted of multiple phases and evolved significantly over the 5-year period as a result of the launch of the Automatic Water Softener Rebate Program – Phase I and II, Saltwater Pool Ordinance, and the Ordinance. Since the Ordinance required the removal of all residential SRWS by June 30, 2009, the program was pared down after that date.

From July 2009 to June 2010, the District worked successfully with local retailers to discontinue the sale of rock salt and potassium chloride. By April 2010, four Albertsons, a Do It Center, a Food 4 Less, two Home Depots, a Kmart, two Lowe's, seven Ralphs, a Sam's Club, the Sand Canyon Paint & Hardware, a Stater Bros. Market, and three Walmarts had remove rock salt and potassium chloride for SRWS from their shelves and committed to not restock the products. The District also continued to send monthly letters to new homeowners, to update the chloride website with additional alternative water conditioning units and resident reviews, to participate in community events, and to respond to residents' questions on the toll-free chloride hotline and dedicated email address.

Although many source control efforts have focused on the residential sector, the District has also conducted extensive source control efforts for other sectors. For the industrial sector, the District operates a comprehensive industrial waste source control program that includes permitting, inspections, monitoring, and enforcement. Under this program, industrial dischargers in the Santa Clarita Valley have either been assigned a chloride discharge limit of 100 mg/L or assigned a performance-based chloride limit that reflects implementation of chloride reduction practices to the extent technologically and economically feasible. For the commercial sector, the District is aggressively enforcing the prohibition

<sup>1</sup> Rental SRWS removed under contract with the water softening companies did not require applications forms.

## **Section 1. Executive Summary**

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on the use of SRWS. Numerous notifications about the prohibition have been made to commercial businesses, and thousands of on-site inspections have been conducted to verify compliance. In addition, the District has required implementation of best management practices to reduce chloride discharges from commercial swimming pools. The District is also investigating alternative disinfection methods for Saugus and Valencia WRPs to reduce in-plant chloride loading.

The District is firmly committed to reducing chloride sources in the sewerage system to the maximum extent technologically and economically feasible, and will continue to explore innovative and effective means to bring about this reduction.



## **Section 2. Introduction**

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### **INTRODUCTION**

#### **2.1 Purpose**

This report has been prepared in accordance with the requirements of Task 3 of the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL) Implementation Plan, as adopted by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) on May 6, 2004.<sup>1</sup> Task 3 requires that “Six months after the effective date of the TMDL, CSDLAC [Districts] will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including but not limited to: execute community-wide outreach programs, which were developed based on the pilot efforts conducted by CSDLAC [Districts], assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in reducing chloride. CSDLAC shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.”

Although Task 3 requires, in part, that the Santa Clarita Valley Sanitation District (District) implement source control measures for chloride, it should be noted that such measures began well before the effective date of the TMDL. The District began source control efforts in the Santa Clarita Valley in 1961 with adoption of a resolution prohibiting the discharge of brines from self-regenerating water softeners (SRWS). The residential source control efforts include passage in February 2003 of a groundbreaking ordinance prohibiting the installation of residential SRWS, launch in March 2004 of a major, multimedia public education program, and implementation of the Automatic Water Softener Rebate Program - Phase I from November 2005 to April 2007. The District also proactively created and manages the Automatic Water Softener Rebate Program - Phase II that provides compensation to residents for reasonable value of the SRWS and provides free removal and disposal of the unit if specific plumbers are used. On November 4, 2008, voters adopted the Santa Clara River Chloride Reduction Ordinance of 2008 (Ordinance). The Ordinance required the removal of all residential SRWS in homes connected to the District’s sewerage system effective January 1, 2009. As a result of the District’s extensive source control efforts, 6,980 residential SRWS have been removed since 2005 and all SRWS are illegal in the District’s service area. In addition to historical source control efforts, this report addresses current and planned chloride quantification and source control efforts, including assessment of chloride sources from imported water.

#### **2.2 County Sanitation Districts of Los Angeles County**

The Sanitation Districts (Districts) are a confederation of independent special districts serving the wastewater and solid waste management needs of over five million people in Los Angeles County, California. Seventeen of the districts have collectively constructed an extensive regional sewer system known as the Joint Outfall System, which conveys and treats approximately 450 million gallons per day (MGD) of wastewater from 73 cities and unincorporated county areas. The Joint Outfall System consists of seven treatment plants/water reclamation plants (WRPs) and 1,200 miles of large diameter, trunk sewers that form a network connecting the treatment plants and ocean outfalls off White Point on the Palos Verdes Peninsula. The Districts also operate four WRPs in northern Los Angeles County. Two plants serve the City of Santa Clarita and adjacent unincorporated areas in the Santa Clarita Valley.

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<sup>1</sup> State of California, California Regional Water Quality Control Board, Los Angeles Region, Resolution No. 04-004, May 6, 2004.

## **Section 2. Introduction**

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Two other plants serve the cities of Lancaster and Palmdale. The designated beneficial uses of the receiving waters to which the Districts' WRPs discharge are diverse and vary depending on location. These existing and potential use designations include groundwater recharge, agriculture, water recreation, warm fresh water habitat, wildlife habitat, commercial and sport fishing, and rare, threatened or endangered species reproduction and early development. Solid material removed during treatment is digested and dewatered. The resulting biosolids are either beneficially reused or landfilled.

### **2.3 Santa Clarita Valley Sanitation District**

The District<sup>2</sup> owns and operates two wastewater treatment plants, Saugus and Valencia WRPs, in the Santa Clarita Valley. In addition to these two plants, the District operates more than thirty miles of trunk sewers in the area and one pumping plant. The District's service area consists of the City of Santa Clarita and a portion of unincorporated Los Angeles County in the Santa Clarita Valley. The Saugus WRP has a design capacity of 6.5 MGD and the Valencia WRP has a design capacity of 21.6 MGD (collectively the two WRPs have a design capacity of 28.1 MGD).

The Saugus WRP is a tertiary treatment plant consisting of comminution, grit removal, primary sedimentation, nitrification/denitrification activated sludge biological treatment, secondary sedimentation, coagulation, inert media filtration, chlorination, and dechlorination. No facilities for solids processing are located at the Saugus WRP. Instead, all solids are conveyed by trunk sewer and a waste activated sludge force main to the Valencia WRP for treatment. In 2009, the average effluent discharged from the Saugus WRP was 4.9 MGD. The reclaimed water is discharged from the Saugus WRP to the Santa Clara River. The Castaic Lake Water Agency (CLWA) is in the preliminary stages of evaluating using reclaimed water from Saugus WRP for beneficial reuses.

The Valencia WRP is a tertiary treatment plant with solids processing facilities. Current treatment consists of comminution, grit removal, primary sedimentation, flow equalization, nitrification/denitrification activated sludge biological treatment, secondary sedimentation, coagulation, inert media filtration, chlorination, and dechlorination. The waste activated sludge from the Saugus and Valencia WRPs is thickened using dissolved air flotation, combined with primary solids, and then anaerobically digested. The digested sludge is dewatered using plate and frame filter presses, and is beneficially reused for agricultural land application. In 2009, 15.6 MGD of reclaimed water was discharged from the Valencia WRP. The majority of the reclaimed water, 15.3 MGD, was discharged to the Santa Clara River, and 0.3 MGD was reused by CLWA.

It is important to point out that, throughout this report, chloride loadings and contributions will be addressed collectively for both the Saugus and Valencia WRPs, rather than for each individual plant. This approach is necessary because the plants are physically interconnected to allow for raw sewage from the Saugus service area to be treated at the Valencia WRP, and to allow for the solids generated from wastewater treatment processes at the Saugus WRP to be conveyed to the Valencia WRP for subsequent treatment. Consequently, it is difficult to delineate specific sectors and/or source contributions to the individual WRPs; however, source contributions can be determined jointly for the two plants in the District.

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<sup>2</sup> The District was historically operated by two independent sanitation districts: County Sanitation District Number 26 of Los Angeles County and County Sanitation District Number 32 of Los Angeles County and referred to as the Santa Clarita Valley Joint Sewerage System. These two districts were merged into a single district, the Santa Clarita Valley Sanitation District of Los Angeles County, as of July 1, 2005. For simplicity in this report, actions taken by the County Sanitation District Number 26 of Los Angeles County and County Sanitation District Number 32 of Los Angeles County prior to the merger will be considered as though they were actions taken by the District.

## **Section 2. Introduction**

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Task 3 of the TMDL Implementation Plan requires an annual update to the Regional Board on the sources of chloride in the District and the District's source reduction, pollution prevention, and public outreach programs. This report describes the sources of chloride in the District's sewerage system and the District's source reduction, pollution prevention, and public outreach programs from July 2009 to June 2010 and discusses additional efforts that will be undertaken in the future.



## **Section 3. Sources of Chloride Loadings**

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### **SOURCES OF CHLORIDE LOADINGS**

#### **3.1 Scope**

In 2002 the District conducted a detailed investigation into sources of chloride in wastewater in the Santa Clarita Valley. This investigation used the year 2001 as a basis and included collection of thousands of chloride samples to fully characterize chloride loadings from industrial, commercial, residential, liquid waste disposal station, treatment plant operations, and water supply sources. The findings are detailed in the District's *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*. The thorough investigation was used in support of passage of an ordinance prohibiting the installation of residential SRWS, also known as automatic water softeners, in the Santa Clarita Valley, and was also used to choose targets for further chloride source reduction efforts.

In 2005, 2006, 2007, 2008, and 2009, the District utilized the methodologies established in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002* to analyze chloride data collected from 2002 to mid-2009. This analysis provided updated estimates of the chloride loading contributions from industrial, commercial, residential, liquid waste disposal station, treatment plant operations, and water supply sources and characterized the changes in the chloride loading from 2002 to mid-2009. The estimates of the chloride loading to the District's sewerage system during the years 2002 to mid-2009 are presented in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*.

This section of the report addresses the period from July 2009 to June 2010 and builds upon the methodologies and quantification of sources established in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2006*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2008*; and *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*. In this report data have been updated to reflect the entire 2009 calendar year (January 2009 to December 2009) and the first half of the current year, January 2010 to June 2010. The purpose of this section is to provide an update on the changes in chloride loadings over time, so that the effectiveness of chloride source reduction measures can be evaluated and a planning level determination can be made as to how to proceed with further source control efforts. However, the reader should bear in mind that the data presented herein are, in many cases, estimates based on numerous assumptions and best professional judgment. Many inputs are difficult to quantify and this analysis represents the best available information at this time.

#### **3.2 Santa Clarita Valley Potable Water Supplies**

Potable water supplied to the community contributes a significant fraction of the chloride loading in the District's sewerage system. This section discusses sources of potable water supplied to the Santa Clarita Valley and provides a quantitative estimate of the amount of chloride present in the water. Water volume and water quality data collected from the local water purveyors in the Santa Clarita Valley were used to estimate the loadings.

### Section 3. Sources of Chloride Loadings

#### 3.2.1 Groundwater and Surface Water Volumes

The relative volumes of local groundwater and State Water Project (SWP) water delivered in the Santa Clarita Valley vary by water purveyor and vary from year-to-year. The volume of each type of water served by each of the four local water purveyors, for the period 2002 through 2009, is shown in Table 3.2-1 (see page T-1). The percentage of water supplied by the various sources (i.e., SWP water, Alluvial Aquifer, and Saugus Aquifer) is detailed in Table 3.2-2 (see page T-2) and summarized in Table 3.2-3.

**Table 3.2-3 Summary of Santa Clarita Valley Potable Water Supply Sources**

Year	State Water Project	Alluvial Aquifer	Saugus Aquifer
2002	61.2%	32.4%	6.4%
2003	65.9%	28.8%	5.3%
2004	65.7%	26.4%	7.9%
2005	54.1%	37.5%	8.5%
2006	55.1%	36.9%	8.0%
2007	58.9%	33.3%	7.9%
2008	55.2%	36.9%	7.9%
2009	55.3%	35.0%	9.6%

For the year 2009, the last year for which volume data are available, total potable water production for municipal use was 69,646 acre-feet. SWP water represented 55 percent of the potable water served to the Santa Clarita Valley community. Alluvial Aquifer water comprised 35 percent of water served and the Saugus Aquifer contributed ten percent of water served, for a total of 45 percent of municipal water supply from local groundwater.

The water requirements in 2009 were lower than the average projection in the 2005 Urban Water Management Plan. Compared to the previous year, total water demand in the Santa Clarita Valley was about 4.5 percent lower in 2009. The decrease in water use in 2009 is attributed to the widespread awareness of dry conditions throughout the state, aggressive conservation messaging, and the decrease in local growth.<sup>1</sup>

#### 3.2.2 Groundwater and Surface Water Chloride Concentrations

A variety of data sources were used to characterize source water chloride concentrations. CLWA conducts monthly analyses of the chloride content of the treated SWP water that it supplies to local water purveyors. CLWA data were therefore used to characterize the chloride content of SWP water. Well sampling data from Newhall County Water District (NCWD), the CLWA Santa Clarita Water Division, and the Valencia Water Company (VWC) were used to characterize the chloride content of the local groundwater supply. Typically, these water retailers do not sample all active supply wells for chloride every year, but rather analyze a subset of wells every three years, on a rotating basis. Beginning in mid-2001 VWC began sampling its supply wells for chloride on a monthly basis, so the chloride content of groundwater supplied by VWC is better characterized than the chloride content of groundwater supplied by the other water purveyors. Source water chloride concentrations are detailed in Table 3.2-4 (see page T-3) and summarized in Table 3.2-5.

<sup>1</sup> Luhdorff & Scalmanini Consulting Engineers. 2009 Santa Clarita Valley Water Report. CLWA, CLWA Santa Clarita Water Division, Los Angeles County Waterworks District 36, Newhall County Water District, and Valencia Water Company. May 2010.

### Section 3. Sources of Chloride Loadings

**Table 3.2-5 Summary of Santa Clarita Valley Potable Water Supply Chloride Concentrations**

Year	State Water Project (mg/L)	Alluvial Aquifer (mg/L)	Saugus Aquifer (mg/L)
2002	83	87	33
2003	81	101	34
2004	69	97	34
2005	54	59	32
2006	51	66	35
2007	61	66	38
2008	75	85	38
2009	79	88	35
2010 (through June)	79	88	37

The chloride concentrations of the various sources of potable supply water varied over the period from 2002 through mid-2010. The SWP chloride concentration peaked in 2002 at 83 mg/L and decreased steadily through the 2005-2006 season<sup>2</sup>, reflecting precipitation patterns in northern California. The SWP chloride concentration increased from 2006 to 2009 as a result of below normal precipitation in northern California during the 2006-2007, 2007-2008, and 2008-2009 seasons. The 2009-2010 season produced about average precipitation in northern California that resulted in the SWP chloride concentration remaining stable. Chloride concentrations in the shallow Alluvial Aquifer peaked in 2003 at 101 mg/L and decreased in 2004. There was a notable decrease in chloride concentrations from 2004 to 2005, reflecting the historic heavy rainfall in southern California during late 2004 and early 2005. Due to below normal rainfall in southern California in the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 seasons, chloride concentrations in the Alluvial Aquifer increased from 2005 to 2009. The 2009-2010 season produced approximately ten percent above normal rainfall which caused the chloride in the Alluvial Aquifer to stabilize. Chloride concentrations in the deep Saugus Aquifer are not impacted by rainfall patterns and thus remained relatively constant from 2002 through the first half of 2010, at about 32 to 38 mg/L.

#### 3.2.3 Blended Water Supply Chloride Concentration

The concentration of chloride in potable water supplied to the Santa Clarita Valley each year was estimated as a flow-weighted average of the chloride concentrations from each of the four local water purveyors. This blended water supply chloride concentration ( $C_{BWS}$ ) was calculated using the equation:

$$C_{BWS} = W_{LACWD} * C_{LACWD} + W_{VWC} * C_{VWC} + W_{SCWD} * C_{SCWD} + W_{NCWD} * C_{NCWD} \quad (1)$$

where

- $W_{LACWD}$ ,  $W_{VWC}$ ,  $W_{SCWD}$ ,  $W_{NCWD}$ , and  $W_{SWP}$  are the water supply production ratios for Los Angeles County Waterworks District 36 (LACWD), VWC, SCWD, and NCWD (refer to Table 3.2-2 on page T-2), respectively; and

$C_{LACWD}$ ,  $C_{VWC}$ ,  $C_{SCWD}$ ,  $C_{NCWD}$  are calculated chloride concentrations for LACWD, VWC, SCWD, NCWD service areas, as computed using equation (2).

<sup>2</sup> Water years run from October of one calendar year to September of the following year.

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$$C_i = W_{SWP(i)} * C_{SWP(i)} + W_{Alluvial(i)} * C_{Alluvial(i)} + W_{Saugus(i)} * C_{Saugus(i)} \quad (2)$$

where

- *i* represents the individual water purveyors, LACWD, VWC, SCWD or NCWD;
- $W_{SWP(i)}$ ,  $W_{Alluvial(i)}$ , and  $W_{Saugus(i)}$  are the fractions of a purveyor's (*i*) total potable water supply associated with SWP water, the Alluvial Aquifer, and the Saugus Aquifer, respectively; and
- $C_{SWP(i)}$ ,  $C_{Alluvial(i)}$ , and  $C_{Saugus(i)}$  are yearly average chloride concentrations for each source. The SWP chloride data are the same for all purveyors, and Alluvial Aquifer and Saugus Aquifer data specific to each purveyor were used. For the LACWD chloride concentration in the Alluvial Aquifer, the annual average of the Alluvial Aquifer chloride concentrations from each of the three local water purveyors was used as an estimate since data from LACWD were not available.<sup>3</sup> For 2005, VWC data for the Saugus Aquifer were used as an estimate for the concentrations in the NCWD Saugus Aquifer since data from NCWD were not available.

The resulting estimated blended water supply chloride concentrations are presented below in Table 3.2-6. The concentration of chloride in the Santa Clarita Valley water supply peaked in 2003 at approximately 85 mg/L and decreased until 2006. The decrease was likely due to a combination of increased precipitation in northern California leading to lower chloride concentrations in SWP water and increased local rainfall leading to lower groundwater chloride concentrations in the shallow Alluvial Aquifer. For the first half of 2010, the blended water supply chloride concentration increased to 78 mg/L. The increase in blended water supply chloride concentrations from 2006 to mid-2010 is due to an increase in chloride concentrations in SWP water and the Alluvial Aquifer, likely due to below normal total precipitation received in northern and southern California during the 2006-2007, 2007-2008 and 2008-2009 seasons and near normal total precipitation in the 2009-2010 season.

**Table 3.2-6 Santa Clarita Valley Estimated Blended Water Supply Chloride Concentration**

Year	Blended Water Supply Chloride Concentration (mg/L)
2002	82.0
2003	84.6
2004	73.4
2005	56.2
2006	55.1
2007	61.4
2008	74.3
2009	77.6
2010 (through June)	78.2

<sup>3</sup> A straight average of all Alluvial Aquifer chloride data for 2004 results in a chloride concentration of 90 mg/L. However, since the vast majority of the chloride data for this period are from VWC, the 90 mg/L figure is primarily representative of VWC's wells. The 97 mg/L figure is an average of the average Alluvial Aquifer chloride concentration for the three local water purveyors with such data for 2004, and thus better represents the Alluvial Aquifer chloride concentration throughout the area. From 2002 to mid-2010, LACWD only pumped from the Alluvial Aquifer in 2004 and 2005. During the other time periods, LACWD utilized water from the SWP.

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To estimate the degree of uncertainty in the blended water supply chloride concentration calculation, an alternate method of determining the concentration was used. Under this alternate method, all chloride data for each source of water (e.g., Alluvial Aquifer and Saugus Aquifer) were averaged and combined with information on the fraction of each source of water to the total water supply. If an extensive data set were available to characterize the chloride in each source of water, this calculation method would yield the same result as the previous calculation. However, since much more data are available for VWC's wells than the other water purveyors' wells, the calculated blended water supply chloride concentration using this alternate method will be more heavily influenced by VWC data. If VWC data are representative of other wells in each aquifer, this alternate method is a better calculation method because it allows a heavier weight to the more extensive data set from VWC. However, if the chloride concentrations in the other water purveyors' wells are notably different from the chloride concentrations in VWC's wells, the original method is more accurate. Using the alternate method, the blended water supply chloride concentration is calculated using the following equation:

$$C_{BWS} = W_{SWP} * C_{SWP} + W_{Alluvial} * C_{Alluvial} + W_{Saugus} * C_{Saugus} \quad (3)$$

where

- $W_{SWP}$ ,  $W_{Alluvial}$ , and  $W_{Saugus}$  are the fractions of the total potable water supply associated with SWP water, the Alluvial Aquifer, and the Saugus Aquifer, respectively (see Table 3.2-3); and
- $C_{SWP}$ ,  $C_{Alluvial}$ , and  $C_{Saugus}$  are yearly average chloride concentrations for SWP water, the Alluvial Aquifer, and the Saugus Aquifer, respectively (see Table 3.2-5).

The results of the alternate calculations are presented in Table 3.2-7. For the first half of 2010, the resulting chloride concentration is within one percent of the concentration calculated using the original method, indicating that the results are not very sensitive to the calculation method used.

**Table 3.2-7 Santa Clarita Valley Estimated Blended Water Supply Chloride Concentration, Alternate Calculation Method**

Year	Blended Water Supply Chloride Concentration (mg/L)
2002	81.0
2003	83.9
2004	73.6
2005	53.9
2006	55.2
2007	60.9
2008	75.6
2009	77.7
2010 (through June)	78.0

### 3.3 Infiltration Contribution

In late 2004 and early 2005, the Santa Clarita Valley experienced exceptionally heavy rainfall. For the 2004-2005 water year, running from October 2004 to September 2005, the Los Angeles County Department of Public Works Santa Clarita Valley Rain Gauge 32Z (Newhall-Soledad Division Headquarters, recently renamed to Newhall-Fire Station 73) recorded a rainfall of 50.54 inches, which is the highest seasonal rainfall on record for the area. The heavy rains caused higher than normal flowrates

### **Section 3. Sources of Chloride Loadings**

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to occur at the Saugus and Valencia WRPs. The flowrates did not return to their expected values after the rains had ceased, suggesting infiltration of groundwater into the District's trunk sewer system and into local collector sewers and private laterals tributary to the District's sewerage system. Infiltration is a term indicating that shallow groundwater enters sewers in joints and cracks. Infiltration is different than inflow; inflow is intrusion of rainwater from flooded areas through manholes. Inflow occurs primarily during, but not following, rainfall events.

Wastewater flowrates in the District's sewerage system for the period 1996 through mid-2010 were evaluated. The only two years during this period where high flows were seen for extended periods after heavy seasonal rainfall were in 1998, when seasonal rainfall was 35.77 inches, and during 2005, when seasonal rainfall was 50.54 inches.<sup>4</sup> Increased flows after heavy rain seasons historically have been transitory in nature, gradually abating over a period of months. Flowrates after the 1998 rain season returned to normal within six months of the end of the rainy period. However, the impact of infiltration on the District's sewerage system as a result of the 2004-2005 rainy season was considered until December 2005. The longer time period was used because flowrates to Saugus and Valencia WRPs did not decrease to approximately normal until January 2006. The longer time period for infiltration impacts to dissipate in 2005 as compared to 1998 was probably due to heavier rainfall in 2005 than in 1998.

Estimation of the impact of infiltration on 2005 flows was done by performing a linear regression on District's sewerage system flow data for the calendar years 1999 to 2004. The system was not impacted by heavy rainfalls during this period, so flows during this period reflect expected treated plant flowrates in the absence of significant infiltration. Linear regression returns the best-fit equation to describe the data as:

$$\text{Flowrate} = (0.55685 \times \text{Year}) - 1097.37, \text{ where Year is the year expressed in decimal form.}$$

Using this equation, the excess flow due to infiltration for 2005 was estimated as 1.74 MGD. The chloride load contributed to the District's sewerage system by infiltration was then estimated by combining this average infiltration flowrate with an estimate of the chloride content of infiltration water. Because infiltration is intrusion into sewers of shallow groundwater, the chloride concentration of shallow groundwater provides a good estimate of the chloride concentration of infiltration water. Shallow groundwater in the Santa Clarita Valley is part of the Alluvial Aquifer. Averaging the Alluvial Aquifer chloride concentration from each of the three local water purveyors with such data available for 2005 results in a chloride concentration of 59 mg/L.<sup>5</sup> The corresponding estimated chloride loading from infiltration is 862 pounds per day for 2005. Because infiltration water has a lower chloride concentration than other sources of water entering the District's sewerage system, the presence of infiltration water reduces effluent chloride concentrations in the system.

From July 2009 to June 2010 there was no expected contribution of chloride from infiltration. Details on infiltration were included in this report in order to provide context for the 2005 chloride loading estimates.

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<sup>4</sup> In both high rain years, heavy rainfalls did not occur until the middle of rain year. Rain years run from October of one calendar year to September of the following year.

<sup>5</sup> A straight average of all Alluvial Aquifer chloride data for 2005 results in a chloride concentration of 71 mg/L. However, since the vast majority of the chloride data for this period are from the VWC, as discussed in Section 3.2.3, the 71 mg/L figure is primarily representative of VWC's wells. The 59 mg/L figure is an average of the average Alluvial Aquifer chloride concentration for the three local water purveyors with such data for 2005, and thus better represents the Alluvial Aquifer chloride concentration throughout the area.

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#### 3.4 Water Reclamation Plant Operation Contribution

The operation of a WRP requires the addition of a variety of chemicals to facilitate operation of the plant, enhance treatment, and provide for disinfection of treated wastewater. When a chemical is chlorine-based, such as sodium hypochlorite, use of the chemical at the WRP results in an increase in chloride concentration in wastewater as it is treated at the plant. This section addresses chloride increases in District's wastewater resulting from operation of the Saugus and Valencia WRPs.

From July 2009 to June 2010 sodium hypochlorite and ferrous chloride were used at the Saugus and Valencia WRPs. The overwhelming majority of the sodium hypochlorite was used for disinfection of treated wastewater to protect public health. Insignificant amounts of sodium hypochlorite were also used at the Valencia WRP for odor control in a flow equalization basin. From December 22, 2009 to January 11, 2010, and from May 11, 2010 to June 30, 2010, ferrous chloride was added to the raw sludge line at Valencia WRP to control hydrogen sulfide in digester gas and prevent struvite formation in sludge piping. The ferrous chloride was added on an experimental basis in an attempt to reduce influent ferric sulfate chemical usage.

Sodium hypochlorite used for disinfection at the WRPs is measured and recorded in the Districts' mainframe computer system as gallons used per day. When preparing this report it was discovered that some of the historical data contained errors. These errors were corrected and the sodium hypochlorite data was updated from 2002 to mid-2010. Summaries of treatment plant operation chloride contributions are presented in Tables 3.4-1 and 3.4-2.

**Table 3.4-1 Concentration of Treatment Plant Operation Added Chloride**

Year	Valencia WRP (mg/L)					Saugus WRP (mg/L)	Flow-Weighted System Average (mg/L)
	Flow Equalization Basin	Raw Sludge Line	Scrubber	Disinfection	Total	Disinfection	
2002	0.1	0	0.3	15.5	15.9	10.6	14.2
2003	0.1	0	0.1	13.1	13.3	13.6	13.4
2004	0.0	0	0	13.8	13.8	17.8	14.7
2005	0.2	0	0	11.5	11.7	15.8	12.5
2006	0.2	0	0	12.0	12.2	10.9	11.9
2007	0.1	0	0	12.5	12.6	11.5	12.3
2008	0.1	0	0	11.4	11.5	11.3	11.4
2009	0.1	0.2	0	12.0	12.3	10.6	11.8
2010 (through June)	0.2	1.1	0	10.9	12.2	9.4	11.4

### Section 3. Sources of Chloride Loadings

**Table 3.4-2 Treatment Plant Operation Chloride Loading**

Year	Saugus and Valencia WRP Flow (MGD)	Flow-Weighted System Average Chloride Concentration from Plant Operations (mg/L)	Treatment Plant Operation Chloride Loading (pounds per day)
2002	17.98	14.2	2,136
2003	18.12	13.4	2,018
2004	18.78	14.7	2,302
2005	21.13	12.5	2,209
2006	20.83	11.9	2,068
2007	20.91	12.3	2,150
2008	20.91	11.4	1,990
2009	20.43	11.8	2,013
2010 (through June)	20.25	11.4	1,926

Chloride containing chemicals used for wastewater treatment contribute approximately 1,900 pounds per day of chloride to the District's sewerage system. The majority of the chloride is added for wastewater disinfection. A small amount of chloride is from ferrous chloride addition into the raw sludge line and a negligible amount of chloride is added from use of sodium hypochlorite to control odors in the flow equalization basin at the Valencia WRP. In 2009 and the first half of 2010, treatment plant operations contribute approximately nine percent of the chloride loading in the final effluent.

### 3.5 Industrial Sector Contribution

Dischargers to the District's sewerage system can be grouped into three general categories: industrial, commercial, and residential. Industrial dischargers are those facilities that are involved in the production of goods and provision of certain services including chemical manufacturers, metal finishers, hospitals, and municipal pools. These types of facilities are regulated under the District's industrial source control program, and are issued permits to discharge industrial wastewater. Facilities that are not issued industrial wastewater discharge permits are considered to be commercial facilities.

#### 3.5.1 Overview of Industrial Sector

The Santa Clarita Valley is primarily a bedroom community hosting only a limited amount of industry. The District currently permits 71 industrial wastewater dischargers in the District's sewerage system including the following types of facilities:

**Section 3. Sources of Chloride Loadings**

**Table 3.5-1 Summary of Industrial Facilities Permitted in the SCVSD**

Type of Industry	Number of Permitted Facilities
Bottled water manufacturing	1
Car care product manufacturing	1
Correctional facilities	1
Cosmetics manufacturing	1
Detergent manufacturing	1
Education (colleges)	2
Energy	1
Fastener manufacturing	1
Food manufacturing	6
Groundwater remediation	3
Hospital	1
Laboratory	2
Mail processing	1
Metal finishing	6
Miscellaneous manufacturing	14
Personal care product manufacturing	1
Pharmaceutical manufacturing	2
Photoprocessing	1
Printing	2
RV sanitary disposal station	5
Semiconductor manufacturing	1
Swimming pools	7
Theme park	1
Truck/car wash	4
Vehicle maintenance	5
<b>Total</b>	<b>71</b>

The largest industrial discharger on the District's sewerage system is the Peter Pitchess Honor Rancho. This correctional facility is operated by the Los Angeles County Sheriff's Department and houses approximately 8,000 inmates. Wastewater is generated at the facility from toilets, showers, kitchens, cleaning, on-site vehicle maintenance, and a laundry that offers services to other Los Angeles County facilities. The District receives approximately 1.3 million gallons per day of wastewater from this facility, primarily sanitary in nature. Peter Pitchess does operate a large water softener that produces approximately 5,000 gallons per day of brine, but the brines are prohibited from discharge and are instead distilled at an on-site cogeneration facility. Distilled water from this process is reused at the cogeneration facility and the concentrated brine is hauled off-site for disposal.

The District also accepts wastewater from Magic Mountain, a large amusement park that includes a seasonally operated water park. Magic Mountain discharges wastewater to the sewer through three separate connections. Overall the facility discharges about 117,000 gallons per day of wastewater, consisting primarily of sanitary waste from park employees and visitors. Wastewater is also generated from the water park's sand filters (filter backwash), vehicle maintenance operations, restaurants, and an on-site laundry for employee uniforms.

The other large discharger in the District is the Henry Mayo Newhall Memorial Hospital, which discharges wastewater from three separate connections. Smaller dischargers include various types of

### **Section 3. Sources of Chloride Loadings**

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manufacturers, printers, municipal and community pools, educational institutions, and recreational vehicle sanitary disposal stations.

#### **3.5.2 Industrial Sector Chloride Loading**

To estimate the chloride loading from the industrial sector from July 2009 to June 2010 flows and chloride concentrations from all industries in the Santa Clarita Valley were compiled. Chloride concentration data were obtained from two sources, District's sampling data and industrial self-monitoring data. District's sampling data were collected as part of routine sampling and inspection operations. The District's industrial chloride samples were analyzed by the District's Water Quality Laboratory using U.S. EPA Test Method 300.0. All appropriate sample handling and quality assurance/quality control procedures were followed.<sup>6</sup> Industrial self-monitoring data are data that are collected by industries on their own effluent. The District typically requires self-monitoring for chloride at industries in the Santa Clarita Valley. The District reviews all self-monitoring data as it is received to ensure that samples were analyzed by appropriately certified laboratories.

In some cases, chloride sample data were not available for a particular facility for a particular year. In these cases, the effluent chloride concentration was usually estimated using chloride data for the company for a different year. For certain types of small dischargers, such as municipal swimming pools and recreational vehicle sanitary waste disposal stations, data were transferred from one facility to another. Because most facilities for which estimated chloride values were used have low flowrates, the uncertainty introduced by estimating chloride concentrations is relatively small.

To estimate the mass of chloride discharged from each industrial facility it was also necessary to determine the flow from each facility. Flow values were taken from District's surcharge (industrial sewer use fee) database,<sup>7</sup> where available, and from permitting information when surcharge data were not available. Surcharge flows were determined by either direct measurement or calculated based on water usage information from water bills. Direct measurement was used for the two facilities in the District that discharge the largest volumes of wastewater: Peter Pitchess Honor Rancho and Magic Mountain. These facilities are required by the District to maintain continuous flow monitoring systems that are calibrated annually to ensure a high degree of accuracy in flow data. Smaller facilities that discharge less than 50,000 gallons per day are not usually required to maintain continuous flow monitoring systems. In these cases, the volume of wastewater discharged annually for surcharge purposes is determined based on annual water usage information contained in water bills. Water usage is totaled for each year, then any additions (e.g., additions through processing products) or losses of water (e.g., evaporation) are taken into consideration. Facilities that discharge less than one million gallons of wastewater per year are not required to perform annual surcharge calculations. For these facilities, flow is calculated on a one-time basis when the permit is issued. These flow calculations are also based on water bill usage adjusted for any additions or losses.

In estimating the loading of chloride from industrial sources, it was necessary to separate the loading of chloride added by industry from the loading of chloride present in the potable water supplied to industries. Potable water concentrations were assumed to be the blended water supply concentrations for the Santa Clarita Valley, as discussed in Section 3.2.

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<sup>6</sup> For a more complete discussion of quality assurance/quality control procedures for chloride analyses, see Appendix 3.5-A in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

<sup>7</sup> This is an annual fee for wastewater collection, treatment and disposal services for industries. All industrial companies discharging more than one million gallons of wastewater during the fiscal year or that have high strength waste are required to pay an annual surcharge fee. The fee is based on flow and wastewater strength.

### Section 3. Sources of Chloride Loadings

Estimated industrial loadings from 2002 to mid-2010 are presented in Tables 3.5-2 to 3.5-10 (see pages T-4 to T-12) and are summarized in Table 3.5-11. The estimated industrial chloride loading decreased from approximately 1,601 pounds per day in 2002 to 1,555 pounds per day in the first half of 2010. The estimated chloride loading added to the system by industries, above chloride present in the water supply, varied from 357 pounds per day to 707 pounds per day during the same period. In 2009, the industrial loading above blended water supply increased primarily due to increased chloride loading from Henry Mayo Newhall Memorial Hospital. In the first half of 2010, the loading decreased to 464 pounds per day. The average chloride concentration discharged by industrial facilities dropped from 131 mg/L in 2002 to 111 mg/L in the first half of 2010. The average industrial chloride concentration is lower than the concentration of chloride discharged at the District's WRPs. This means that industries may provide a diluting effect on chloride concentrations relative to other sources; if all industrial sources were removed from the District's sewerage system the effluent chloride concentration at the plants may increase.

**Table 3.5-11 Summary of Estimated Industrial Chloride Loadings**

Year	Industrial Flow (MGD)	Flow-Weighted Average Industrial Chloride Concentration (mg/L)	Total Industrial Chloride Loading (pounds per day)	Industrial Chloride Loading Above Blended Water Supply (pounds per day)
2002	1.46	131	1,601	608
2003	1.25	123	1,281	408
2004	1.14	111	1,047	357
2005	1.15	108	1,035	503
2006	1.25	96	1,003	433
2007	1.38	101	1,171	469
2008	1.77	110	1,631	540
2009	1.79	125	1,860	707
2010 (through June)	1.69	111	1,555	464

### 3.6 Commercial Sector Contribution

#### 3.6.1 Overview of Commercial Sector

The commercial sector, as the term is used by the District, consists of all non-residential dischargers that do not hold industrial wastewater discharge permits. The commercial sector includes retail stores, restaurants, motels, offices, professional buildings, warehouses, and a number of other types of businesses.

#### 3.6.2 Commercial Sector Flow Volume

To estimate the amount of chloride discharged from the commercial sector it was necessary to identify both the flow volume and chloride concentration of wastewater discharged from this sector.

### **Section 3. Sources of Chloride Loadings**

Flow volumes were determined using information from internal District's service charge<sup>8</sup> and connection fee<sup>9</sup> databases. When a commercial business is first connected to the sewer system, the flow volume for the business is determined using a standard usage unit. The usage unit varies based on the type of business. For most business types, the usage unit is 1,000 square feet of occupied area. For motels and hotels the usage unit is the number of rooms on the property. For recreational vehicle parks the usage unit is the number of spaces, and for convalescent homes the usage unit is the number of beds.

A wastewater flow rate is then assigned to the business based on the District's standard business parcel connection fee schedule. The connection fee schedule establishes wastewater discharge rates per unit of usage for specific commercial business sectors based on studies conducted by the District in developing both the service charge and connection fee program. These studies characterized typical discharges for specific business categories. For example, office buildings are assumed to discharge 200 gallons of wastewater per day per unit of usage. The unit of usage for office buildings is 1,000 square feet of occupied area. Therefore, a 10,000 square foot office building would have ten usage units and would be assumed to discharge 2,000 gallons per day of wastewater. In some cases, however, certain commercial dischargers have applied for and received assigned wastewater flowrates lower than the standard usage units, based on reduced water usage.

Summaries of the flowrates from the various commercial business types in the Santa Clarita Valley, for the years 2002 through 2010 are presented in Tables 3.6-1 to 3.6-9 (see pages T-13 to T-21). The overall commercial wastewater flowrate increased from an estimated 2.7 MGD in 2002 to 4.0 MGD in 2010, commensurate with residential growth in the Santa Clarita Valley during this timeframe.

#### **3.6.3 Commercial Sector Chloride Concentrations**

Chloride concentrations in wastewater discharged by the commercial sector were taken from the District's *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*. As part of the District's 2001 chloride source identification study, the District sampled wastewater from a number of commercial business sectors. The sectors were chosen based on the potential for the businesses in the sector to discharge non-sanitary wastes that contained elevated chloride concentrations. Business sectors that only discharged sanitary wastes, such as office buildings, were excluded from sampling. Certain other business types, such as beauty salons and florists, were excluded because inspection and investigation of typical business practices at these facilities indicated that there were no operations that added significant amounts of chloride to their wastewater.

The commercial sectors chosen for sampling were dry cleaners, car washes, dog grooming, hotels/motels, health clubs, restaurants, laundromats, movie theaters, and retail grocery stores. The District selected a single company from each business sector to collect monitoring samples. Companies within a business category were reviewed based on the following criteria to select an acceptable location:

<sup>8</sup> As a special district, the District is permitted to charge an assessment for the services rendered under the applicable state law that allowed its creation. For residential and commercial uses of the District's sewerage system, this assessment is called a service charge. In accordance with state law, each fiscal year the District provides the Los Angeles County Auditor-Controller with a listing of the land parcels within its service area and the amounts to be charged to each parcel on the property tax roll.

<sup>9</sup> In 1981, a District-wide Connection Fee Program was implemented to provide funds for future capital expenditures needed to accommodate additional wastewater contributions in the District's sewerage system. This program requires all new users of the sewerage system, as well as existing users who expand their wastewater discharge by more than 25 percent, to pay a connection fee to the District based upon the quantity and the strength of the wastewater discharge. This connection fee applies to residential, commercial, and industrial users of the system.

### Section 3. Sources of Chloride Loadings

1. Suitability of the Sampling Point - The wastewater at the sampling location had to be representative of only that business being evaluated (e.g., no other sources of wastewater are discharged to the sewer line, which can be a problem in some shopping centers). Also the sampling location had to collect all wastewater from the business, including sanitary wastewater.
2. Representative Operating Conditions - The business, on the day of the sampling, had to be operating in a manner that reflected the normal operations of the business in that category.
3. Site Inspection - The sites were thoroughly inspected prior to sampling to ensure that unauthorized chloride sources (such as SRWS) were not present.
4. Sampling Location Access - The sampling location had to be situated in such a manner as to provide safe access for District's personnel.

The sampling program included the collection of two non-concurrent 24-hour chloride composite samples at each business type. To further ensure the validity of the data, the two composite sampling events were separated by a minimum of 40 days. Inspection of the businesses during the sampling periods confirmed the activities at the facilities were those of a typical business day. All wastewater samples collected from the commercial businesses were analyzed by the Districts' Water Quality Laboratory using U.S. EPA Test Method 300.0. All appropriate sampling handling and quality assurance/quality control procedures were followed.<sup>10</sup> The results of the sampling program are presented in Table 3.6-10.

**Table 3.6-10 2001 Commercial Sampling Results**

Business Sector	Average Chloride Concentration (mg/L)	Chloride Concentration Above Water Supply (mg/L)
Car Washes	75	6
Dog Grooming	85	16
Hotels & Motels	106	37
Health Clubs	115	46
Restaurants	120	51
Laundromats	121	52
Movie Theaters	146	77
Grocers - Retail	148	79

*\*Chloride concentrations above water supply in this table are based on the average 2001 chloride water supply value of 69 mg/L.*

<sup>10</sup> For a more complete discussion of quality assurance/quality control measures for chloride analysis, see Appendix 3.5-A in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*

### Section 3. Sources of Chloride Loadings

Businesses not in one of the sectors listed in Table 3.6-10 were evaluated independently. For example, convenience stores were assigned a chloride value equal to local potable water plus 30 mg/L to account for sanitary and domestic wastes.<sup>11</sup> This nominal value was assigned because no operations were conducted that would add significant amounts of chloride to their wastewater.

#### 3.6.4 Commercial Sector Chloride Loading

Flowrates and wastewater chloride data were combined to estimate the chloride loading from each commercial business type in the Santa Clarita Valley, as presented in Table 3.6-11. The estimated commercial loading of chloride above water supply contributions increased from 748 pounds per day in 2002 to 1,110 pounds per day in 2010. The increased chloride loading was due to increased flows from the commercial sector, as it grew commensurate with residential growth in the Santa Clarita Valley.

The concentration of chloride added to wastewater by the commercial sector has remained steady over the past nine years at 33 mg/L. This concentration is significantly lower than the average amount of chloride added to wastewater by other sources. Therefore, as with the industrial sector, the commercial sector provides a diluting effect on chloride concentrations in the District's sewerage system; if all commercial sources were removed from the District the effluent chloride concentration at the plants would increase.

**Table 3.6-11 Summary of Estimated Commercial Chloride Loadings**

Year	Commercial Flow (MGD)	Flow-Weighted Average Commercial Added Chloride Concentration (mg/L)	Commercial Chloride Loading Above Blended Water Supply (pounds per day)
2002	2.72	32.9	748
2003	2.95	32.5	800
2004	3.02	32.5	820
2005	2.99	32.7	815
2006	2.98	33.1	823
2007	3.41	33.3	945
2008	3.23	33.4	900
2009	3.92	33.1	1,082
2010 (through June)	4.02	33.1	1,110

#### 3.7 Liquid Waste Disposal Station Contribution

In addition to wastewater directly discharged to the sewerage system from industrial, commercial, and residential sources, the District accepts a small amount of wastewater that is delivered by truck, also known as hauled waste. The District operates the Saugus Liquid Waste Disposal Station, which accepts trucked loads of portable toilet, septic tank, and cesspool wastes at the Saugus WRP. No industrial wastes are accepted at the station, which primarily serves Santa Clarita and the outlying unsewered areas of Canyon Country and Aqua Dulce.

<sup>11</sup> Metcalf and Eddy, Inc., *Wastewater Engineering Treatment and Reuse*, 4<sup>th</sup> ed., McGraw-Hill, 2003.

### Section 3. Sources of Chloride Loadings

Each load arriving at the Saugus Liquid Waste Disposal Station is accompanied by a manifest. The number of loads, types of loads, and volumes of wastes arriving at the station can be determined by a review of historical manifest data. Table 3.7-1 presents a summary of the number of loads and volumes of loads arriving at the station from 2002 to mid-2010.

**Table 3.7-1 Saugus Liquid Waste Disposal Station Volumes**

Year	Number of Loads		Gallons	
	Chemical Toilet	Septage	Chemical Toilet	Septage
2002	523	2,270	948,339	5,731,245
2003	557	2,392	899,119	6,249,707
2004	896	2,503	1,146,404	5,784,546
2005	999	4,663	1,540,894	12,831,309
2006	1,257	3,439	1,765,512	7,367,571
2007	1,233	2,727	1,597,029	5,041,595
2008	1,367	2,860	1,637,258	5,130,228
2009	1,273	2,840	1,573,506	5,060,053
2010 (through June)	473	1,152	618,265	2,322,211

The chloride concentration of hauled waste loads arriving at the Saugus Liquid Waste Disposal Station was determined by direct measurement during the period from January 2000 through July 2004. Eighty-one randomly selected loads arriving at the station were sampled and analyzed for chloride. All samples were analyzed by the District's Water Quality Laboratory using U.S. EPA Test Method 300.0 and all appropriate quality assurance/quality control measures were followed.<sup>12</sup>

The results of the hauled waste sampling are detailed in Table 3.7-2 (see page T-22). Chloride concentrations in hauled waste loads varied from a minimum of 51 mg/L to a maximum of 2,650 mg/L. On average, the chloride content of chemical toilet waste was found to be 1,341 mg/L and the chloride content of septage waste was found to be 175 mg/L.

The chloride mass loading from the Saugus Liquid Waste Disposal Station was determined for the years 2002 to mid-2010 using the volumes of chemical toilet waste and septage received for each year and the average chloride concentrations of these wastes. The results are presented in Table 3.7-3. The contribution of chloride to the District's sewerage system from the Saugus Liquid Waste Disposal Station is minimal, ranging from 52 to 99 pounds per day.

<sup>12</sup> For a more complete discussion of quality assurance/quality control measures for chloride analyses, see Appendix 3.5-A in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

## Section 3. Sources of Chloride Loadings

**Table 3.7-3 Saugus Liquid Waste Disposal Station Chloride Loadings**

Year	Chemical Toilet Waste (pounds per day)	Septage Waste (pounds per day)	Total (pounds per day)
2002	29	23	52
2003	28	25	53
2004	35	23	58
2005	47	52	99
2006	54	30	84
2007	49	20	69
2008	50	21	71
2009	48	20	68
2010 (through June)	38	19	57

### 3.8 Residential Sector Contribution

#### 3.8.1 Residential Sector Overview

The Santa Clarita Valley consists of the City of Santa Clarita and outlying communities in unincorporated Los Angeles County. As of January 2008, the City of Santa Clarita is the fourth largest city in Los Angeles County with a population of 177,045 and the 24th largest city in California. The City of Santa Clarita grew 17 percent from 2000 to 2008, both as a result of influx and annexations of surrounding areas into the city limits. The projected City population for the year 2010 is 181,000.<sup>13</sup>

The Saugus and Valencia WRPs provide wastewater treatment for the majority of residents of the Santa Clarita Valley. Based on records from the District's service charge database, as of October 2010, the District contained 40,164 detached single-family homes and 26,258 non-single family housing units (e.g., condominiums, apartments, and mobile home parks). Of the 26,258 non-single family housing units, 25,835 units were identified as condominiums/townhouses, 184 were identified as duplexes, triplexes, and fourplexes, 216 were identified as multi-unit apartment complexes, and 23 were identified as mobile homes complexes. The 26,258 non-single family housing units contained 42,508 dwelling units.

#### 3.8.2 Residential Sector Flow Volume

The volume of flow discharged by the residential sector was estimated by finding the difference between the flow volume discharged by the Saugus and Valencia WRPs and the flow volumes from infiltration, the industrial sector, the commercial sector, and the liquid waste disposal station. Because all of these flow volumes are well characterized, this differential method should provide an accurate representation of the residential flow volume. Additionally, in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*, residential flow volumes were determined using both this differential method and a rigorous modeling technique based on extensive field data collection. There was excellent agreement in the residential flow volumes determined using the differential method and using the more rigorous modeling technique.

Using the differential technique, residential flowrates for the years 2002 to mid-2010 were found to vary from 13.8 MGD in 2002, to 16.6 MGD in 2006, to 14.5 MGD for the first half of 2010, as presented in Table 3.8-1. The overall increase in residential flow volume from 2002 to the first half of

<sup>13</sup> <http://www.santa-clarita.com/index.aspx?page=574> (Accessed September 25, 2010).

### Section 3. Sources of Chloride Loadings

2010 is commensurate with the increase in the Santa Clarita Valley population during the same period. The flows attributed to residences have been decreasing since 2006 as a result of an increase in flow from the industrial and commercial sectors. In addition, the combined plant flows and residential flows from 2008 to the first half of 2010 show a decreasing trend. The decrease is most likely due to the economic downturn and water conservation efforts during this time period.

**Table 3.8-1 Residential Wastewater Flowrates**

Year	Combined Plant Flow (MGD)	Infiltration Flow (MGD)	Industrial Flow (MGD)	Commercial Flow (MGD)	LWDS Flow (MGD)	Residential Flow (MGD)
2002	17.98	0	1.46	2.72	0.018	13.78
2003	18.12	0	1.25	2.95	0.020	13.90
2004	18.78	0	1.14	3.02	0.019	14.60
2005	21.13	1.74	1.15	2.99	0.039	15.21
2006	20.83	0	1.25	2.98	0.025	16.57
2007	20.91	0	1.38	3.41	0.018	16.10
2008	20.91	0	1.77	3.23	0.018	15.89
2009	20.43	0	1.79	3.92	0.018	14.70
2010 (through June)	20.25	0	1.69	4.02	0.016	14.52

#### 3.8.3 Residential Sector Chloride Concentration

To determine the chloride concentration in Santa Clarita Valley residential wastewater, exclusive of contributions from SRWS, data were used from the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*. In this report, it was noted that the typical chloride concentration above water supply that can be expected in municipal wastewater resulting from domestic usage is 20 to 50 mg/L, excluding chloride addition from domestic water softeners.<sup>14</sup> To verify this concentration, the District examined chloride data collected as part of the corresponding commercial sampling program, which included samples from a major hotel. The operations that generate wastewater at a hotel are similar to those in a household, including toilet/faucet/shower use by guests, clothes washing (laundry of linens by hotel staff), and dishwashing (from any on-site restaurants and cleaning of glassware used in the rooms). The average chloride concentration above water supply in the hotel wastewater was 35 mg/L. To further verify domestic non-SRWS chloride additions, daytime<sup>15</sup> chloride concentrations at four residential sites in the Santa Clarita Valley with a low incidence of SRWS were examined at the same time. The daytime chloride concentrations were believed to be representative of domestic wastewater with no SRWS regenerate, as the incidence of SRWS was low at these sites and SRWS are usually set to regenerate at night. As shown in Table 3.8-2, both the hotel data and the literature chloride value agree well with the daytime chloride concentrations above water supply found at the four residential sites with low SRWS usage in the Santa Clarita Valley.

<sup>14</sup> Metcalf & Eddy Inc., *Wastewater Engineering Treatment and Reuse*, 4<sup>th</sup> ed., McGraw Hill, 2003.

<sup>15</sup> 6 A.M. to midnight.

### Section 3. Sources of Chloride Loadings

**Table 3.8-2 Residential Chloride Concentration Above Water Supply Comparison**

	Chloride Concentration Above Water Supply (mg/L)
Literature	20 to 50
Hotel Wastewater	35
Site 1	31
Site 2	26
Site 3	28
Site 4	39
Average, Sites 1 to 4	31

To further quantify residential non-SRWS chloride contributions, the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002* contained a detailed study of residential non-SRWS sources of chloride. Chloride loadings for human waste, laundry products, other cleaning products, and swimming pool backwash were individually quantified. The chloride concentration in residential wastewater without SRWS was found to be 31 mg/L.<sup>16</sup>

#### 3.8.4 Residential Sector Chloride Load

The residential sector chloride load, exclusive of SRWS contributions, was estimated using flow and chloride concentrations as described above. The results are presented in Table 3.8-3. They indicate that the residential added chloride load, exclusive of SRWS, increased from 3,562 pounds per day in 2002 to about 3,754 pounds per day in mid-2010. The amount of residential chloride load has been decreasing since 2006 due a decrease in the flowrate attributed to residences as described in Section 3.8.2.

**Table 3.8-3 Estimated Residential Non-SRWS Chloride Load**

Year	Residential Flowrate (MGD)	Chloride Concentration (mg/L)	Chloride Load (pounds per day)
2002	13.78	31	3,562
2003	13.90	31	3,593
2004	14.60	31	3,774
2005	15.21	31	3,932
2006	16.57	31	4,284
2007	16.10	31	4,164
2008	15.89	31	4,108
2009	14.70	31	3,800
2010 (through June)	14.52	31	3,754

From 2002 to 2008, the primary source of chloride added to residential wastewater in the Santa Clarita Valley was SRWS. The chloride contribution from residential SRWS was estimated as the difference between the total chloride mass effluent from the Saugus and Valencia WRPs and the chloride loadings from other sources (water supply, infiltration, disinfection at the treatment plants, industrial, commercial, hauled waste, and residential non-SRWS). The mass of chloride discharged from the Saugus

<sup>16</sup> For a more complete discussion of the quantification of these sources see Section 4.6.6 in the District's *Santa Clarita Valley Joint Sewerage System Chloride Report, October 2002*. For information about the quantification of chloride concentration from residential garbage grinders/disposers, see Section 3.8.3 in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

### Section 3. Sources of Chloride Loadings

and Valencia WRPs for the years 2002 to mid-2010 is presented in Table 3.8-4, and the estimated residential SRWS chloride load for the same period is presented in Table 3.8-5.

**Table 3.8-4 Saugus and Valencia WRPs Chloride Load**

Year	Flowrate (MGD)			Chloride Concentration (mg/L)			Chloride Load (pounds per day)
	Saugus	Valencia	Total	Saugus	Valencia	Flow-weighted Average	
2002	5.63	12.35	17.98	174	187	183	27,431
2003	4.11	14.01	18.12	172	194	189	28,564
2004	4.04	14.74	18.78	160	183	178	27,887
2005	4.19	16.94	21.13	125	146	142	24,995
2006	4.85	15.98	20.83	124	136	133	23,141
2007	4.94	15.97	20.91	136	143	141	24,621
2008	5.07	15.84	20.91	147	149	148	25,847
2009	4.86	15.57	20.43	139	137	137	23,418
2010 (through June)	5.07	15.18	20.25	130	127	128	21,573

**Table 3.8-5 Estimated SRWS Chloride Load, Pounds per Day**

Year	Total Load	Water Supply	Inf.	Disinf.	Ind.	Com.	EWDS	Residential Non-SRWS	Residential SRWS
2002	27,431	12,296	0	2,136	608	748	52	3,562	8,029
2003	28,564	12,785	0	2,018	408	800	53	3,593	8,907
2004	27,887	11,496	0	2,302	357	820	58	3,774	9,080
2005	24,995	9,088	862	2,209	503	815	99	3,932	7,487
2006	23,141	9,572	0	2,068	433	823	84	4,284	5,877
2007	24,621	10,708	0	2,150	469	945	69	4,164	6,116
2008	25,847	12,955	0	1,990	540	900	71	4,108	5,283
2009	23,418	13,219	0	2,013	707	1,082	68	3,800	2,529
2010 (through June)	21,573	13,205	0	1,926	464	1,110	57	3,754	1,057

The number of active residential SRWS present in the Santa Clarita Valley was estimated using the chloride loading from each SRWS. This analysis assumes that each residential SRWS contributes a daily chloride loading of 1.34 pounds per day above water supply.<sup>17</sup> An estimate of the number of households that are using a SRWS was then made by dividing the SRWS contribution to the residential loading by the SRWS loading rate of 1.34 pounds per day per SRWS. The results are presented in Table 3.8-6.

<sup>17</sup> See the District's *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002* for a complete discussion of how the chloride loading per SRWS was determined.

### Section 3. Sources of Chloride Loadings

**Table 3.8-6 Estimated Residential SRWS**

Year	Residential SRWS Chloride Load (pounds per day)	Number of SRWS
2002	8,029	5,992
2003	8,907	6,647
2004	9,080	6,776
2005	7,487	5,588
2006	5,877	4,386
2007	6,116	4,564
2008	5,283	3,943
2009	2,529	1,888
2010 (through June)	1,057	789

According to these estimates, there were approximately 789 SRWS still in use in the community as of the middle of 2010. This represents an 88 percent decrease from a maximum of about 6,500 units in the 2002-2004 timeframe. The reduction is believed to be due to the combination of a prohibition on the installation of SRWS in the Santa Clarita Valley, which became effective in late March 2003,<sup>18</sup> the successful community-wide education and outreach program launched in March 2004,<sup>19</sup> the Automatic Water Softener Rebate Program – Phase I and II from November 2005 to June 2010,<sup>20</sup> and the enactment of the Santa Clara River Chloride Reduction Ordinance of 2008, which became effective January 1, 2009.<sup>21</sup> It should be kept in mind, however, that the exact numbers of SRWS in the community is unknown, and these estimates represent the best available information at this time.

### 3.9 Chloride Trends, Loading Summary, and Future Plans

#### 3.9.1 Chloride Trends

The flow-weighted combined effluent chloride concentrations at the District's WRPs from 1996 to June 2010 are presented in Figure 3.9-1 (see page F-1). Effluent chloride concentrations in the system began rising in 1997, when local ordinances prohibiting the discharge of brines from residential SRWS were invalidated by court rulings. SRWS were heavily marketed to the community, and became increasingly popular. The upward trend in chloride was exacerbated by increasing chloride concentrations in SWP water, causing the chloride loading in water supplied to the community to increase. Effluent chloride concentrations continued to rise until early 2003. In early 2003, the District enacted an ordinance prohibiting the installation of SRWS.<sup>22</sup> At the same time, drought conditions eased in northern California and the chloride concentration in SWP water served to the community began to drop. Chloride concentrations in the District's sewerage system exhibited a strong downward trend until 2007 due to the decrease in the chloride in the blended water supply and the District's community-wide outreach and rebate programs. Due to precipitation patterns in northern and southern California, the chloride concentration in the SWP water and Alluvial Aquifer has increased since 2007, contributing to an increase in the amount of chloride in the effluent. The combined, flow-weighted effluent chloride concentration in the District's sewerage system in the first half of 2010 was 128 mg/L.

<sup>18</sup> See Section 4.1.1 for details on the ordinance.

<sup>19</sup> See Section 4.1.5 for details on the public outreach efforts.

<sup>20</sup> See Section 4.1.4 for more information on the Automatic Water Softener Rebate Program – Phase I and II.

<sup>21</sup> See Section 4.1.3 for a discussion of the ordinance.

<sup>22</sup> See Section 4.1.1 for a discussion of the ordinance.

### Section 3. Sources of Chloride Loadings

Figure 3.9-2 (see page F-2) presents a chart of trends in chloride concentrations added to the District's sewerage system by users of the system (industrial, commercial, residential, and the liquid waste disposal station). Chloride added by the system users began to increase in 1997, again commensurate with invalidation of the ordinance prohibiting installation of SRWS. Chloride added by the system users continued to rise until early 2003, when the ordinance was enacted prohibiting installation of SRWS. Chloride concentrations then leveled off, and began to drop in early 2004 when community-wide outreach efforts about SRWS were implemented. They have been on a steady downward trend since, excluding the contributions from the potable water supply and wastewater disinfection.

#### 3.9.2 Summary of Chloride Loadings

The breakdown of chloride loadings by sector is presented in Tables 3.9-1, 3.9-2, and 3.9-3, and graphically depicted in Figures 3.9-3 to 3.9-11 (see pages F-3 to F-11).

**Table 3.9-1 SCVSD Chloride Loadings, Pounds per Day**

Year	Total Load	Water Supply	Inf.	Disinf.	Ind.	Com.	LWDS	Residential Non-SRWS	Residential SRWS
2002	27,431	12,296	0	2,136	608	748	52	3,562	8,029
2003	28,564	12,785	0	2,018	408	800	53	3,593	8,907
2004	27,887	11,496	0	2,302	357	820	58	3,774	9,080
2005	24,995	9,088	862	2,209	503	815	99	3,932	7,487
2006	23,141	9,572	0	2,068	433	823	84	4,284	5,877
2007	24,621	10,708	0	2,150	469	945	69	4,164	6,116
2008	25,847	12,955	0	1,990	540	900	71	4,108	5,283
2009	23,418	13,219	0	2,013	707	1,082	68	3,800	2,529
2010 (through June)	21,573	13,205	0	1,926	464	1,110	57	3,754	1,057

**Table 3.9-2 SCVSD Chloride Loadings, Concentration (mg/L)**

Year	Effl. Cl.	Water Supply	Inf.	Disinf.	Ind.	Com.	LWDS	Residential Non-SRWS	Residential SRWS
2002	183	82	0	14	4	5	0.3	24	54
2003	189	85	0	13	3	5	0.4	24	59
2004	178	74	0	15	2	5	0.4	24	58
2005	142	52	5	12	3	4	0.6	22	43
2006	133	55	0	12	2	5	0.5	25	34
2007	141	61	0	12	3	6	0.4	24	35
2008	148	74	0	12	3	5	0.4	24	30
2009	137	78	0	12	4	6	0.4	22	15
2010 (through June)	128	78	0	12	3	7	0.3	22	6

### Section 3. Sources of Chloride Loadings

**Table 3.9-3 SCVSD Chloride Loadings, Percentages**

Year	Total Load	Water Supply	Inf.	Disinf.	Ind.	Com.	LWDS	Residential Non-SRWS	Residential SRWS
2002	100%	45%	0%	8%	2%	3%	0.2%	13%	29%
2003	100%	45%	0%	7%	1%	3%	0.2%	13%	31%
2004	100%	41%	0%	8%	1%	3%	0.2%	14%	33%
2005	100%	37%	3%	9%	2%	3%	0.4%	16%	30%
2006	100%	41%	0%	9%	2%	4%	0.4%	19%	25%
2007	100%	43%	0%	9%	2%	4%	0.3%	17%	25%
2008	100%	51%	0%	8%	2%	3%	0.3%	16%	20%
2009	100%	56%	0%	9%	3%	5%	0.3%	16%	11%
2010 (through June)	100%	62%	0%	9%	2%	5%	0.3%	17%	5%

The relative contribution to chloride loadings of the industrial sector, commercial sector, liquid waste disposal station, disinfection, and residential non-SRWS has stayed relatively constant over the past several years. The industrial sector discharges one to three percent of the total loading, representing 2 to 4 mg/L of chloride in the final system effluent. The commercial sector discharges three to five percent of the total chloride loading, representing 4 to 7 mg/L chloride in the final system effluent. The liquid waste disposal station discharges less than one percent of the total chloride loading, representing about 0.4 mg/L chloride in the final system effluent. Disinfection at the WRPs contributes seven to nine percent of the total chloride loading, representing 12 to 15 mg/L in the final system effluent. Residential non-SRWS contributes 13 to 19 percent of the total chloride loading, representing approximately 22 to 25 mg/L in the final system effluent.

The two sources of chloride that have significantly varied over the past several years are chloride in the potable water supply and chloride from residential SRWS. The estimated chloride loading from water supply between 2002 and mid-2010 peaked in 2009 at 13,219 pounds per day of chloride, representing 78 mg/L chloride in the system effluent. In the first half of 2010, the potable water supply contributed 62 percent of the chloride load in the District's sewerage system. The chloride loading from SRWS peaked in 2003/2004 at about 9,000 pounds per day, representing 59 mg/L in the system effluent. This coincided with enactment of the prohibition on installation of SRWS in the District in 2003. The SRWS contribution maintained a downward trend in the first half of 2010, as the Automatic Water Softener Rebate Program – Phase II, Santa Clara River Chloride Reduction Ordinance of 2008, and community-wide public outreach effort convinced residents to remove existing SRWS. For the first half of 2010, the chloride loading from SRWS was approximately 1,057 pounds per day, representing about 6 mg/L in the system effluent.

The relative contributions of chloride sources, exclusive of potable water supply contributions, are presented in Figures 3.9-12 to 3.9-20 (see pages F-12 to F-20). The amount of added chloride loading from SRWS has dramatically reduced from 56 percent in 2003/2004 timeframe to 13 percent in mid-2010 (see Figures 3.9.13, 3.9.14, and 3.9-20). Data from the first half of 2010, Figure 3.9-20, indicates that residential SRWS continue to remain a controllable source of chloride added to wastewater in the Santa Clara Valley.

This analysis shows that residential SRWS should remain a primary target of the District's chloride source reduction efforts, and that chloride from the potable water supply should be also addressed to the maximum extent possible. The District should also consider further source control efforts for the residential, commercial, and industrial sectors and wastewater treatment.

## **Section 3. Sources of Chloride Loadings**

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### **3.9.3 Future Plans**

The District will continue to monitor and quantify chloride sources on an on-going basis. Continued efforts will include collection of data on industrial chloride concentrations and flowrates, industrial self-monitoring of chloride concentrations, quantification of commercial flowrates, tracking of treatment plant sodium hypochlorite and ferrous chloride use, tracking of volumes of wastes accepted at the Saugus Liquid Waste Disposal Station, obtaining groundwater and SWP chloride data from local water purveyors, and monitoring chloride concentrations and flowrates at the Saugus and Valencia WRPs. It is anticipated that the loading due to SRWS will continue to decrease with the further implementation of the Santa Clara River Chloride Reduction Ordinance of 2008. An update of the chloride loading per source category and the District's pollution prevention and public outreach programs for July 2010 to June 2011 will be submitted to the Regional Board next year as part of the annual progress report required under the Upper Santa Clara River Chloride TMDL, Task 3.



## **Section 4. Chloride Source Control Measures**

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### **CHLORIDE SOURCE CONTROL MEASURES**

#### **4.1 Residential Sector**

As detailed in Section 3, the primary controllable source of chloride in the Santa Clarita Valley has been residential SRWS, also known as automatic water softeners. Therefore, District's residential source control efforts have focused on these units. This section describes the residential source control efforts, which began in 1961. These efforts were substantially increased beginning in 2000, well in advance of deadlines required under the Upper Santa Clara River Chloride TMDL.

##### **4.1.1 Historical Control of Self-Regenerating Water Softeners**

In 1961, the District adopted resolutions that prohibited the connection of laterals or other sewer lines to the District's sewerage system that included salt brines produced by the regeneration of water softeners (e.g., SRWS). This action was taken to protect the quality of the District's wastewater and in turn to protect the quality of water discharged to the Santa Clara River and/or the quality of water beneficially reused. The prohibition applied to all users of the sewerage system: residential, commercial and industrial. In 1997, the prohibition in effect was limited to only industrial and commercial users based on the outcome of several lawsuits that impacted the ability of local agencies to control residential SRWS, as further explained below.

In the mid-1990s, the California Court of Appeals made several significant rulings regarding the ability of local agencies to enact ordinances to ban or restrict residential SRWS.<sup>1</sup> Each agency had adopted an ordinance that either banned or placed restrictions on the use of residential SRWS. In each case, the Courts ruled that restrictive ordinances prohibiting or significantly restricting residential use of SRWS were invalid, as the State had statutes in place that regulated softener performance on a statewide basis (and these took precedence over more stringent local regulations). Specifically, in 1978, the state Legislature adopted California Health and Safety Code Section 116775 that reads, in pertinent part as follows:

*"The Legislature hereby finds and declares that the utilization of the waters of the state by residential consumers for general domestic purposes, . . . is a right that should be interfered with only when necessary for specified health and safety purposes. The Legislature further finds that variation in water quality, and **particularly in water hardness, throughout the state requires that on-site water softening or conditioning be available throughout the state** to insure to domestic consumers their right to a water supply that is effective and functional for domestic requirements of the residential household, **but that the on-site water softening or conditioning shall be available only as hereinafter set forth.**" (Emphasis added)*

Health and Safety Code Sections 116785 and 116790 established minimum salt efficiency ratings for residential SRWS of 2,850 grains of hardness per pound of salt, and required that regeneration be based on clock or demand control devices. The Courts determined that the statute declared that the residential use of SRWS was a right, and that the local ordinances restricting SRWS use by residents interfered with that right. The Courts acknowledged the concerns of the agencies about impacts of salinity on water quality resulting from the discharge of brine wastes into sewers, but indicated that any desire to further restrict softeners would need to be addressed by the State Legislature.<sup>2</sup> These court decisions prevented local agencies from regulating

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<sup>1</sup> Water Quality Association et al. versus County of Santa Barbara et al.; Water Quality Association et al. versus City of Santa Maria et al.; Water Quality Association et al. versus City of Escondido et al.

<sup>2</sup> 96 Daily Journal D.A.R. 4450.

#### **Section 4. Chloride Source Control Measures**

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residential SRWS, even where there were adverse water quality impacts, or where salt levels contributed by water softeners posed an impediment to water recycling efforts.

In 1999, Senate Bill 1006 (Statutes of 1999, Ch. 969) was enacted, but it did not take effect until January 1, 2003. Among other things, the bill amended the California Health and Safety Code Section 116786 to establish new conditions under which a local agency could regulate SRWS.<sup>3</sup> Health and Safety Code Section 116786 authorized a local agency to limit the availability, or prohibit the installation, of residential water softening or conditioning appliances that discharge to the sewer system through adoption of an ordinance, if three findings are made, substantiated by an independent study, and included in the ordinance. The findings must include the following:

- 1) The local agency is not in compliance with either their NPDES permit or their water reclamation requirements;
- 2) Limiting the availability, or prohibiting the installation, of the appliances is the only available means of achieving compliance with the permit or reclamation requirements; and
- 3) The local agency has adopted, and is enforcing, regulatory requirements that limit the volumes and concentrations of saline discharges from non-residential sources to the sewer system to the extent technologically and economically feasible.<sup>4</sup>

The independent study was required to include a quantification of all sources of salinity, including residential water softening, residential consumptive use, industrial and commercial discharges, and seawater or brackish water infiltration and inflow into the sewer collection system. The study was also required to identify remedial actions taken to reduce the discharge of salinity into the sewer system from each source, to the extent technologically and economically feasible, to bring the local agency into compliance with its permit requirements.

In addition, changes to the statute enacted through Senate Bill 1006 increased the minimum operating efficiencies for all residential SRWS sold after January 1, 2000, from 2,850 to 3,350 grains removed per pound of salt added. These minimum operating efficiencies increased to 4,000 grains removed per pound of salt added for residential SRWS sold after January 1, 2002. The amended statute also specified that the regeneration cycle of all residential SRWS sold after January 1, 2000, should be demand controlled or initiated. Historically, older SRWS were timer-controlled, meaning that the regeneration cycle was controlled by a clock, which would trigger the regeneration cycle based on a preset cycle, independent of whether or not the exchange capacity of the resin beads was exhausted.

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<sup>3</sup> Under Senate Bill 1006, new ordinances enacted by local agencies must be prospective in nature, and thus, residential water softening devices installed before the effective date of a new ordinance were automatically grandfathered in.

<sup>4</sup> These provisions of Senate Bill 1006 (SB 1006) were amended by Assembly Bill 334 (AB 334), which was enacted August 4, 2003 and took effect January 1, 2004. AB 334 changed these provisions to require that limiting the availability, or prohibiting the installation, of the appliances is a necessary means of achieving compliance with waste discharge requirements or water reclamation requirements. The determination of whether it is a necessary means of compliance must include an assessment of the technological and economic feasibility of alternatives to the ordinance and an assessment of the potential saline discharge reduction as a result of the ordinance. However, the District's ordinance was adopted prior to the enactment of AB 334, so the original provisions of SB 1006 were followed.

## **Section 4. Chloride Source Control Measures**

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In 2001, the District began preparation of the independent study required for adoption of an ordinance prohibiting the installation of SRWS. The study quantified chloride contributions in the District's sewerage system for the year 2001. It examined the amount of chloride entering the system from potable water, industrial waste, commercial discharges, hauled waste, residences, and wastewater treatment plant operations. It included extensive sampling and flow monitoring in six Santa Clarita Valley neighborhoods, conducted in February, August, and October 2001. The study also detailed efforts that had been taken thus far to control and reduce chloride discharges. The report describing the study, *Santa Clarita Valley Joint Sewerage System Chloride Source Report*, was released in October 2002.

The findings of the report were reviewed by an independent panel convened by the National Water Research Institute. This panel, the National Water Research Institute Independent Review Panel (Panel), was charged with the task of independently studying the report and offering its findings and recommendations relative to making a determination of whether the District could and should regulate SRWS in accordance with state law. The panel verified the findings in the report and substantiated that the District was taking the necessary actions to restrict non-residential sources of chloride pursuant to California Health and Safety Code Section 116786.

Subsequent to the panel's determination, an ordinance was drafted and later adopted by the District's Board of Directors on February 25, 2003.<sup>5</sup> It became effective thirty days after adoption, on March 27, 2003. A violation of the ordinance is a misdemeanor, punishable by a fine not to exceed \$1,000.00, imprisonment not to exceed thirty days, or both.

The District began efforts to publicize the ordinance as soon as it was introduced. During February and March 2003, the District conducted outreach to local newspapers, radio stations, home developers, plumbers, contractors, and water system conditioning vendors regarding the ordinance. The District's chloride website was also updated to include information about the ordinance. Letters were then sent to all households in the District's service area.

Because the ordinance did not prohibit the sale of SRWS,<sup>6</sup> a key element of implementing the ordinance was to obtain agreement from local retailers to voluntarily stop selling the units. In March and April 2003, staff from the District, the Regional Board, and the City of Santa Clarita met with the local retailers that were selling SRWS. All eight retailers agreed to stop selling SRWS. These retailers were Sears, Costco, Lowe's, OSH, Caston's TV & Appliances, Warehouse Discount Center, and two Home Depot stores. Costco also stopped selling rock salt and potassium chloride in their local stores.

During this period the District also began compiling a list of acceptable alternatives to SRWS. Vendors were put on the list at their request. Before adding a new vendor to the list, the vendor's system was reviewed to ensure that it did not produce a high-chloride waste product. Vendors of acceptable alternative systems were sent letters stating that their systems were acceptable for installation in the Santa Clarita Valley. A list of approved alternative systems was initially only sent to residents upon their request, but was later added to the District's chloride website to provide wider distribution.

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<sup>5</sup> The District was historically operated by two independent sanitation districts: County Sanitation District Number 26 of Los Angeles County and County Sanitation District Number 32 of Los Angeles County and referred to as the Santa Clarita Valley Joint Sewerage System. These two districts were merged into a single district, the Santa Clarita Valley Sanitation District of Los Angeles County, as of July 1, 2005. For simplicity in this report, actions taken by the County Sanitation District Number 26 of Los Angeles County and County Sanitation District Number 32 of Los Angeles County prior to the merger will be considered as though they were actions taken by the District.

<sup>6</sup> State law allowing prohibitions on the installation of SRWS does not allow for sales prohibitions.

## **Section 4. Chloride Source Control Measures**

### **4.1.2 California Health and Safety Code Section 116787**

As detailed in Section 4.1.1, the District adopted an ordinance in accordance with SB 1006 that prohibited the installation of new residential SRWS in the Santa Clarita Valley after March 27, 2003. However, SB 1006 did not allow a local agency to adopt an ordinance requiring the removal of SRWS that were installed prior to the effective date of the ordinance. To facilitate the timely removal of all residential SRWS, the District and the City of Santa Clarita worked with Senator George Runner (17th Senate District) on the enactment of Senate Bill 475. The bill added Section 116787 to the California Health and Safety Code<sup>7</sup> to provide the District with the authority to adopt an ordinance to require the removal of all previously installed residential SRWS if specific findings are met. A copy of Section 116787 of the California Health and Safety Code is provided in Appendix 4.1-A. This is a special statute applicable only in the Santa Clarita Valley due to the unique circumstances associated with the requirements for reductions of chloride in order to attain water quality standards in the Santa Clara River. Because of concerns expressed during the legislative process about requiring residents and businesses (i.e. SRWS rental companies) to remove equipment legally purchased, installed, and operated and the attendant loss of use and capital investment that would be associated with such a new requirement, the bill carefully balances the rights of SRWS owners in the Santa Clarita Valley with the desire to expeditiously and cost-effectively reduce chloride levels in wastewater.

The statute required a phased voluntary and mandatory program to compensate residents for the reasonable value and cost of removal and disposal of the SRWS unit. Under the voluntary program offered prior to the effective date of the ordinance, residents would be compensated for 100 percent of the reasonable value of the removed appliance; under the mandatory program after the effective date of the ordinance, the compensation would be at the 75 percent level. This differential compensation rate was intended to provide an incentive for owners to remove their units sooner, prior to a mandatory removal program going into effect. Compensation is required to be made available if the owner disposes of the unit and provides written confirmation of the disposal. In determining reasonable value of residential SRWS, the statute required the District consider information provided by manufacturers of residential SRWS and providers of water softening or conditioning appliances and services in the District's service area regarding purchase price, useful life, and the cost of installation, removal, and disposal. For rental units, the statute allows owners to voluntarily waive the 100 percent or 75 percent compensation and allows them to avoid the disposal requirement (and retain ownership of the units for salvage or reuse elsewhere) if the owner provides written confirmation that the appliance has been removed from the home for use in a location outside the District's service area.

Prior to the adoption of an ordinance prohibiting SRWS, the statute required that the District make a finding that the removal of residential SRWS is a necessary and cost-effective means of achieving timely compliance with waste discharge requirements, water reclamation requirements, or a TMDL. In determining what constitutes a necessary and cost-effective means of achieving compliance, the District was required to assess all of the following:

- (1) Alternatives to the ordinance;
- (2) The cost-effectiveness and timeliness of the alternatives as compared to the adoption of the ordinance;
- (3) The reduction in chloride levels to date resulting from the voluntary compensation program implemented;

<sup>7</sup> The bill was passed by the Legislature on August 31, 2006 and signed into law on September 22, 2006 (Statutes of 2006, Chapter 393).

## **Section 4. Chloride Source Control Measures**

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- (4) The potential reduction in chloride levels expected as a result of the mandatory compensation program;
- (5) Adoption and enforcement of regulatory requirements that limit the volume and concentrations of saline discharges from non-residential sources, to the extent that is technologically and economically feasible;
- (6) Based on available information, sufficient wastewater treatment capacity exists in Los Angeles County to make portable exchange water softening services available to residents affected;
- (7) Based on available information, the adoption and implementation of the ordinance will avoid or significantly reduce the costs associated with advanced treatment for salt removal and brine disposal that otherwise would be necessary to meet the TMDL.

Finally, the ordinance must be approved in a referendum by a majority vote of the qualified voters prior to taking effect and the ordinance may not take effect prior to January 1, 2009.

### **4.1.3 Santa Clara River Chloride Reduction Ordinance of 2008**

The District's Board of Directors introduced the Santa Clara River Chloride Reduction Ordinance of 2008 (Ordinance) on May 27, 2008, and it was adopted on June 11, 2008. A copy of the Ordinance is attached as Appendix 4.1-B. The Ordinance was supported by the requisite findings detailed in the *Staff Report in Support of Findings Necessary for Adoption of an Ordinance Pursuant to California Health and Safety Code Section 116787, with Addendum*. The key findings of the report are summarized as follows:

- SRWS are a major source of chloride loading to the District's Valencia and Saugus WRPs through the sewer system, and the District estimates that the maximum active SRWS chloride loading to the WRPs prior to the District's public outreach efforts was approximately 8,700 pounds per day.
- A voluntary SRWS removal program, which provides rebates to residents, has been active since November 2005.
- The District estimates that the remaining active SRWS chloride loading is approximately 6,400 pounds per day.
- The total achievable reduction in chloride loading as a result of the voluntary rebate program is estimated at 4,400 pounds per day. Including the District's agreements for the removal of rental SRWS units, a total of 3,300 SRWS are expected to be removed prior to adoption and implementation of the Ordinance.
- Engineering design consultant(s) have assessed the various treatment-based alternatives to comply with the TMDL and have determined that advanced treatment, consisting of microfiltration and/or membrane bioreactors and reverse osmosis, and brine disposal are the only reliable and least costly treatment technologies to remove chloride.
- The estimated cost to remove the remaining active SRWS within the District's service area through the Ordinance is significantly less than removing the equivalent load of chloride through advanced treatment and brine disposal.

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- ❑ The removal of the remaining active SRWS chloride load through adoption and implementation of the Ordinance would be more timely than through the removal of the equivalent chloride loading with advanced treatment and brine disposal.
- ❑ The potential additional reduction in chloride loading (beyond the completion of the voluntary rebate program) through a mandatory program requiring removal of SRWS is estimated at 4,300 pounds per day.
- ❑ The District has limited chloride loading of non-residential discharges (commercial and industrial sources) to the extent that it is technologically and economically feasible.
- ❑ Sufficient treatment capacity exists in Los Angeles County to provide for disposal of brine wastes generated from portable exchange water softeners that may serve the Santa Clarita Valley as a result of any mandatory program requiring removal of SRWS.
- ❑ The removal of the remaining active SRWS chloride load through mandatory program requiring removal of SRWS would significantly reduce the cost of compliance with the TMDL.

In accordance with the provisions of Section 116787 of the California Health and Safety Code, the Ordinance must be approved by majority vote in a voter referendum within the District's service area before it is effective. The Ordinance appeared as Measure S on the November 4, 2008 ballot. The text of Measure S appears below:

**DISTRICT**  
**SANTA CLARITA VALLEY SANITATION DISTRICT**  
**SPECIAL ELECTION**

<b>S</b>	To reduce chloride levels in the Santa Clara River as required by the State of California and minimize future rate increases for the customers of the Santa Clarita Valley Sanitation District of Los Angeles County, shall an ordinance be adopted requiring the removal of, and providing a compensation program for, all installed residential "salt-based" self-regenerating water softeners within the District's service area?	<b>158</b>	<b>YES</b> → <input type="radio"/>
		<b>159</b>	<b>NO</b> → <input type="radio"/>

**END OF BALLOT**

Voters overwhelmingly approved Measure S on November 4, 2008, with almost two-thirds of them voting in favor. Measure S received 55,502 votes, 64 percent, in favor, and 31,192 votes, 36 percent, against.<sup>8</sup> The District is the first and only agency in California to have adopted such an ordinance.

In accordance with the provisions of Section 116787 of the California Health and Safety Code, the Ordinance took effect on January 1, 2009. On January 1, 2009, the District began compensating owners of residential SRWS within its service area for 75 percent of the reasonable value of each removed residential SRWS and the reasonable cost of the removal and disposal of that residential SRWS.<sup>9</sup> The Ordinance required the removal and disposal of all existing SRWS installed in the District's service area by June 30, 2009, 180 days after the effective date of the Ordinance.

<sup>8</sup> County of Los Angeles, Department of Registrar/County Clerk, November 4, 2008 General Election, Final Official Election Returns, <http://trcc.co.la.ca.us/elect/08110018/rr0018p1.html-ssi> (accessed October 28, 2009).

<sup>9</sup> See Section 4.1.4 for more information on the Automatic Water Softener Rebate Program -- Phase I and II.

## **Section 4. Chloride Source Control Measures**

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The District performed community-wide public outreach to inform residents of the terms of the Ordinance and to encourage compliance.<sup>10</sup> The District also withheld administrative enforcement actions to allow all affected residents adequate time to remove their installed residential SRWS. The District intends to enforce the Ordinance by monitoring flows within the sewer system to determine the locations of residential SRWS and/or conducting inspections upon reasonable notice of any residence that discharges to the sewer system.

The District may issue a Notice of Violation to any person who failed to remove a residential SRWS as required by the Ordinance. A Notice of Violation shall allow a period of sixty days to correct the violation and to remove and dispose of the installed residential SRWS. Any person violating the Ordinance after issuance of Notice of Violation and the subsequent sixty day period shall pay an administrative fine to the District in an amount not to exceed \$1,000.00 for such violation. Any person who has received a Notice of Violation may within thirty days request a hearing and review by a hearing officer of the District. Violations of the provisions of the Ordinance following the issuance of a final Administrative Order is a misdemeanor punishable by a fine not to exceed \$1,000.00 or by imprisonment not to exceed thirty days or by both such fine and imprisonment.

### **4.1.4 Automatic Water Softener Rebate Program – Phase I and II**

The District initiated the Automatic Water Softener Rebate Program – Phase I on November 30, 2005. The program provided a \$100 rebate to residents that removed their SRWS or a \$150 to residents that removed their SRWS and replaced it with a qualified alternative unit, such as portable exchange tank service or a non-salt water conditioning device. The Automatic Water Softener Rebate Program - Phase I led to the removal of 433 SRWS between December 2005 and April 2007. The total expenditure on rebates for residents that removed their SRWS was approximately \$52,000. Detailed information on the Automatic Water Softener Rebate Program – Phase I is available in Section 4.1.3 in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2006* and the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*.

The Automatic Water Softener Rebate Program – Phase II was developed between June 2006 and April 2007 and launched on May 1, 2007. The program provides residents with compensation for the reasonable value of their SRWS and for free removal and disposal of their unit if specific plumbers are used. The program is intended to be consistent with the provisions for a voluntary and mandatory program under the terms of the California Health and Safety Code Section 116787. Detailed information about the program development is provided in Section 4.1.4 in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*.

The Automatic Water Softener Rebate Program – Phase II offered rebates for 100 percent of the reasonable value of non-rental SRWS, installed in the District's service area prior to March 2003, from May 1, 2007 to December 31, 2008. Rebates of \$325 to \$2,000 per SRWS for the removal and disposal of non-rental SRWS were available from May 1, 2007 to January 31, 2008. On February 1, 2008, the minimum value was reduced to \$275 to account for the additional depreciation of the SRWS. Rebates of \$275 to \$2,000 per SRWS were available from February 1, 2008 to December 31, 2008.

On January 1, 2009, the rebate amount was lowered to 75 percent of the reasonable value of the SRWS consistent with terms of the California Health and Safety Code Section 116787 and the Ordinance. The minimum value of the rebates was also lowered to \$206, 75 percent of \$275. The District continues to provide

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<sup>10</sup> See Section 4.1.5 for more information on community-wide public outreach efforts.

#### **Section 4. Chloride Source Control Measures**

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rebates of \$206 to \$2,000 for the removal and disposal of non-rental SRWS installed in the District's service area prior to March 27, 2003.

In order to treat all community members equally, residents that participated in the Automatic Water Softener Rebate Program – Phase I are eligible for the difference between the new rebate amount and the \$100 or \$150 incentive provided under the prior program. Between May 1, 2007 and June 30, 2010, the District received 205 rebate applications from participants in the Automatic Water Softener Rebate Program – Phase I requesting consideration for an additional rebate. The last application received from an Automatic Water Softener Rebate Program - Phase I participant for a supplemental rebate was on April 8, 2008. It is unlikely that the District will receive additional Automatic Water Softener Rebate Program – Phase II Application Forms from Automatic Water Softener Rebate Program - Phase I participants.

For new participants in the Automatic Water Softener Rebate Program – Phase II, residents obtain an application form on the District's chloride website at [www.lacsd.org/chloride](http://www.lacsd.org/chloride). For residents that do not have access to the Internet, they may call the District's toll-free hotline at (877) CUT-SALT and request an application form to be mailed. Residents complete the one-page application form and mail or fax it back to the District. In order to expedite processing of the application, residents are encouraged to provide verification of the SRWS purchase using one or more of the following documents, if available: dated receipt, contract, original service agreement, or other relevant paperwork.

The District reviews the application form and attached documentation to evaluate eligibility for the program. Once the application is deemed complete, the District uses all available information to verify data provided on the application form and to determine the reasonable value of the SRWS. The reasonable value of the SRWS is based on the sales price and installation date of the unit, and a 12-year average service life expectancy for the unit. Depending on the age, make, and model of the SRWS, rebates for individual units may range from \$206 to \$2,000.<sup>11</sup> A minimum value of \$206 is offered for all non-rental SRWS installed prior to March 27, 2003.<sup>12</sup>

After the reasonable value of the SRWS is calculated, the District prepares an Authorization for Rebate letter that states the address at which the SRWS is installed, the make, model, and serial number of the SRWS, and the rebate offer amount. Two copies of the Authorization for Rebate letter, one copy on white paper and one copy on yellow paper, and a List of Approved and Licensed Plumbers are mailed to the resident. An example of an Authorization for Rebate letter is provided in Appendix 4.1-C.

The purpose of the Authorization for Rebate letter is to inform the resident on the rebate offer amount before the unit is disconnected and removed. This procedure was established to eliminate confusion and disagreements after the SRWS is removed. Since the rebate offer is based on a depreciated value, the rebate offer amount will be honored if the SRWS is removed within sixty days of the date on the Authorization for Rebate letter. If the SRWS is not removed within sixty days, the resident may request a recalculated Authorization for Rebate letter. The Authorization for Rebate - Recalculation letter requires the removal of the SRWS within 30 days. The Authorization for Rebate letter also states that in order for the resident to receive the rebate, the SRWS must be removed and disposed of using contractors on the List of Approved and Licensed Plumbers or by an authorized District's representative. In addition, to facilitate the removal of the SRWS the resident is asked to stop adding rock salt or potassium chloride to the unit.

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<sup>11</sup> Rebates for individual units varied from \$325 to \$2,000 from May 1, 2007 to January 31, 2008 and from \$275 to \$2,000 from February 1, 2008 to December 31, 2008.

<sup>12</sup> A minimum value of \$325 was offered from May 1, 2007 to January 31, 2008 for all non-rental SRWS installed prior to March 27, 2003. A minimum value of \$275 was offered from February 1, 2008 to December 31, 2008.

#### **Section 4. Chloride Source Control Measures**

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After the resident receives the Authorization for Rebate letter, the resident may contact a plumber on the List of Approved and Licensed Plumbers to schedule the removal and disposal of the SRWS. Removal and disposal of the unit is at no cost to the resident if a plumber on the District's List of Approved and Licensed Plumbers is used. The District has verified that the plumbers on the list are licensed and bonded per the requirements of the State of California, but the list does not constitute an endorsement by the District of any particular contractor.

For convenience, some of the contractors on the List of Approved and Licensed Plumbers offer alternative non-salt water treatment units. The contractors that offer alternative units are marked with an asterisk. The installation of a non-salt water conditioning system is not required for participation in the Automatic Water Softener Rebate Program – Phase II.

When a plumber is called to remove a SRWS, the plumber will first verify that the resident has a District's Authorization for Rebate letter and confirm that the unit is a SRWS. Then, the plumber will disconnect, disable, and remove the unit from the address stated on the Authorization for Rebate letter and return the on-site plumbing to an operable state. The plumber is required to collect the yellow copy of the Authorization for Rebate letter and document the make, model, and serial number of the SRWS and the date the unit was removed on the yellow copy. The plumber also writes the street address of the residence where the SRWS was installed in permanent marker or spray paint on the unit. The plumber then transports the SRWS to the central yard near the Saugus WRP.

If desired, a resident may disconnect the unit themselves or use a plumber not on the List of Approved and Licensed Plumbers. The District provides an additional \$50 rebate for parts and materials to these residents. The Authorization for Rebate letter states that the resident should contact the District after the unit is disconnected and schedule pickup of the unit. Currently, District staff is available to pickup units on Wednesdays and Thursdays.<sup>13</sup> Before removing the SRWS from a property, District staff verifies that the unit was installed at that location and that the resident received the Authorization for Rebate letter. After confirmation of these items, District staff loads the SRWS onto the truck. In some cases, for example if they have already installed an alternative non-salt water conditioning unit, residents would like their SRWS picked up before the rebate amount is determined. In these cases, District staff requests that the resident sign a form stating that the rebate amount has not been determined at this time and once the SRWS is removed from the property, the SRWS will be destroyed.

Daily, District staff creates an inventory of the SRWS at the yard. To receive payment, the plumber is required to send to the District the yellow copy of the Authorization for Rebate letter for each SRWS removed and an invoice. District staff confirms the information on the SRWS removed matches the information provided by the resident on the application form and that the SRWS was received at the yard. Once the verification procedure is complete, the District initiates payment to the resident and the plumber.

In May 2007, the District estimated that approximately one-quarter of the SRWS installed in the District were rental units. The Automatic Water Softener Rebate Program – Phase II provided a \$100 rebate to residents that remove their rental SRWS from May 1, 2007 to January 31, 2008. The Automatic Water Softener Rebate Program – Phase II compensation to residents for rental SRWS sunset on January 31, 2008, as

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<sup>13</sup> Previously, District staff was available to pickup units Monday through Friday. Due to a reduction of the number SRWS pickup requests, the available pickup days were reduced to Wednesday and Thursday in May 2010. Currently, pickups are available from 8:00 a.m. to 2:30 p.m. or 11:00 a.m. to 7:00 p.m. on Wednesdays, depending on requests from residents, and from 8:00 a.m. to 2:30 p.m. on Thursdays. Additional pickup days will be added if needed.

## **Section 4. Chloride Source Control Measures**

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a result of the contractual agreements the District formed with the retail water softening companies discussed below.

To expedite removal, the District developed contractual agreements with the retail water softening companies that provide rental SRWS units to residents in the District for the removal of approximately 1,580 rental units by June 2009. The agreements provide compensation for eligible units that are removed, disabled, and surrendered to the District within the allocated time period. Rayne Dealership Corporation signed an agreement with the District on September 12, 2007 to remove approximately 530 rental SRWS from the District's service area by October 31, 2008. On December 12, 2007, Culligan Water Conditioning of Orange County signed an agreement for the removal of approximately 1,000 rental SRWS by June 30, 2009, and Guaranteed Water Systems, Incorporated agreed to remove approximately 50 rental SRWS by December 31, 2008. These three companies provide the majority of rental service for SRWS in the Santa Clarita Valley.

As of June 30, 2010, Rayne Dealership Corporation removed 529 rental SRWS, Culligan Water Conditioning of Orange County removed 260 rental SRWS, and Guaranteed Water Systems removed 37 rental SRWS. A total of 826 rental SRWS were removed by June 30, 2010, as a result of these agreements. Rayne Dealership Corporation has confirmed that they have removed all known rental SRWS. The District is currently working with Culligan Water Conditioning of Orange County and Guaranteed Water Systems, Incorporated to confirm that all known rental SRWS have been removed. The actual number of rental SRWS in the District's service area was significantly lower than originally estimated by the three companies.

High Desert Water Conditioning, Inc. in Acton contacted the District in June 2009 stating that the company had rental SRWS in the District's service area that needed to be removed per the Ordinance. The District agreed to provide the company with rebates of 75 percent of the reasonable value of each SRWS and a \$50 rebate per SRWS for parts and materials for the disconnection and removal of the units. The company delivered the removed units to the District's yard for verification and disposal. The company also provided the District with the estimated cost of each SRWS and the original installation date of the unit. All High Desert Water Conditioning, Inc. rental SRWS qualified for the minimum rebate amount of \$206 plus \$50 for parts and materials, totaling \$256 per SRWS. High Desert Water Conditioning, Inc. removed 27 rental SRWS from the District's service area in June 2009. A negligible number of SRWS units operating in the Santa Clarita Valley may be rented to customers from other companies, but no specific information about these units is available to the District at this time.

The District received 6,085 applications from new participants in the Automatic Water Softener Rebate Program – Phase II from May 1, 2007 to June 30, 2010. Figure 4.1.1 (see page F-21) shows the cumulative number of applications from new participants for the Automatic Water Softener Rebate Program – Phase II received by the District from May 2007 to June 2010. Approximately 68 percent of the applications for the Automatic Water Softener Rebate Program – Phase II were received after passage of Measure S on November 4, 2008.

From May 1, 2007 to June 30, 2010, the Automatic Water Softener Rebate Program – Phase II removed 6,547 SRWS of which 5,694 SRWS were owned by residents or rentals removed by residents, and 853 were rental SRWS removed by the retail water softening companies. Figure 4.1.2 (see page F-22) shows the cumulative number of units removed from May 1, 2007 to June 30, 2010, as a result of the Automatic Water Softener Rebate Program – Phase II. From November 30, 2005 to June 30, 2010, the Automatic Water Softener Rebate Program – Phase I and II removed 6,980 SRWS from the Santa Clarita Valley. Figure 4.1.3 (see page F-23) shows the cumulative number of units removed from November 30, 2005 to June 30, 2010, as a result of the Automatic Water Softener Rebate Program – Phase I and II.

## **Section 4. Chloride Source Control Measures**

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Approximately six percent of the total SRWS removed, 433 units, were removed during the Automatic Water Softener Rebate Program – Phase I. An additional 2,400 SRWS, 34 percent, were removed during the voluntary removal period from May 1, 2007 to December 31, 2008. Approximately 60 percent of the total SRWS removed, 4,147 units, were removed from January 1, 2009, the effective date of the Ordinance, to June 30, 2010. These statistics highlight the effectiveness of the mandatory removal provision in the Ordinance in reducing the number of SRWS from the District’s service area.

As detailed in Section 4.1.5 below, the Automatic Water Softener Rebate Program - Phase II was accompanied by a public outreach campaign in order to inform residents and encourage full community participation.

### **4.1.5 Public Education and Outreach Efforts**

In July 2002, after research in preparation for the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002* showed that SRWS were the primary controllable source of chloride beyond the potable water supply, the District conducted a pilot-scale outreach program to reduce use of residential SRWS in the Santa Clarita Valley. The program targeted two neighborhoods, Stevenson Ranch and Fair Oaks Ranch, that were identified during the District’s residential chloride sampling efforts in 2001 as neighborhoods with high usage of SRWS.<sup>14</sup>

After passage of the ordinance prohibiting the installation of SRWS in February 2003 and completion of the initial publicity in 2003,<sup>15</sup> the District focused its residential source control efforts on a large public education and outreach program. The major multimedia community-wide components of the campaign began on March 25, 2004 and concluded on June 30, 2009. The program consisted of multiple phases and evolved significantly over the 5-year period as a result of the launch of the Automatic Water Softener Rebate Program – Phase I and II,<sup>16</sup> Saltwater Pool Ordinance,<sup>17</sup> and the Ordinance.<sup>18</sup>

The District used a competitive process to select a consultant for the development and implementation of the community-wide public education and outreach efforts. The social marketing firm O’Rorke, Inc. (O’Rorke) was selected and worked on the project from September 2003 to June 2009. Smaller scale public outreach efforts continued from July 2009 to June 2010 utilizing District staff.

The first phase of the public education and outreach program was geared towards increasing the awareness of the impacts of SRWS. The program was launched with a press event in March 2004. During the spring of 2004, the District developed and aired a thirty-second cable television advertisement entitled “Hard Facts.” In addition, the District mailed a postcard to all 56,000 households connected to the sewer system, updated the chloride website ([www.lacsd.org/chloride](http://www.lacsd.org/chloride)), launched a dedicated toll-free hotline (877-CUT-SALT), and participated in the CLWA’s Annual Open House.

The second phase of the campaign, from fall 2004 to spring 2005, focused on encouraging residents to unplug their SRWS. During this phase the District ran two thirty-second cable television advertisements, the revised second edition “Hard Facts” commercial and a newly developed “Unplug” advertisement. In addition,

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<sup>14</sup> For additional details on the District’s pilot-scale public outreach efforts, see Section 4.1.2 in the District’s *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

<sup>15</sup> See Section 4.1.1 for more information on the public education and outreach program from February 2003 to December 2003.

<sup>16</sup> See Section 4.1.4 for more information on the Automatic Water Softener Rebate Program – Phase I and II.

<sup>17</sup> See Section 4.1.6 for more information on the Saltwater Pool Ordinance.

<sup>18</sup> See Section 4.1.3 for more information on the Ordinance.

#### **Section 4. Chloride Source Control Measures**

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the District hosted a SRWS alternative vendor fair in conjunction with the City of Santa Clarita's River Rally, issued a press release promoting the vendor fair, modified the chloride website to list alternatives to SRWS and allow Santa Clarita Valley residents to submit reviews on alternative units, mailed a postcard to all 58,000 sewered households, submitted articles to homeowner's association newsletters, mailed letters to homeowner's associations, distributed brochures and postcards to the Santa Clarita Valley Realtors Association, and asked local retailers to stop selling rock salt and potassium chloride. The District also mailed a targeted outreach postcard to 11,000 households that had changed ownership since 1997 and began mailing letters monthly to new homeowners in the Santa Clarita Valley.

An updated campaign was introduced in the fall of 2005 to provide information on the Automatic Water Softener Rebate Program – Phase I and enactment of the Saltwater Pool Ordinance. This phase of the program featured an improved chloride website with new web pages for the Automatic Water Softener Rebate Program, Saltwater Pool Ordinance, and How to Remove Your Automatic Water Softener, and a more user-friendly Automatic Water Softener Alternatives webpage. In addition, the multimedia program included launch of a dedicated email address ([cutsalt@lacsds.org](mailto:cutsalt@lacsds.org)), airing of the second edition "Hard Facts" and the "Unplug" cable television advertisements; airing of the third edition "Hard Facts" advertisement on cable television and at two 21-megaplex Edwards Cinemas; mailing a letter and distributing a door hanger to all 62,000 households connected to the District; press event showing a resident participating in the Automatic Water Softener Rebate Program – Phase I; advertisements in *The Signal* newspaper; participating in the City of Santa Clarita's River Rally, CLWA's Annual Open House, and Saugus Speedway Semi-Annual Home and Garden Show; and developing and placing signs asking residents to unplug their SRWS at local grocery stores and the Valencia Town Center.

The District began the fourth phase of the multimedia community-wide public education and outreach campaign in May 2007 in conjunction with the launch of the Automatic Water Softener Rebate Program – Phase II. From May 2007 to June 2009, the District's public education and outreach efforts primarily focused on providing information and encouraging participation in the Automatic Water Softener Rebate Program – Phase II, providing factual information on Measure S<sup>19</sup>, and providing information on the mandatory removal of SRWS as required by the Ordinance. The program included conducting focus groups; issuing press releases; airing of the fourth, fifth, and sixth editions of the "Hard Fact" television commercials and movie theater advertisements; publishing newspaper, magazine, radio, billboard, bus shelter, and Money Mailer advertisements; sending direct mail pieces; mailing information in water bills; writing articles for the CLWA newsletter; using robocalls; and hanging street banners, street pole flags, and waste hauler truck signs. In addition, the District continued to update the chloride website; mail letters to new homeowners; staff the (877) CUT-SALT toll-free line and [cutsalt@lacsds.org](mailto:cutsalt@lacsds.org) email address; and participate in community events such as the City of Santa Clarita's River Rally, City of Santa Clarita's Earth Day, CLWA's Annual Open House, Saugus Speedway Semi-Annual Home and Garden Show, and College of the Canyons Environmental Conference.

From December 2007 to October 2009, the District also conducted targeted outreach to specific communities known to have a high concentration of SRWS. The goal of the program was to provide focused outreach on these neighborhoods to encourage residents to remove SRWS. The communities selected for the targeted outreach were neighborhoods that were constructed between 1997 and 2003 (when SRWS were legal to install) in Canyon Country, Copperhill, Fair Oaks Ranch, Stevenson Ranch, and Valencia. Based on information collected in 2001,<sup>20</sup> homes in Stevenson Ranch and Fair Oaks Ranch had SRWS market penetrations rates between 50 to 60 percent.

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<sup>19</sup> See Section 4.1.3 for more information on Measure S.

<sup>20</sup> See Section 4.6 in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*.

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The targeted outreach program included a pilot project in Fair Oaks Ranch and meeting with the Stevenson Ranch Homeowner's Association in December 2007; publishing an article in the Winter 2007 Stevenson Ranch Homeowner's Association newsletter that was distributed to 3,700 homes; conducting door-to-door outreach in February and March 2008 to 3,100 homes in Canyon County, Fair Oaks Ranch, Stevenson Ranch, and Valencia; and distribution of 1,700 flags on the covers of *The Signal* newspapers in April 2008. From September 2008 to October 2009, the targeted outreach program provided support to the VWC's Pellet Softening Demonstration Project in the Copperhill community. The targeted outreach program in Copperhill included door-to-door outreach and distribution of a door hanger to 432 homes, an article in the Copperhill Homeowner's Association newsletter, direct mail postcard, focus groups, and phone surveys.

As highlighted above, the District conducted an extensive multimedia public education and outreach campaign from March 2004 to June 2009 to reduce chloride loading from residential SRWS. This program included: five direct mailings and one door hanger to all sewered households in the Santa Clarita Valley; ten cable television campaigns totaling 8,811 thirty-second advertisements; six movie theater campaigns totaling 12,852 thirty-second advertisements; 572 KHTS drive time sixty-second radio spots; 20,824 letters to new homeowners; 20 advertisements in *The Signal* and *LA Times*; nine press releases; two press events; four focus groups; and participation in 17 community events. In addition, the targeted outreach program provided focused attention to approximately 3,500 households.

Detailed information about the community-wide education and outreach program from 2003 to June 2009 is available in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*; the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2006*; the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*; the *Chloride Source Identification/Reduction, Pollution Prevention, Public Outreach Plan, November 2008*; and the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*.<sup>21</sup> Detailed information about the targeted public outreach program is available in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2008* and the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*.<sup>22</sup> Detailed information on the public outreach program for the VWC's Groundwater Softening Demonstration Project can be found in the *Valencia Water Company Groundwater Softening Demonstration Project Final Report, October 2009* written by O'Rourke.

The Ordinance required all residential SRWS to be removed by June 30, 2009. Therefore, the multimedia community-wide public education and outreach program was pared down in July 2009. From July 2009 to June 2010, the District worked with local retailers to discontinue the sale of rock salt and potassium chloride, continued to send monthly letters to new homeowners, updated the chloride website with additional alternative water conditioning units and resident reviews, participated in community events, and responded to residents' questions on the toll-free chloride hotline and dedicated email address.

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<sup>21</sup> For additional details on the District's community-wide public education and outreach efforts, see Sections 4.1.4 in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005* and *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2006*, and Sections 4.1.5 in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*; *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2008*; and *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*.

<sup>22</sup> For additional details on the District's targeted outreach efforts, see Section 4.1.6 in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2008* and *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2009*.

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The District began efforts to convince local retailers to stop selling rock salt and potassium chloride pellets in 2004. Discussions on this topic were initiated with several large retailers including Home Depot, Albertsons, and Walmart. The District sent a letter in April 2004 to all Santa Clarita Valley retailers selling rock salt and potassium chloride requesting that they stop selling these products. The City of Santa Clarita sent a similar letter. Follow-up phone calls were made to the retailers in the summer of 2004, requesting one-on-one meetings to discuss the cessation of rock salt and potassium chloride sales. During the phone calls it was difficult to get retailers to commit to meetings. As a result, personal visits were made to several stores without advance appointments. Three independent hardware stores were visited, but the stores were not open to the idea of removing salt from their shelves.

For the larger retail chain stores, corporate offices were contacted in an effort to get local stores to remove rock salt and potassium chloride pellets from their shelves. Corporate offices were contacted in the fall of 2004, and corporate offices and local stores were contacted again in January 2005. Sears and OSH agreed to remove rock salt and potassium chloride from their shelves. Other stores contacted included Vons, Pavilions, Lowe's, Home Depot, Albertsons, Safeway, and several independent hardware stores.

Because it was proving difficult to convince retailers to remove rock salt and potassium chloride pellets from their shelves, a decision was made to offer retailers a sign to place in their stores where rock salt and potassium chloride pellets are sold to explain the problems caused by the use of SRWS and encourage customers to unplug the units. The signs went on display beginning in October 2005 at four Albertsons, four Vons, and a Pavilions.

In the Spring 2009, a phone survey was conducted to inventory the stores that sell rock salt and potassium chloride pellets in the Santa Clarita Valley. Thirty stores were found to sell rock salt and/or potassium chloride including: four Albertsons, a Food for Less, two Home Depots, a Kmart, two Lowe's, two Smart and Finals, a Stater Bros, seven Ralphs, a Pavilions, three Vons, three Walmarts, the Agua Dulce Hardware, a Do-It Center, and an Orchard Supply Hardware (formerly known as OSH). Twenty stores with similar characteristics did not carry rock salt or potassium chloride.

On June 29, 2009, staff from the District, City of Santa Clarita, County of Los Angeles, and O'Rourke held a kick-off meeting to provide information on the District's plan to pursue a voluntary sales ban on rock salt and potassium chloride. All parties were in agreement to pursue the voluntary sales ban.

On November 3, 2009, the District sent a letter to 30 local retailers and 10 corporate offices requesting the Santa Clarita Valley stores discontinue the sale of rock salt and potassium chloride pellets. A copy of the letters is provided in Appendix 4.1-D. The letter informed the stores that voters approved Measure S which provided for the adoption of the Ordinance and that the Ordinance required the removal and disposal of all residential SRWS by June 30, 2009, in homes connected to the sewer system. It also explained that businesses in the Santa Clarita Valley have been prohibited from using SRWS since 1961. As a result, there is very little legitimate use for rock salt and potassium chloride in the Santa Clarita Valley so the District requested the stores stop selling the products as an environmentally responsible choice and to free up valuable shelf space. The District also informed the stores that since over 6,500 SRWS had been removed to date, it was anticipated that the retailers had already seen a substantial decrease in the sale of rock salt and potassium chloride. Lastly, the letter invited the retailers to one of two meetings to future discuss the issue.

The District made follow-up phone calls the second and third weeks in November 2009 in preparation for the meetings. Staff from the District and the City of Santa Clarita attended the first meeting on November 16, 2009, at 6:30 p.m. at the City of Santa Clarita City Hall. Three retailers had stated they were going to attend the meeting, but no retailers were present by 6:45 p.m. and the meeting was adjourned. The second meeting was held on November 19, 2009, at 11:00 a.m. at the same location. Staff from the District,

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City of Santa Clarita, and Los Angeles County attended this meeting. In addition, the Director of Environmental Stewardship Operations for Albertsons attended the meeting representing the four Santa Clarita Valley Albertsons' stores. The representative provided valuable information on salt and potassium chloride sales at these four stores, insight into the grocery business, and possible routes to discontinue and/or limit rock salt and potassium chloride sales.

A representative from Ralphs contacted the District on November 19, 2009. She had received a copy of the letter that the District sent to the Castaic Ralphs' store and requested the zip codes of the areas impacted. An email was sent to her listing the Ralphs and Food 4 Less stores in the District's service area on November 20, 2009.

As a result of the letters and follow up phone calls in November 2009, a Kmart, three Ralphs, and two Walmart stores stated that they no longer stock salt and potassium chloride for SRWS. To reach the remaining retailers, District staff attempted to schedule appointments with the store managers from January 25, 2010 to January 29, 2010.

During the last week of January 2010, District staff visited all stores known to sell rock salt and potassium chloride and/or that potentially sold SRWS. The District confirmed that a Do It Center, a Food 4 Less, a Kmart, seven Ralphs, a Sam's Club, a Stater Bros. Market, and three Walmart stores had removed rock salt and potassium chloride pellets for SRWS from their shelves. The District also confirmed that the Costco, Sears, and Target did not sell rock salt and potassium chloride for SRWS. No stores were selling SRWS.

In February and March 2010, the District continued to work with the remaining retailers to discontinue the sale of rock salt and potassium chloride. By April 2010, four Albertsons, a Do It Center, a Food 4 Less, two Home Depots, a Kmart, two Lowe's stores, seven Ralphs, a Sam's Club, the Sand Canyon Paint & Hardware, a Stater Bros. Market, and three Walmarts had removed rock salt and potassium chloride for SRWS from their shelves and committed to not restock the products. Rock salt and potassium chloride continues to be sold at an Orchard Supply Hardware, a Pavilions, two Smart and Finals, and four Vons stores. The District will continue to work with the store managers and the corporate offices to discontinue the sale of rock salt and potassium chloride.

The District continued reaching out to new residents of the Santa Clarita Valley from July 2009 to June 2010. New residents may be unaware of the problems caused by SRWS or restrictions on their installation. Additionally, research conducted by the Claremont Graduate University found that decisions about water conditioning are often made in the period shortly after moving into a new home.<sup>23</sup> To take advantage of the opportunity to influence new homeowners to remove SRWS installed by previous homeowners and prevent violations of the SRWS and saltwater pool ordinances, beginning in April 2005 letters were sent to all new homeowners in the Santa Clarita Valley. Typically the letters are sent to new owners of homes sold in the previous month. The letter explains the problems caused by chloride in the Santa Clara River, informs them of the ban on SRWS and saltwater pools, and encourages them to remove the SRWS if one came with their home and take advantage of the rebate program. From July 2009 to June 2010, the District sent a total of 4,187 letters to new households.

The District continues to allow Santa Clarita Valley residents to submit reviews on non-salt water conditioning units for the Automatic Water Softener Alternative web page. Residents that submit reviews are required to submit their names, addresses, and telephone numbers; their residency status in the Santa Clarita

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<sup>23</sup> Knight, Kim and Kung, David. *Consumer Behaviors and Trends Surrounding the Use and Impact of Chloride-Based Water Softeners*. Claremont Graduate University, August 15, 2003.

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Valley is verified using property tax records and/or a reverse phone directory.<sup>24</sup> From July 2009 to June 2010, the number of qualified alternative water conditioning units that appear on the chloride website increased by one to 62 units. In addition, there was an increase in the number of alternative unit reviews submitted by residents, from 82 reviews in July 2009, up to 83 reviews posted as of June 2010.

As a component of the public outreach program, District staff continued to answer inquiries from the media and other sewerage entities facing chloride and/or total dissolved solids challenges. District staff also gave a presentation to Inland Empire Utilities Agency on March 2, 2010, regarding the District's residential chloride reduction programs.

The District participated in two community events from July 2009 to June 2010. The first event was the City of Santa Clarita's 15<sup>th</sup> Annual River Rally on September 12, 2009. The District also staffed a booth at the CLWA's Annual Open House on May 8, 2010. At the District's booths staff distributed information and answered questions about the problems with SRWS, alternative water conditioning options, Automatic Water Softener Rebate Program – Phase II, and the Ordinance.

In addition, from June 2009 to July 2010, the District's chloride reduction efforts, alternatives to SRWS, proposed sewer service charge rate increase, and Upper Santa Clara River Chloride TMDL received significant press coverage. These topics had coverage in: *The Signal* on July 1, 2009, "Water softener rules now consistent" by Paul Martyn; *The Signal* on July 8, 2009, "Sewer fees rise across the board" by Brian Charles; *The Signal* on October 3, 2009, "Patio and pool pavers buckle under extreme heat" by Robert Lamoureux; *The Signal* on December 12, 2009, "Tankless water heaters need maintenance" by Robert Lamoureux; *The Signal* on March 25, 2010, "Winter water brings spring spots" by Natalie Everett; *The Signal* on March 28, 2010, "Two days in the Capitol" by Lila Littlejohn; *The Signal* on April 3, 2010, "Water: Trade in your old 'illegal' water-softening equipment and receive a rebate in the process" by J. Walker; *The Signal* on April 18, 2010, "Lobbying for chlorides in the Santa Clara River" by Lynne Plambeck; *The Signal* on April 10, 2010, "Better solutions exist for chloride fix in the SCV" by Maria Gutzeit; *The Signal* on April 24, 2010, "Hard water is costly" by Doug Zabalski; *Inland Valley Daily Bulletin* on May 4, 2010, "Water plan contested: Experts lobby agency against softener ban" by Wes Woods II; *The Signal* on May 9, 2010, "Sewage rates could rise" by Jonathan Randles; *The Signal* on May 13, 2010, "District looks at sewage rate hike" by Jonathan Randles; *The Signal* on May 15, 2010, "Say 'no' to the increase" by Maria Gutzeit; *KHTS* on May 24, 2010, "City Council Considers Increasing Fees For City Services;" *The Signal* on May 27, 2010, "Sewer-fee hike meeting delayed" by Natalie Everett; *The Signal* on May 30, 2010, "Salt water daffy in the SCV" by Diana Shaw; *The Signal* on May 31, 2010, "The search for a solution to salty water" by Natalie Everett; *The Signal* on June 4, 2010, "Hearing set for rate hike" by Natalie Everett; *The Signal* on June 6, 2010, "We could use some help here" by The Signal Editorial Board; *The Signal* on June 7, 2010, "Council to consider asking for salt strategy" by Natalie Everett; *The Signal* on June 9, 2010, "City plans rate-hike fight" by Natalie Everett; *The Signal* on June 13, 2010, "Lines drawn in salty river" by Jim Holt; *The Signal* on June 14, 2010, "Canyon Country Advisory Committee meeting set for June 16" by Canyon Country Advisory Committee; *The Signal* on June 15, 2010, "Of woolly mammoths and farming" by Jim Holt; *The Signal* on June 16, 2010, "Might as well" by David Turk; *The Signal* on June 18, 2010, "SCV pays to pass the salt" by Jim Holt; *The Signal* on June 20, 2010, "Let your voice be heard" by Linda Savadian; *KHTS* on June 21, 2010, "Santa Clarita Valley Sanitation District Proposed Sewer Charge Rate Increase;" *The Signal* on June 22, 2010, "High cost of salt wars" by Jim Holt; *The Signal* on June 27, 2010, "No hard science? No sewer-fee hike!" by Guest Commentary; *The Signal* on June 28, 2010, "The sewer-rate hike's salty effect on business" by Jim Holt; and *The Signal* on June 30, 2010, "There's more to this debate" by Rob Kerchner.

<sup>24</sup> For more information on the resident review and rating program refer to Section 4.1.4 in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005* and Section 4.1.5 in the *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2007*.

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Throughout the period from January 2009 to June 2010, District staff tracked the visits to the chloride website. The web page on alternatives to SRWS<sup>25</sup> continued to be the most frequently visited part of the website with 14,860 page visits in 2009 and 6,310 page visits from January to June 2010. Other popular web pages included the home page<sup>26</sup>, with 14,364 page visits in 2009 and 5,100 page visits in the first half of 2010, and the Automatic Water Softener Rebate Program web page<sup>27</sup>, with 7,217 page visits in 2009 and 1,955 page visits in the first half of 2010. Visitors to the website also showed an interest in the Ordinance web page<sup>28</sup> with 708 page visits in 2009 and 459 page visits from January to June 2010.

The District also tracked responses via phone and email to the public outreach campaign. Figure 4.1-4 (see page F-24) shows the variation in the response to the community-wide outreach campaign over time from January 2006 to June 2010. Figure 4.1-5 (see page F-25) is a graphical representation of the type of responses received during the same time period. The District received the most number of responses from December 2008 to June 2009, averaging 413 inquiries per month, highlighting the interest in the Ordinance. The majority of the questions from July 2009 to June 2010 related to the Automatic Water Softener Rebate Program – Phase II.

### **4.1.6 Saltwater Pool Ordinance**

As discussed in previous reports, one source of chloride from residences is discharge of swimming pool wastewater. Swimming pool wastewater is created from filter backwash, any overflows during rainy periods, and periodic change-outs of the swimming pool water. Although the loading of chloride from traditional residential swimming pools in the Santa Clarita Valley is small, a new popular technology could increase this contribution. The technology uses an electrolysis process to create chlorine gas in-situ at the pool from sodium chloride that has been added to the pool. The chlorine gas reacts with pathogens and organic material in the swimming pool, returning to its sodium chloride form after reaction. The sodium chloride in the pool is therefore used over and over, and is only replenished to make up for filter backwash, any overflows, and water splashed out of the pool. In order for the electrolysis process to work correctly, a chloride concentration of 1,500 to 5,500 mg/L<sup>29</sup> must be maintained in the swimming pool. Pools using this disinfection system are therefore referred to as “saltwater pools.”

To limit this new source of chloride, the District adopted an ordinance on November 9, 2005, effective on December 9, 2005, making it illegal for both new and existing saltwater swimming pools to be connected to the sewer system. The Saltwater Pool Ordinance prohibits new saltwater pool connections to the sewer system and prohibits the conversion of swimming pools already connected to the sewer system to saltwater pools.

Since many swimming pools are not connected to the sewer system and are instead drained to the storm drain system, the District continues to work with staff at the City of Santa Clarita and the County of Los Angeles to educate them on the potential chloride loading from saltwater pools. The District has also encouraged them to adopt saltwater pool ordinances prohibiting the discharge of saltwater pools into the storm drain system, which would significantly limit the potential impact to the Santa Clara River from this source.

<sup>25</sup> [http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/alternatives.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/alternatives.asp)

<sup>26</sup> [http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/default.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/default.asp)

<sup>27</sup> [http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/softenerrebate.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/softenerrebate.asp)

<sup>28</sup> [http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/ordinance2008.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/ordinance2008.asp)

<sup>29</sup> See, for example, <http://www.poolandspa.com/catalog/product001138000013.cfm>, <http://www.pool-spacare.com/e-pool-saltwater-gen.html>, and [http://www.poolplaza.com/pool-school/salt\\_maintenance.shtml](http://www.poolplaza.com/pool-school/salt_maintenance.shtml).

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### **4.1.7 Future Residential Source Control Efforts**

The District is firmly committed to continuing residential chloride source control efforts in the Santa Clarita Valley. The District will continue to offer rebates for SRWS as part of the Automatic Water Softener Rebate Program – Phase II and support the public education and outreach program. The District also intends to enforce the Ordinance by following up with residents in homes that were sold a SRWS per vendor sales records and homebuilder records, and homes that were issued building permits for SRWS but have not responded; residents that have responded they have removed a SRWS but the District did not receive the unit; residents that have applied for the Automatic Water Softener Rebate Program – Phase II but the District has not received the unit; and residents that previously applied for the Automatic Water Softener Rebate Program but were denied since their unit was installed after March 27, 2003 (these residents are not eligible for the Automatic Water Softener Rebate Program but must remove their SRWS). In addition, the District intends to monitor flows within the sewer system to determine the locations of residential SRWS and/or conduct inspections upon reasonable notice of any residence that discharges to the sewer system. These programs will be periodically reassessed to determine their value to overall chloride reduction.

The public education and outreach campaign will continue to use direct mailings, advertisements, and newspaper stories to reach the general public as needed. The District will also continue mailing letters to new homeowners. In addition, the District expects to continue to investigate and implement new outreach methods to ensure residents are aware of the bans on SRWS and saltwater pools. The chloride website will be maintained and updated with new information, vendors, and reviews of whole-house water conditioning alternatives as they become available. The District will also continue to staff the (877) CUT-SALT toll-free information number and respond to e-mail received from the public regarding the Automatic Water Softener Rebate Program – Phase II, the Ordinance, the Saltwater Pool Ordinance, and other questions related to chloride.

The District was able to successfully limit the availability of rock salt and potassium chloride by working with retailers to discontinue the sale of the products. The District will continue to work with store managers and the corporate offices for the seven stores that continue to sell rock salt and potassium chloride. In addition, the District will monitor the stores that have removed the products to ensure that they are not restocked in the future.

## **4.2 Industrial Sector**

This section discusses on-going efforts to control chloride from industrial sources in the Santa Clarita Valley. Although the industrial sector as a whole discharges approximately one to three percent of the chloride load in the final system effluent, which is a significantly lower chloride concentration and a much smaller mass load of chloride than the residential sector, the District has strictly regulated chloride discharges from this sector since 1961.<sup>30</sup>

In September 2002, the District systematically implemented more stringent chloride limitations on industry in the Santa Clarita Valley. The purpose of the new limitations was to ensure that industrial saline discharges were being controlled to the extent technologically and economically feasible. At this time, all industrial dischargers in the District's sewerage system were assigned a chloride limit or required to develop a Chloride Reduction Workplan, or both. The target chloride limit for every industrial discharger was 100 mg/L,

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<sup>30</sup> For additional information on the industrial source control program and historical industrial source control efforts, see Sections 4.2.1 and 4.2.2 in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

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which is the current water quality objective for the upper Santa Clara River. A 100 mg/L chloride limitation was imposed on all industrial wastewater discharge permits (permits) that had historical chloride discharge concentrations at 100 mg/L or below. The purpose of the limit was to ensure that these facilities maintained their current discharge levels. Thirty-nine permits were initially assigned the 100 mg/L limit.

It was recognized, however, that it might not be technologically or economically feasible for all facilities to meet the target 100 mg/L limit. Therefore, facilities with a history of discharging greater than 100 mg/L were given an option. They could either meet a 100 mg/L chloride limit, or submit a Chloride Reduction Workplan detailing all technologically and economically feasible steps to reduce chloride in their discharge. This option was given to twenty-six permits. Of these permits, the fourteen historically discharging less than 230 mg/L chloride were assigned interim chloride limits of 230 mg/L during workplan development, to ensure that they continued to control chloride to the maximum extent feasible.<sup>31</sup>

Once submitted, District staff evaluates Chloride Reduction Workplans. Each permit is assigned a specific performance-based chloride limit, which reflects the allowable chloride concentration after all technologically and economically feasible chloride reduction measures have been implemented. Many facilities have stated that they are not adding a significant amount of chloride to the wastewater but they are unable to meet the 100 mg/L chloride limit due to the amount of chloride supplied in the potable water.<sup>32</sup> In these cases, the permittee is asked to obtain a letter from their water purveyor stating the amount of chloride present in the potable water delivered to the facility. The District uses the information in the Chloride Reduction Workplan and from the water purveyor to calculate the performance-based chloride limit.

A list of these facilities and their current permit limits is presented in Table 4.2-1 (see page T-24). Currently, there are 40 chloride permit limits above 100 mg/L at 35 facilities.<sup>33</sup> To ensure compliance with the chloride limits, the District samples these facilities for chloride on an on-going basis, and requires self-monitoring at most of the facilities in the District. The only facilities for which self-monitoring for chloride is not required are municipal swimming pools and recreational vehicle sanitary waste disposal stations.

Currently, all new permits are issued a 100 mg/L chloride limit unless the company requests to submit a Chloride Reduction Workplan. If the company requests to submit a Chloride Reduction Workplan, the facility has up to 60 days to submit the plan and a performance-based chloride limit is assigned.

In 2009, 3D International LLC was found to have a SRWS connected to the sewer system. The inspector requested that the unit be disconnected immediately and removed from the property within 30 days. The facility complied. The contact stated that the unit was purchased at a trade show in Las Vegas and that they did not know about the prohibition on SRWS.

<sup>31</sup> For more information on the Chloride Reduction Workplan and guidance on the preparation of the workplan, see Appendix 4.2A in the District's *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*.

<sup>32</sup> The estimated annual blended water supply chloride concentrations for the Santa Clarita Valley from 2002 to mid-2010 presented in Table 3.2-6 vary from 55 mg/L to 85 mg/L. However, the potable water supply chloride concentration at an individual location may vary significantly from these estimates. From 2002 to mid-2010, samples from the Alluvial Aquifer varied from 17 mg/L to 171 mg/L and the SWP chloride concentration varied from 44 mg/L to 95 mg/L. Therefore, for a five-year permit, it is prudent to expect variability in the chloride concentration in the potable water supplied to facilities in the Santa Clarita Valley.

<sup>33</sup> Two permits have two sample locations in their permit with chloride limits above 100 mg/L. In addition, three facilities have multiple permits (because the facilities connect at multiple locations to the public sewer) with chloride limits above 100 mg/L.

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In 2009, Henry Mayo Newhall Memorial Hospital submitted a self-monitoring report with an unusually high chloride sample value. The facility operates a SRWS and is required to haul all brine off-site for treatment outside of the District. An inspection of the facility revealed that the majority of brine was being hauled off, but a portion of it was being discharged to the sewer system. The facility utilized a conductivity meter to determine when to divert the brine to a holding tank and when to discharge the residual to the sewer system. The facility contact stated that the conductivity meter malfunctioned leading to the discharge of brine to the sewer system and the high chloride sample. The contact also stated that the hospital had just purchased and installed a new conductivity meter to solve the problem. The hospital was notified that all brine from the SRWS must be hauled and that the unit may not have a connection to the sewer per the 1961 ordinance. The facility promptly complied and made the necessary piping modifications.

The performance-based chloride limits ensure that all facilities introducing chloride to the system at concentrations greater than 100 mg/L have controlled their chloride discharges to the extent technologically and economically feasible. The District will continue to enforce chloride limits at all existing industrial facilities and continue to establish and enforce chloride limits at new industrial facilities.

### **4.3 Commercial Sector**

As with the residential and industrial sectors, the District's program to control discharges of chloride from the Santa Clarita Valley commercial sector began in 1961 with adoption of resolutions prohibiting the discharge of salt brines produced by the regeneration of water softening units to the sewerage system. As detailed in this section, the District's commercial source control program has focused on enforcing the prohibition on use of SRWS and on ensuring that brine discharges from commercial sources are controlled to the extent technologically and economically feasible.

#### **4.3.1 Enforcement of Prohibition on Use of SRWS**

A key tool for enforcement of the prohibition on discharge of SRWS brines to the sewer from commercial businesses is on-site inspection of businesses to ensure that SRWS are not used. The District began site inspections of commercial facilities in 1974, concurrent with the creation of its source control program. In 1997, commercial site inspections in the Santa Clarita Valley intensified as a result of increased attention on controlling chloride in the area, and have remained at high levels since.

In 1998, the District undertook a systematic effort to identify commercial business sectors that are likely to use softened water to maximize the impact of commercial site inspections. District staff reviewed water uses at each type of business to determine if the business sector would benefit from softened water and therefore would be likely to use a SRWS. On-site inspections were also conducted to determine whether SRWS were present. These inspections revealed that the businesses most frequently using softened water were restaurants, hotels, and dry cleaners. Restaurants use softened water to prevent spots during dishwashing. Hotels use softened water in their restaurant dishwashers to prevent spots and in their laundry facilities to minimize the quantity of laundry detergent and softening agents required. Dry cleaners use softened water in their boilers to minimize scaling.<sup>34</sup> Based on the results of this systematic effort to identify commercial business sectors likely to use soft water, the District conducted inspections of all restaurants, hotels, bars, lounges, billiard halls, and dry cleaners in the Santa Clarita Valley.

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<sup>34</sup> For additional information of this effort, see Section 4.3.1 in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

## **Section 4. Chloride Source Control Measures**

Any business found during an inspection to be illegally operating a SRWS was verbally reminded of the District's ban on brine discharges. A follow-up letter was sent to the business, requiring the removal of the unit within thirty days. The District's Industrial Waste inspection staff then re-inspected the business to confirm that the unit had been removed. If the business failed to comply, the business would have been referred to the District's Enforcement group for further action. To date, all businesses that have been found to be operating a SRWS have removed them upon notification without the need for enforcement action. In most cases businesses that removed their SRWS replaced the units with exchange tank water softening systems.

In early 2010, the District thoroughly updated the commercial business inspection list. The District reviewed business listings through Yahoo Yellow Pages (<http://yp.yahoo.com/>), Google ([www.google.com](http://www.google.com)), Santa Clarita Valley Chamber of Commerce website (<http://www.scvchamber.com>), Santa Clarita Guide (<http://www.santaclaritaguide.com/Restaurants.html>), and District's inspection records and called businesses to identify new businesses, existing businesses operating under a new name, businesses that had moved to a new location, and closed businesses. The District will continue to review business listings annually to identify new businesses or businesses under new ownership that might not be aware of the prohibition on SRWS.

The District also obtained information on caterers in 2010. These companies have the potential to use softened water to prevent spots during dishwashing. Most caterers contacted use disposable glassware, dishware, and utensils or rent from other companies. If the District was unable to contact the caterer via the phone, the business was added to the commercial inspection list. If the company rents their equipment, information on the rental companies was requested.

In 2009 and the first half of 2010, the District continued to inspect commercial businesses in the Santa Clarita Valley. On average, approximately 250 such businesses are inspected each year. In 2009, the District conducted 260 commercial inspections. Beginning in 2010, all bars, caterers, dry cleaners, hotels, and restaurants from the updated commercial inspection list will be inspected once every two years. A District's Industrial Waste inspector will visit each business, notify the business owner/site manager of the brine discharge prohibition, and conduct an inspection of the premises. If the business is found not to have a use for softened water, such as a restaurant that uses only disposable drinking glasses, dishware, and utensils or a dry cleaning drop shop, they will be removed from the future lists. The District will also periodically inspect a few businesses from the sectors of concern that were found not to have a use for softened water to ensure these businesses have not changed their practices.

### **4.3.2 Control of Saline Discharges to the Extent Technologically and Economically Feasible**

The District began an effort in mid-2002 to determine if additional chloride reductions could reasonably be made at commercial businesses. An outside engineering consulting firm, CGvL Engineers, was hired to identify saline discharges at commercial businesses and to determine measures to reduce any such discharges to the extent technologically and economically feasible.<sup>35</sup>

As a result of the study, it was determined that some best management practices (BMPs) to reduce saline discharges from swimming pools were both technically and economically feasible. These included the addition of stabilizer<sup>36</sup> for all pools and the use of bromide disinfection for indoor pools. Implementation of the BMPs began in August 2002. At that time, all commercial businesses were sent letters informing them that the District was developing chloride reduction measures for commercial businesses. In December 2002, a

<sup>35</sup> The full results of the study are available in the document *Best Management Practices to Reduce Chlorides in Commercial Wastewater for Santa Clarita Valley Joint Sewerage System, December 2002* by CGvL Engineers.

<sup>36</sup> The stabilizer is typically cyanuric acid. Use of stabilizer helps to reduce excessive chlorine loss in pools due to the ultraviolet rays of the sun.

## **Section 4. Chloride Source Control Measures**

follow-up was sent to all businesses. The purpose of the second letter was to inform owners of swimming pools about the upcoming mandatory pool BMPs, and to also encourage other commercial businesses to incorporate voluntary chloride reduction measures for sanitizing, laundering, and janitorial cleaning. In January 2003, letters were sent to all owners of public access swimming pools in the Santa Clarita Valley, requiring implementation of the mandatory BMPs. Included in this mailing were owners of pools at apartment buildings and homeowner's associations in the Santa Clarita Valley, informing them about the BMPs so that appropriate steps could be taken during pool maintenance. Over the next several months District's Industrial Waste inspectors visited all affected pools to help the owners prepare the certification forms required under the mandatory BMP program.

From July 2009 to June 2010, no new public access swimming pools were identified in the Santa Clarita Valley. The District will continue to issue BMP permits to new swimming pool owners as they are identified.<sup>37</sup>

### **4.4 Liquid Waste Disposal Station**

The District operates a liquid waste disposal program to ensure that hauled wastes are accepted in accordance with all laws and federal regulations<sup>38</sup> and that they do not cause adverse impacts at the Saugus WRP. Haulers must obtain a permit prior to discharging liquid wastes to the District's sewerage system. A separate permit is issued for each vehicle in which waste is hauled. The permit provides the District with information on the hauler and the vehicle. Each time a hauler discharges a waste load, a fee and manifest are required. The manifest that accompanies each waste load identifies the source<sup>39</sup> and waste type of each component of the particular load, as well as the information on the waste hauler.

When a load is brought to the Saugus Liquid Waste Disposal Station, the accompanying manifest is first reviewed. The waste hauler bringing the load must sign and certify that the liquid waste is non-hazardous and that it came from only non-industrial sources. A sample of the load is taken by the station attendant to ensure that it exhibits characteristics typical of portable toilet, septic tank, and/or cesspool waste. Every load is tested for pH and conductivity. Samples are also taken of every load and retained, and every twenty-fifth sample is subject to a more complete chemical analysis.

In June 2001, a program was put in place at the Saugus Liquid Waste Disposal Station to ensure that liquid wastes with excessive chloride concentrations were not disposed at the station. The disposal of hauled septage loads with conductivities greater than 3,000 umhos/cm was prohibited, unless the loads were accompanied by additional analytical information ensuring that the loads do not contain hazardous, industrial, and/or other non-sanitary wastes. This prohibition was put in place based on data collected by the District indicating that septage wastes have conductivities less than 3,000 umhos/cm. Although conductivity is not a direct measure of chloride concentration, liquids containing high levels of dissolved solids will have higher conductivities. This screening program therefore prevents disposal of loads that could contain excessive chloride concentrations. Since, the Saugus Liquid Waste Disposal Station represents less than one percent of the chloride loading at the WRPs and contributes less than 1 mg/L of chloride to effluent chloride concentrations at the WRPs, further restrictions on disposal of loads at the station would not have a measurable impact on effluent chloride concentrations.

<sup>37</sup> For more information about BMP permits and other documents associated with the BMP program, see Appendix 4.3-B in the District's *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan, November 2005*.

<sup>38</sup> Including federal requirements specified at 40 CFR Part 403.5(b)(8).

<sup>39</sup> Name, address, and telephone number of the waste generator.

## **Section 4. Chloride Source Control Measures**

### **4.5 Water Reclamation Plant Processes**

As discussed in Section 3.4, operation of a wastewater treatment plant requires use of a variety of chemicals. Chemicals containing chlorine and chloride increase the chloride concentration of wastewater being treated.

Chlorine, either in gaseous or sodium hypochlorite form, has been used for disinfection to deactivate pathogens at the Saugus and Valencia WRPs since they were constructed.<sup>40</sup> Chlorine gas was historically used for disinfection, but this practice was discontinued in 1998 for safety reasons and sodium hypochlorite has since been used. Another historical use of a chemical that contributed to the chloride loading at the Saugus and Valencia WRPs was the use of ferric chloride ( $\text{FeCl}_3$ ) to enhance settling during primary sedimentation. At the Valencia WRP,  $\text{FeCl}_3$  was also used as a filter press coagulant to enhance the dewatering of biosolids and ferrous chloride ( $\text{FeCl}_2$ ) was used in the operation of its anaerobic digesters. Very small amounts of sodium hypochlorite were also used at the Valencia WRP to control odors in its flow equalization basin.

Due to concerns over the in-plant loading of chloride from WRP chemical usage, in 2000 the District's Wastewater Research Section initiated a study to consider the use of ferric sulfate ( $\text{FeSO}_4$ ) as an alternative to  $\text{FeCl}_3$ . The study showed that in terms of performance,  $\text{FeSO}_4$  could successfully replace  $\text{FeCl}_3$ . The increased chemical cost to switch to  $\text{FeSO}_4$  was estimated at \$260,000 per year for the Saugus WRP and \$330,000 per year for the Valencia WRP. In May 2000,  $\text{FeCl}_3$  was replaced with  $\text{FeSO}_4$  for primary sedimentation at the Saugus WRP. In November 2000 and September 2001 respectively,  $\text{FeCl}_3$  was replaced with  $\text{FeSO}_4$  for biosolids processing/odor control and for primary sedimentation at the Valencia WRP. The primary sedimentation tank scrubber at the Valencia WRP, to which sodium hypochlorite was added for odor control, was replaced in 2003 with a biotrickling filter, eliminating this minor source of chloride in the plant's treated wastewater.

From December 22, 2009 to January 11, 2010, and from May 11, 2010 to June 30, 2010,  $\text{FeCl}_2$  was added to the raw sludge line at Valencia WRP to control hydrogen sulfide in digester gas and prevent struvite formation in sludge piping. The  $\text{FeCl}_2$  was added on an experimental basis in an attempt to reduce influent  $\text{FeSO}_4$  chemical usage. The experimental addition of  $\text{FeCl}_2$  to the raw sludge line at Valencia WRP caused an increase in Valencia WRP effluent chloride of 1.9 mg/L during the trial periods. It is expected that the ferrous chloride experiment will continue until September 2010 to collect additional data.

As a result of the change in chemicals, the total in-plant contribution of chloride has been significantly reduced at each WRP. In the first half of 2010, the average total chloride contribution from chemical usage at the Saugus and Valencia WRPs was 12.1 mg/L and 9.4 mg/L, respectively. The combined flow-weighted average was 11.4 mg/L, a reduction of 53 percent from the 1996 to 1999 average value of 24 mg/L.

The major remaining use of chloride-containing chemicals at the Saugus and Valencia WRPs is the use of sodium hypochlorite for disinfection. The District is continuing to evaluate alternative disinfection methods to replace sodium hypochlorite disinfection. An internal task force to investigate alternative disinfection methods, consisting of personnel from the District's Operations, Research, Design, Monitoring, Planning, and Laboratory Sections, continues to meet. Since 2008, the District also has been investigating alternative disinfection methods as part of the Chloride TMDL Facilities Plan and Environmental Impact Report. One option being considered is the replacement of sodium hypochlorite disinfection with the use of ultra-violet (UV) light technology.

<sup>40</sup> The NPDES permits for the two WRPs require compliance with a final effluent coliform limit of less than 2.2/100 mL based on a seven-day median.

## **Section 4. Chloride Source Control Measures**

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The use of UV-disinfection would reduce the in-plant chloride loading. Some sodium hypochlorite would still be necessary in the treatment process for inert filter maintenance. Additionally, initial research indicates that UV disinfection may not be fully effective in destruction of adenovirus, so a small dose of chlorine may be needed to ensure thorough disinfection. The replacement of sodium hypochlorite would not itself result in compliance with the current Basin Plan surface water chloride objective of 100 mg/L. Despite the high cost of this technology, the District is continuing to investigate UV-disinfection.

### **4.6 Santa Clarita Potable Water Supplies**

#### **4.6.1 Water Supply Chloride Contribution Study**

As part of the TMDL, the District has developed a Groundwater and Surface Water Interaction Model (GSWI) for the Upper Santa Clara River watershed, which provides a thorough assessment of water supply chloride concentrations and their impact on WRP reclaimed water and receiving water quality. The GSWI model is being utilized to assess water supply management scenarios that could potentially minimize impacts to WRP reclaimed water and receiving water quality. A report summarizing the development and application of the GSWI model are available on the TMDL project website at [www.santaclarariver.org](http://www.santaclarariver.org).

The District will continue to monitor water supply chloride contributions and report updated loadings as part of annual reporting requirements as specified in Task 3 of the TMDL.

#### **4.6.2 Wellhead Softening Demonstration Project**

VWC is implementing a Groundwater Softening Demonstration Project, which evaluates the feasibility of wellhead water softening. The project will determine how improvements in potable water quality hardness may potentially reduce the usage of SRWS in VWC's service area and thus reduce the chloride loading of these units to the District's WRPs. The project has three main goals: 1) determine customer attitudes towards pre-softened water, 2) establish cost estimates and overall cost savings to customers, and 3) quantify chloride reduction in wastewater. VWC completed Phase I of the study in April 2006<sup>41</sup> and began operating the Phase II demonstration project in September 2008.

Phase II of the VWC Groundwater Softening Demonstration Project is being implemented in the Copperhill community, within the VWC's service area, using pellet softening technology. Pellet softening utilizes a column filled with sand; by raising the pH of hard water and flowing it up through the column, the calcium carbonate precipitates out and adheres to the sand creating white pellets. The only by-product of the process are white pellets, which are considered to be environmentally safe, and can be reused in various industries.<sup>42</sup>

The Groundwater Softening Demonstration Project is ongoing, with data being gathered to evaluate the project based on potable water quality improvement and reduction in chloride attributable to the reduced use of SRWS.

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<sup>41</sup> Valencia Water Company. *Well Softening Feasibility Study (Draft Report)*. April 2006.

<sup>42</sup> Valencia Water Company. Valencia Water Company Groundwater Softening Demonstration Project. <http://www.valenciawater.com/images/ContentImages/River%20Rally%20Poster.pdf> (accessed October 2, 2010).

# **EXHIBIT**

## **“21”**

4837-0090-6752.2

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**SANTA CLARITA VALLEY SANITATION DISTRICT  
UPPER SANTA CLARA RIVER CHLORIDE TMDL**

USCR CI TMDL – SCR Reaches 5 & 6  
Cost Estimate Summary for Conceptual  
Compliance Alternatives (Task 9)

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**June 2008**

DOC # 1047318

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**Executive Summary**

The California Regional Water Quality Control Board – Los Angeles Region (Regional Board) adopted Upper Santa Clara River (SCR) chloride Total Maximum Daily Load (Chloride TMDL) setting water quality objectives for the Santa Clara River. The Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD or District) owns and operates the Saugus and Valencia water reclamation plants (WRPs) that discharge recycled water to the SCR and must ultimately comply with the Chloride TMDL water quality objectives. The Chloride TMDL Implementation Plan contains provisions that would enable to the Regional Board to consider revising the water quality objectives for the SCR based on the results of several scientific studies to be conducted by the SCVSD in cooperation with the Regional Board and Los Angeles and Ventura County stakeholders.

Task 9 of the Chloride TMDL Implementation Plan requires the SCVSD develop of pre-planning report on conceptual TMDL compliance measures and their costs. The SCVSD, Regional Board and Los Angeles and Ventura County stakeholders have identified several potential compliance measures as part of the USCR Chloride TMDL collaborative process, specifically:

- Advanced Treatment and Brine Disposal
- Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall
- Alternative WRP Discharge Location
- Alternative Water Resource Management

These conceptual compliance measures and the results of the analysis of these alternatives utilizing the Groundwater Surface Water Interaction Model, developed as part of the Chloride TMDL Implementation Plan, are described in detail in a separate report submitted to the Regional Board by Geomatrix Consultants (2008 b). This report was prepared to provide the cost estimates developed for the conceptual compliance measures as required by the TMDL Implementation Schedule. The costs for these alternatives are summarized in Table ES-1.

**Table ES-1: Conceptual TMDL Compliance Measures Cost Summary**

<b>Alternative</b>	<b>Capital Cost (\$ Million)</b>	<b>Present Worth O&amp;M (\$ Million)</b>	<b>TOTAL (\$ Million)</b>
Advanced Treatment and Brine Disposal	\$348	\$116	<b>\$464</b>
Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall	\$471	\$58	<b>\$529</b>
Alternative WRP Discharge Location	\$180	\$124	<b>\$304</b>
Alternative Water Resource Management	\$205	\$54	<b>\$259</b>

Note: All costs above are based on September 2007 dollars.

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## 1.0 Introduction

This report summarizes cost estimates for potential alternatives for the Upper Santa Clara River chloride Total Maximum Daily Load (Chloride TMDL) to achieve compliance with various water quality objectives (WQOs) within the Upper Santa Clara River watershed. These potential compliance alternatives are discussed in detail in a separate report (the Task 2B-2 report) prepared by Geomatrix Consultants, Inc. (Geomatrix) as part of the Chloride TMDL collaborative process.<sup>i</sup> These reports satisfy the requirements of Task 9 of the Chloride TMDL Implementation Plan.

## 2.0 Chloride TMDL Background

The California Regional Water Quality Control Board – Los Angeles Region (Regional Board) adopted the Chloride TMDL in 2002, establishing chloride waste-load allocations for the SCVSD's Valencia and Saugus water reclamation plants (WRPs) at 100 mg/L. Amendments to the TMDL in 2004 and 2006<sup>ii</sup> established a phased TMDL approach, which allowed for the development of several scientific studies and potential site-specific objectives (SSOs) for chloride that the Regional Board may consider as part of any revisions to the existing 100-mg/L WQO. The TMDL implementation schedule specified, among other requirements, that special scientific studies be conducted to: a) evaluate the appropriate chloride threshold for the protection of sensitive agriculture; b) evaluate the appropriate chloride threshold for the protection of endangered species; and c) develop a groundwater/surface water interaction model to evaluate the impacts of chloride loading from all sources on water quality. The results of these studies would then become the technical basis by which potential SSOs for chloride could be developed for Regional Board consideration. The TMDL required development of these studies in a collaborative process through Technical Working Groups (TWG) to ensure substantial agreement between the Regional Board staff, SCVSD staff, and other stakeholders, regarding the scientific and technical basis for establishing water quality objectives for chloride. Each of the major studies conducted as part of the TMDL and their current status are summarized as follows.

Threatened and Endangered Species Chloride Threshold Study (T&Es Study) – The T&Es Study was completed in November 2007 and determined that the 1988 United States Environmental Protection Agency ambient water quality criteria for chloride for the protection of aquatic life (230 mg/L as chronic and 860 mg/L as acute) are protective of locally important T&Es (Advent-Environ, 2007). Therefore, the chloride threshold for the protection of locally important T&Es was found to be considerably higher than the threshold range for the protection of salt-sensitive agriculture.

<sup>i</sup> Geomatrix Consultants, 2008. *Task 2B-2 – Assessment of Alternatives for Compliance Options Using the Groundwater/Surface Water Interaction Model*. June.

<sup>ii</sup> Resolution 04-004, adopted by the California Regional Water Quality Control Board – Los Angeles Region (Regional Board) on May 6, 2004 and Resolution R4-2006-016, revising the USCR Cl TMDL Implementation Schedule, adopted on August 3, 2006.

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Agricultural Chloride Threshold Study (Ag Study) - The Ag Study was a two-part study, with a Literature Review and Evaluation (LRE) completed in September 2005 (CH2M HILL, 2005), and an evaluation of the appropriate averaging period completed in January 2008 (Newfields, 2008). The Ag Study determined that the appropriate chloride threshold for salt-sensitive agriculture (avocados, strawberries, and nursery crops) grown in the Upper Santa Clara River watershed is a guideline chloride concentration ranging between 100 and 117 mg/L, with an averaging period for chloride concentrations of approximately 3 months.

Groundwater – Surface Water Interaction Model (GSWIM) Study – The GSWIM Study developed a calibrated numerical model that was completed in March 2008 (CH2M HILL-HGL<sup>iii</sup> and Geomatrix<sup>iv</sup>), to evaluate the impact of WRP recycled water discharges to the Santa Clara River on downstream surface water and groundwater in the Los Angeles and Ventura County portion of the Santa Clara River watershed.

Site Specific Objectives (SSO) and Anti Degradation Analysis (ADA) Study – The SSO and ADA Study provides the technical and regulatory basis for the Regional Board to consider potential SSOs. As part of the SSO effort, a white paper on the agricultural beneficial uses in Reaches 5 and 6 of the USCR was developed in September 2007<sup>v</sup>, which assessed whether salt-sensitive agriculture was an existing or potential beneficial use. The white paper concluded that salt-sensitive agriculture was not an existing or potential beneficial use for surface water or underlying groundwater that could be impacted by surface water in Reaches 5 and 6. Since salt-sensitive agriculture was not an existing or potential beneficial use for the surface waters or underlying groundwater that could be impacted by surface water in these reaches, SSOs higher than the Ag Study threshold range of 100-117 mg/L are potentially possible, and are being considered as part of the potential compliance alternatives. The SSO-ADA study was completed in July 2008<sup>vi</sup> and provides the technical and regulatory basis for recommending SSOs that would be required for implementation of the AWRM Program.

### 3.0 Chloride TMDL Implementation Plan

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Task 9 of the USCR Cl TMDL Implementation Schedule requires the development of a pre-planning report on conceptual compliance measures and costs to meet potential water quality objectives in the Santa Clara River Reaches 5 and 6. Task 9 states:

*CSDLAC shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on*

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<sup>iii</sup> CH2M Hill, 2008. *Final Report: Task 2B-1 – Numerical Model Development and Scenario Results, East and Piru Subbasins*. March 2008.

<sup>iv</sup> Geomatrix, 2008. *Draft Supplement to Task 2B-1 – Numerical Model Development and Scenario Results, East and Piru Subbasins*, February 2008.

<sup>v</sup> Santa Clarita Valley Sanitation District, 2007. White Paper No. 2A Agricultural Beneficial Use Considerations for Santa Clara River – Reaches 5 and 6., September 2007.

<sup>vi</sup> Larry Walker Associates, 2008. *Draft Task 7 and 8 Report Site Specific Objectives and Anti-Degradation Analysis*, July 2008.

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*different hypothetical scenarios for chloride water quality objectives and final wasteload allocations.*

In accordance with the Chloride TMDL Implementation schedule, a report on TMDL Task 9 was required by February 20, 2008. The Santa Clarita Valley Sanitation District of Los Angeles County (District) submitted reports completed to date to satisfy this requirement<sup>vii</sup>. As noted in the submittal, significant progress has been made working with several stakeholders in the development of an alternative water resources management (AWRM) compliance option, requiring additional time for completion of Task 9 of the Chloride TMDL Implementation schedule.

#### **4.0 Conceptual Compliance Alternatives**

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The District submitted the Task 2B-2 report, which identifies potential alternatives to achieve compliance with various WQOs within the Upper Santa Clara River watershed and describes the results of the assessment of those alternatives conducted as part of the GSWIM Study conducted as part of the Chloride TMDL collaborative process. This report was submitted to satisfy the TMDL Task 9 requirement to identify potential chloride control measures to meet different chloride WQOs and final wasteload allocations.

The report identified and assessed four general alternatives, or strategies for achieving compliance with chloride WQOs in both the East Subbasin and Piru Basin. These alternatives are:

1. **Advanced Treatment and Brine Disposal** – this alternative consists of constructing and operating MF/RO treatment facilities to remove chloride from the reclaimed water produced at the Valencia and Saugus WRPs. Sufficient advanced treatment capacity would be required to reduce all chloride concentrations in WRP reclaimed water to below the WQO of 100 mg/L for the SCR downstream of the discharges (Reaches 5 and 6). MF/RO treatment would result in a significant amount of waste brine that would require disposal, most likely through a dedicated brine conveyance pipeline from the WRPs to a new Pacific Ocean outfall in Ventura County.
2. **Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall** – this alternative consists of constructing and operating MF/RO treatment facilities for a limited amount WRP reclaimed water sized to produce sufficient reclaimed water, meeting the existing WQO of 100 mg/L, for discharge to the SCR to maintain river habitat.<sup>viii</sup> The balance of the WRP recycled water would be

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<sup>vii</sup> Letter Re: *Submittal of Upper Santa Clara River Chloride TMDL Task 7, 8, and 9 Report*, dated February 20, 2008 to Ms Tracy Egoscue, Executive Officer, California Regional Water Quality Control Board – Los Angeles Region.

<sup>viii</sup> The minimum amount of reclaimed water discharge to the SCR to maintain river habitat has not been determined. For purposes of this study, a minimum discharge from each WRP is assumed based on

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conveyed to the Pacific Ocean in Ventura County via a dedicated pipeline and ocean outfall. The objective of this alternative is to export the chlorides in the WRP reclaimed water exceeding the existing water quality objectives directly to the ocean rather than discharging them locally to the SCR.

3. **Alternative WRP Discharge Location** – this alternative consists of relocating the Valencia WRP reclaimed water discharge location upstream to the upper extent of Reach 7 of the SCR near the United States Geological Survey (USGS) gauging station at Lang (e.g. the Lang Gauge). The objective of this alternative is to move the discharge farther away from downstream salt-sensitive agricultural beneficial uses, and utilize the potential assimilative capacity in upgradient surface water and groundwater, to minimize impacts from the chloride in the WRP reclaimed water in Ventura County where those beneficial uses occur.
4. **Alternative Water Resource Management** – this alternative consists of working with the local water supply, agricultural, and development stakeholders in Los Angeles and Ventura Counties on a regional watershed solution to help achieve compliance with USCR Chloride TMDL. The objective of this alternative is to identify the best set of options for compliance that results in the maximum net benefit for all water users along the river, while protecting the salt sensitive agricultural beneficial uses of the Santa Clara River in Ventura County.

The following sections of this report discuss cost estimates for each of these conceptual compliance alternatives and describe the general assumptions on which these cost estimates are based.

## **5.0 Cost Estimates for Conceptual Compliance Alternatives**

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Cost Estimates for each alternative include capital costs and operations and maintenance (O&M) using present worth analysis assuming a period of 20 years and an interest rate of 5.5%, consistent with District practices. Cost estimates for these alternatives presented below are based on Opinions of Probable Construction Costs developed by Trussell Technologies, Inc. (Trussell) and MWH using manufacturer's budgetary cost estimates for equipment, RSMeans Construction Cost Data, recent engineering cost estimates, recent actual construction costs, and cost curves. Opinion of Probable Construction Costs developed by Trussell are for advanced treatment facilities and are based on a hybrid Class 5 estimate per the Advancement of cost Engineering International (ACEi) Cost Estimate Classification System with accuracy of -30 percent to +50 percent. Opinion of Probable Construction Costs developed by MWH for brine disposal and secondary effluent disposal systems are based on an ACEi Class 5 estimate with accuracy of -50 percent to +100 percent.

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information in the SCVSD's 2015 Santa Clarita Valley Joint Sewerage System Facilities Plan and Environmental Impact Report.

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## 5.1 Maximum Advanced Treatment and Brine Disposal

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The Saugus and Valencia WRPs provide primary, secondary and tertiary treatment. These conventional treatment processes remove organic compounds and pathogens and produce high quality recycled water, but are not designed for the treatment or removal of dissolved salts such as chloride from wastewater. The District retained engineering consultant(s) to assess the various advanced treatment alternatives for compliance with the Chloride TMDL. The District's consultants evaluated the various alternative desalination technologies that would remove chloride in recycled water at the Valencia and Saugus Plants, including membrane processes (reverse osmosis, nanofiltration, and electrodialysis), thermal process (multi-stage flash distillation (MFD), multi-effect distillation (MED or MEE), and mechanical vapor compression (VC) technologies), and ion exchange processes. Both Montgomery Watson Harza (2002) and Trussell Technologies (2008) evaluated potential chloride reduction technologies and concluded that reverse osmosis (RO) treatment achieves a high removal of chloride and is less costly than the other desalination technologies and was therefore the recommended treatment alternative if advanced treatment to remove chloride is necessary for compliance with the Chloride TMDL.

These studies also concluded that reverse osmosis treatment requires appropriate pretreatment of recycled water to prevent fouling of the membranes used in the reverse osmosis process, which would result in loss of treatment efficiency. The conventional treatment processes at the Saugus and Valencia WRPs are not sufficient for the direct treatment of tertiary recycled water with reverse osmosis membranes, without some form of pre-treatment. Both studies concluded that pretreatment, utilizing either micro filtration (MF) and/or a membrane bioreactor technology (MBR), which provides both biological treatment and low pressure membrane filtration, would be necessary at the Saugus and Valencia WRPs, prior to RO treatment.

In addition, RO technologies produce a brine waste that also requires disposal. Montgomery Watson Harza (2002, 2008) has identified the use of a brine line and ocean outfall and/or the use of deep well injection as potential means for the disposal of reverse osmosis brines. However, in both reports MWH indicated that deep well injection disposal options would require extensive field exploration and testing in order to determine if such a brine disposal option was technically feasible.

The maximum advanced treatment and brine disposal alternative consists of the installation and operation of advanced treatment facilities (MF/RO and/or MBR/RO) and brine disposal facilities at the Valencia and Saugus WRPs. The District would install sufficient advanced treatment capacity to discharge recycled water with chloride levels that would meet 100 mg/L for the full WRP discharge. Operation of advanced treatment at the WRPs would result in waste brine that requires disposal. Given the large volumes of brine waste generated by the maximum advanced treatment alternative, and uncertainties that such volumes of brine could be handled via deep well injection, the only feasible brine disposal alternative for the maximum advanced treatment alternative

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would be through a new 43-mile brine conveyance pipeline and new ocean outfall off the coast in Ventura County.

Trussell Technologies evaluated chloride data for the Valencia and Saugus WRPs and for the potable water supply in the Santa Clarita Valley to determine the size of advanced treatment facilities necessary to achieve compliance with Chloride TMDL WQOs and the estimated brine waste produced as a result of these treatment processes.<sup>ix</sup> The size of the advanced treatment required was based on the design flows for the Valencia and Saugus WRP<sup>x</sup> while the brine waste flow was determined based on ultimate buildout flows of the Santa Clarita Valley<sup>xi</sup> since construction of a brine conveyance pipeline is considered to be a one-time event. In order to comply with a water quality objective of 110 mg/L as a monthly average, including a 10% safety factor, Trussell determined that approximately 13.9 MGD and 3.23 MGD of RO permeate water would be required to produce a blended discharge meeting the objectives under all conditions. Assuming a 90% on-line factor for the facility this results in the construction of a 15.4 MGD MF/RO and/or MBR/RO facility at the Valencia WRP and a 3.6 MF/RO facility at the Saugus WRP.<sup>xii</sup> Based on these proposed treatment processes at the Valencia and Saugus WRP, Trussell has prepared a construction cost estimate, presented in Table 1

**Table 1: Project Capital Costs for Advanced Treatment**

<b>Valencia WRP (15.4 MGD MBR/RO and MF/RO)</b>	
MBR Facility	\$28,500,000
MF Facility	\$10,000,000
RO Facility	\$32,800,000
Non-Process and General Requirements	\$20,100,000
<b>Total Valencia</b>	<b>\$91,400,000</b>
<b>Saugus WRP (3.6 MF/RO)</b>	
MF Facility	\$7,100,000
RO Facility	\$12,500,000
Non-Process and General Requirements	\$7,000,000
<b>Total Saugus</b>	<b>\$26,600,000</b>
<b>TOTAL ADVANCED TREATMENT</b>	<b>\$118,000,000</b>

<sup>ix</sup> Trussell, 2007(c). *Technical Memorandum No. 6.002-010 - Determination of Reverse Osmosis Capacity and Brine Production for Each Scenario*. July 2007

<sup>x</sup> Design flow for the Valencia and Saugus WRPs is assumed to be 26.8 MGD and 6.7 MGD, respectively; equivalent to the projected maximum monthly WRP recycled water flows based on the 2015 Santa Clarita Valley Joint Sewerage System Facilities Plan and EIR.

<sup>xi</sup> Recycled water flow projections for the ultimate buildout of the Santa Clarita Valley of approximately 62 MGD are determined by the District based on SCAG 2004 data.

<sup>xii</sup> Trussell, 2007(d). *Technical Memorandum No. 6.002-011: Preliminary Design of MF/RO Facilities at Saugus and Valencia WRPs and BMBR for Stave VI Expansion at Valencia WRP*. November 2007.

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Because construction of brine disposal facilities is considered a one-time event, the facilities would be sized based on ultimate build-out flow projections for the Santa Clarita Valley. Therefore, in addition to the size of advanced treatment required to comply with the WQOs under design flow conditions, Trussell also determined the size of advanced treatment required to comply with the existing WQOs under ultimate buildout flow conditions for the entire Santa Clarita Valley in order to provide an estimate for the brine disposal capacity that would be required for advanced treatment facilities sized to comply with the existing WQO for the ultimate build-out flow projections for the Santa Clarita Valley and assuming an RO recovery of 85%, Trussell estimates that approximately 5.12 MGD and 0.59 MGD of brine waste would be generated at Valencia and Saugus WRPs, respectively. Based upon these estimates, MWH prepared cost estimates for several brine disposal options including disposal through a new pipeline and ocean outfall in Ventura County disposal by deep well injection in to abandoned oil fields in the Santa Clarita Valley. As noted earlier, because of the large uncertainties over whether deep well injection for quantities of brine of approximately 5.7 MGD would be feasible, the most likely brine disposal option for the maximum advanced treatment alternative is through a dedicated brine line and ocean outfall off the Ventura County coast.

As such, brine disposal through a new ocean outfall in Ventura County would require the construction of approximately 43 miles of conveyance pipeline, depending upon the final location of the new ocean outfall, from the Saugus and Valencia WRPs through portions of Los Angeles and Ventura Counties. Due to the elevation drop between the WRPs and the ocean outfall, approximately 1,000 feet, it is assumed gravity flow would be feasible for this alternative. Based on these assumptions, MWH has prepared a construction cost estimate presented in Table 2.<sup>xiii</sup> It should be noted that capital costs presented in Table 2 do not include the cost of land acquisition, utility relocation, permitting or environmental assessments.

**Table 2: Project Capital Costs for Brine Disposal**

Facility	Cost
Conveyance Pipeline	\$200,000,000
Ocean Outfall	\$30,000,000
<b>TOTAL BRINE DISPOSAL COST</b>	<b>\$230,000,000</b>

Additionally, Trussell Technologies and MWH provided Operations and Maintenance (O&M) cost estimates for the advanced treatment and brine disposal facilities described in this alternative, assuming a 20-year period. O&M costs for advanced treatment facilities at Valencia WRP were estimated for the full capacity of the system at the end of the 20-year period and proportioned based on projected yearly flows. Advanced treatment facilities at the Saugus WRP are assumed to operate at full capacity

<sup>xiii</sup> MWH, 2008. Analysis of Treatment Cost for Chloride for the Santa Clarita Valley Joint Sewerage System. April 2008

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immediately. Cost for labor, power, replacement equipment and chemicals are based on current Districts costs and contracts. MWH estimated O&M costs for the brine disposal facilities, consisting of annual inspection and cleaning and period repairs for the conveyance pipeline. Inspection and cleaning costs are not included for the ocean outfall facility due to inaccessibility of the facility for these tasks. Cost estimates for Operations and Maintenance (O&M) for Advanced Treatment and Brine Disposals provided by Trussell and MWH, respectively are summarized in Table 3.

**Table 3: Maximum Advanced Treatment Option O&M Costs**

Facility	Annual Cost
Advanced Treatment	\$9,000,000
Brine Disposal	\$700,000
<b>AVERAGE ANNUAL O&amp;M Cost</b>	<b>\$9,700,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated annual O&M costs for advanced treatment and brine disposal is approximately \$116 Million. The combined Present Worth of the estimated Capital and O&M Costs for compliance with the existing objectives by providing advanced treatment and brine disposal is approximately \$464 Million as presented on Table 4.

**Table 4: Maximum Advanced Treatment Costs Summary**

Project Element	Capital Cost	Present Worth O&M	TOTAL
Advanced Treatment at Saugus and Valencia	\$118,000,000	\$108,000,000	\$226,000,000
Brine Disposal	\$230,000,000	\$8,000,000	\$238,000,000
<b>TOTAL AWRM Program</b>	<b>\$348,000,000</b>	<b>\$116,000,000</b>	<b>\$464,000,000</b>

Based on modeling conducted by Geomatrix (2008b), this alternative would not achieve compliance with the existing 100 mg/L WQO at all times and all locations, even though the Saugus and Valencia WRP recycled water discharge would comply with 100 mg/L.

## **5.2 Minimum Advanced Treatment and Secondary Effluent Pipeline and Outfall**

The Minimum Advanced Treatment Alternative would reduce and/or eliminate the amount of advanced treatment capacity needed to comply with the existing 100 mg/L WQO. This option involves the reduction of WRP recycled water discharges to the SCR and conveyance and discharge of the majority of the WRP recycled water directly to the ocean through a secondary effluent disposal pipeline and new ocean outfall in Ventura

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County. A small portion of the WRP recycled water, approximately 10 MGD from the Saugus and Valencia WRP combined, would receive advanced treatment to meet a chloride limit of 100 mg/L, to maintain sufficient habitat for threatened and endangered species in the SCR. This alternative would require construction of a smaller amount of advanced treatment at both the Saugus and Valencia WRPs, estimated at approximately 6 MGD.<sup>xiv</sup> In addition, a 43 mile disposal pipeline and ocean outfall would need to be sized with sufficient capacity to convey the remainder of the projected WRP recycled water discharges at ultimate build-out flow conditions for the Santa Clarita Valley, estimated at approximately 62 MGD total based on 2004 SCAG data. MWH prepared a cost estimate for conveyance pipeline with slightly larger flow assumptions. Therefore, costs for conveyance pipeline required for the Secondary Effluent Pipeline and Ocean Outfall are scaled from MWH's cost estimates for the flows considered in this option as follows:

Pipeline Segment	Length	Diameter
Val to Newhall	37,200 L.F.	36 inches
Newhall to Ocean	200,100 L.F.	48 inches
<b>Assumptions</b>		
Distance Between Manholes		500 L.F.
Cost per Manhole		\$25,000
Cost for Pipe	36 inches	175
Labor for Pipe	36 inches	575
Cost for Pipe	48 inches	250
Labor for Pipe	48 inches	750
Construction Contingency		20%
Eng, Legal, Admin Contingency		25%
<b>Cost</b>		
# of Manholes required		474
Cost of Manholed		\$11,850,000
Length of Pipeline	36 inches	37,200 L.F.
Cost for Pipe	36 inches	\$175
Cost for Labor	36 inches	\$575
Total Cost		\$27,900,000
Length of Pipeline	48 inches	200,100 L.F.
Cost for Pipe	48 inches	\$250
Cost for Labor	48 inches	\$750
Total Cost		\$200,100,000
Subtotal		\$239,850,000
Construction Contingency		\$48,000,000
Construction Cost		\$287,850,000
Eng, Legal, Admin Contingency		\$72,000,000
<b>TOTAL COST</b>		<b>\$359,850,000</b>
Ocean Outfall (3 miles)		15,840 L.F.

<sup>xiv</sup> Cost estimate for advanced treatment at Saugus WRP is based on design and costs provided by Trussell Technologies for Maximum Advanced Treatment alternative, discharging approximately 4.25 MGD of recycled water meeting 100 mg/L. The Valencia WRP would discharge approximately 5.75 MGD of recycled water meeting 100 mg/L, which would require construction of an approximately 3 MGD advanced treatment facility at Valencia. See Section 5.4 for additional information on cost estimate for 3 MGD advanced treatment facility at Valencia WRP.

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<b>Assumptions</b>	
Outfall Diameter	48 inches
Cost for Outfall (48 in Diam)	\$2,500 / L.F.
Construction Contingency	20%
Eng, Legal, Admin Contingency	25%
<b>Cost</b>	
Length of Pipe	15,840 L.F.
Cost of Ocean Outfall	\$2,500
Cost of Pipeline - Ocean Outfall	\$39,600,000
Construction Contingency	\$8,000,000
Construction Cost	\$47,600,000
Eng, Legal, Admin Contingency	\$12,000,000
<b>TOTAL OUTFALL</b>	<b>\$59,600,000</b>

Separate brine disposal facilities for the brine produced from the advanced treatment facilities would not be required as brine could be discharged with the recycled water discharge to the ocean. O&M cost for advanced treatment facilities are based on current District's costs and contracts for labor, power, replacement equipment and chemicals costs. O&M costs for the recycled water conveyance facilities are based on annual inspection and cleaning and period repairs for the pipeline. Inspection and cleaning costs are not included for the ocean outfall facility due to inaccessibility of the facility for these tasks. Based on these assumptions and cost estimates provided by MWH (2008), the District has prepared a construction and O&M cost estimate for the Minimum Advanced Treatment alternative, presented in Table 5. It should be noted that capital costs presented in Table 5 do not include the cost of land acquisition, utility relocation, permitting or environmental assessments.

**Table 5: Minimum Advanced Treatment Capital & O& M Costs**

Facility	Capital Cost	Annual O&M
Minimum Advanced Treatment Saugus	\$26,600,000	\$2,200,000
Minimum Advanced Treatment Valencia	\$25,000,000	\$2,100,000
Conveyance Pipeline	\$360,000,000	\$500,000
Ocean Outfall	\$59,600,000	N/A
<b>TOTAL</b>	<b>\$471,200,000</b>	<b>\$4,800,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated O&M costs for is approximately \$57.4 Million, resulting in a combined Capital and O&M cost of approximately \$528.6 Million, as shown on Table 6.

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**Table 6: Minimum Advanced Treatment Costs Summary**

Project Element	Capital Cost	Present Worth O&M	TOTAL
Advanced Treatment at Saugus and Valencia	\$51,600,000	\$51,400,000	\$103,000,000
Secondary Effluent and Brine Disposal	\$419,600,000	\$6,000,000	\$425,600,000
<b>TOTAL Minimum Advanced Treatment</b>	<b>\$471,200,000</b>	<b>\$57,400,000</b>	<b>\$528,600,000</b>

Based on modeling conducted by Geomatrix (2008b), this alternative would not achieve compliance with the existing 100 mg/L WQO at all times and all locations, even though the Saugus and Valencia WRP recycled water minimum discharge would comply with 100 mg/L.

### 5.3 Alternative WRP Discharge Location

The alternative WRP Discharge Discussion would move the Valencia WRP recycled water discharge location upstream approximately 16 miles from the current location in Reach 5 of the SCR to Reach 7 of the SCR, near the USGS Lang Gauge, thus minimizing impacts from the chloride in the WRP recycled water on salt-sensitive agricultural beneficial uses downstream along Reach 4B of the SCR. Discharging the Valencia WRP recycled water in Reach 7 would potentially utilize additional assimilative capacity in SCR surface water and underlying groundwater between the USGS Lang Gauge and the Los Angeles and Ventura County line.

This alternative would require the construction of conveyance pipeline and pumping facilities designed with sufficient capacity to convey the projected ultimate build-out flows for the Santa Clarita Valley to the proposed discharge location near the USGS Lang Gauge. This alternative would require the construction of an approximately 16 mile conveyance pipeline, with capacity for the Valencia WRP design flow of 27.6 MGD, from the Valencia WRP to a new proposed discharge location near the USGS Lang gauge and pump stations to convey these flows to the that location, which is nearly 700 feet higher in elevation. MWH (2008) prepared cost estimates for conveyance of discharges from the District's WRPs to the Los Angeles County Sanitation Districts' (Districts') Joint Water Pollution Control Plant (JWPCP) in Carson, CA. This estimate assumes significantly larger flows than the Alternative WRP Discharge Location option but does have costs for pumping water over similar distances and elevations as considered in this option. Therefore, costs for pumping and conveyance facilities required for the Alternative WRP Discharge Location are scaled from MWH's cost estimates for the flows and distances considered in this option as follows:

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Pipeline Segment	Length	Diameter
Valencia to Lang	84,480 L.F.	36 inches
<b>Assumptions:</b>		
Distance Between Manholes		500 L.F.
Cost per Manhole		\$25,000
Cost for Pipe	36 inches	175
Labor for Pipe	36 inches	575
Construction Contingency		20%
Eng, Legal, Admin Contingency		25%
<b>Costs:</b>		
# of Manholes required		168
Cost of Manhole		\$4,200,000
Length of Pipeline	36 inches	84,480 L.F.
Cost for Pipe	36 inches	\$175
Cost for Labor	36 inches	\$575
Total Cost		\$63,360,000
Subtotal		\$67,560,000
Construction Contingency		\$13,512,000
Construction Cost		\$81,072,000
Eng, Legal, Admin Contingency		\$20,268,000
<b>TOTAL COST</b>		<b>\$101,340,000</b>
<b><u>Determined Required Horsepower from Valencia To Lange</u></b>		
Segment Capacity		26.83 MGD
Distance		84,480 L.F.
Change in Elevation		700 ft
<b>Assumptions</b>		
C value		150
Diameter of Pipe		36 inches
Pump Efficiency		70%
Motor Efficiency		90%
TDH		2 ft/100 ft
Pump Operation		8,760 hrs/yr
Power Cost		\$0.14 / kW-hr
<b>Calculations</b>		
Velocity		14 fps
Head Loss (Frictional)		859 ft
Dynamic Head		2 ft/100 ft
Head Loss (Dynamic)		1689.6 ft
Head Loss (Static)		700 ft
Total System Head Loss		3248 ft
Total System Pressure		1406 psi
hp@ design head		8,490 hp
Pump Power		6,334 kW
Annual Power Consumption		55,483,429 kW-hr
Annual Power Cost		\$7,800,000.00

Capital costs for the pump stations are scaled from costs provided by MWH based on the number of pumps that would be required based on the above analysis. O&M costs for the pump stations consist primarily of energy costs, based on estimated horsepower required to operate the pumps as shown above, and routine inspection and repair, estimated at 3% of the facility cost. O&M costs for the recycled water conveyance facilities are based on

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annual inspection and cleaning and period repairs for the pipeline. Based on these assumptions and cost estimates provided by MWH, the District has prepared a Capital and O&M cost estimates for the Alternative WRP Discharge Location option, presented in Table 7.

**Table 7: Alternative WRP Discharge Capital & O&M**

Facility	Capital Cost	Annual O&M
Conveyance Pipeline to Lang Station	\$101,300,000	\$200,000
Pumping Stations	\$78,500,000	\$10,200,000
<b>TOTAL</b>	<b>\$179,800,000</b>	<b>\$24,500,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated O&M costs for is approximately \$124 Million, resulting in a combined Capital and O&M cost of approximately \$304 Million, as shown on Table 8.

**Table 8: Alternative WRP Discharge Cost Summary**

Project Element	Capital Cost	Present Worth O&M	TOTAL
Conveyance Pipeline to Lang Station	\$101,300,000	\$2,400,000	\$103,700,000
Pumping Stations	\$78,500,000	\$121,900,000	\$200,400,000
<b>TOTAL Alternative WRP Discharge</b>	<b>\$179,800,000</b>	<b>\$124,300,000</b>	<b>\$304,100,000</b>

Based on modeling conducted by Geomatrix (2008b), this alternative would not achieve compliance with the existing 100 mg/L WQO, and would actually increase surface water and groundwater chloride concentrations in Reach 7 of the Santa Clara River.

#### 5.4 Alternative Water Resources Management Program

Because the alternatives described in Section Nos. 5.1, 5.2 and 5.3, could not achieve compliance with the existing 100 mg/L WQO at all times and all locations, , an alternative water resources management (AWRM) Program was developed to achieve compliance with SSOs at all times and at all locations, while implementing mitigation measures to protect salt-sensitive agricultural beneficial uses and groundwater, when necessary. The AWRM Program consists of several key elements which include:

- Implementing source control measures at the WRPs to reduce chloride in the recycled water;
- Constructing advanced treatment for a portion of the recycled water from the Valencia WRP;
- Procuring supplemental water (i.e. local groundwater or surface water) for release to the SCR to enhance its assimilative capacity;
- Constructing water supply facilities in Ventura County; and

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- Providing alternative water supply when necessary, to protect salt-sensitive agricultural beneficial uses of the SCR

Cost estimates were prepared by the District and its consultants for the various elements of the AWRM Program.

*Source Control Measures at the WRPs*

This element of the AWRM Program consists of implementing measures to reduce the chloride levels in the recycled water discharged from the Saugus and Valencia WRPs. The reduction in chloride levels would be achieved through a) enhanced source control, specifically the removal of residential self-regenerating water softeners, which are a significant source of chloride to the District's WRPs, and b) conversion of the disinfection processes at the WRPs from the current bleach based process, which contribute approximately an additional 10 mg/L of chloride to the WRP recycled water, to ultra violet disinfection technology. The District's costs estimates for these elements of the AWRM Program are presented in Table 9.

**Table 9: AWRM Source Control Measures**

AWRM Element	Capital Cost	Annual O&M
SRWS Removal <sup>xv</sup>	\$2,400,000	N/A
UV Disinfection Facilities <sup>xvi</sup>	\$16,500,000	\$500,000
<b>TOTAL Source Control Measures</b>	<b>\$18,900,000</b>	<b>\$500,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated O&M costs for UV Disinfection facilities at the Saugus and Valencia WRP is approximately \$6 Million, resulting in a combined Present Worth Capital and O&M cost of approximately \$21.5 Million for this element of the AWRM Program.

*Advanced Treatment at Valencia WRP*

In order to comply with the proposed water quality objectives, additional chloride reduction beyond that achieved from source control will be required. The AWRM Program contemplates achieving this additional chloride removal through construction and operation of a 3-MGD advanced treatment facility using MF/RO treatment technology at the Valencia WRP. These facilities would remove approximately 58,000 to 96,000 pounds per month of chloride from the WRP recycled water, reduce chloride levels directly in the SCR when necessary to achieve the proposed water quality

<sup>xv</sup> Cost for SRWS removal is based on removal of remaining SRWS in District's service, including costs for public outreach, rebate payments, conducting a voter referendum, and implementation of an enforcement program. See District's report, *Staff Report in Support of Findings Necessary for Adoption of an Ordinance Pursuant to California Health and Safety Code Section 116787 – Santa Clara River Chloride Reduction Ordinance of 2008*, May 2008.

<sup>xvi</sup> Cost for UV Disinfection Facilities is per internal District's memorandum and is based on costs for UV system for the Districts' Whittier Narrows Water Reclamation Plant.

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objectives, and provide salt export from the Piru basin through operation of water supply facilities in Ventura County.

Based on the cost estimates provided by the Trussell Technologies for advanced treatment utilizing MF/RO technology to comply with the existing water quality objectives, the District has estimated the cost for construction and operation of a smaller 3-MGD MF/RO facility at the Valencia WRP to be approximately \$25 Million with O&M costs of \$2.1 per year. Trussell Technologies subsequently completed a separate memorandum to estimate the cost of a 3 MGD MF/RO facility at the Valencia WRP.<sup>xvii</sup> The estimate in this subsequent memorandum is based on updated costs for materials and equipment as of June 2008, but generally supports the previous estimate by the District when accounting for increases in construction cost index since September 2007. In addition, operation of this advanced treatment facility would produce waste brine, which would require disposal. CH2M Hill has prepared a preliminary feasibility study and cost estimate for the disposal of waste brine from the proposed 3-MGD advanced treatment facility through deep well injection technology.<sup>xviii</sup> CH2M Hill assumes disposal of approximately 0.5 MGD of brine waste at an individual well injection rate of 50 gpm. The estimates for the capital and O&M costs for the 3-MGD MF/RO and brine disposal facilities contemplated as part of the AWRM Program are presented in Table 10.

**Table 10: AWRM Advanced Treatment and Brine Disposal**

AWRM Element	Capital Cost	Annual O&M
3 MGD MF/RO Facility	\$25,400,000	\$2,100,000
Brine Disposal	\$53,000,000	\$1,600,000
<b>TOTAL AWRM Advanced Treatment and Brine Disposal</b>	<b>\$78,400,000</b>	<b>\$3,700,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated O&M costs for the advanced treatment and brine disposal facilities at the Valencia WRP is approximately \$44.2 Million, resulting in a combined Present Worth Capital and O&M cost of approximately \$122.6 Million for this element of the AWRM Program.

*Supplemental Water*

During periods of extreme drought and prior to construction and operation of the proposed 3-MGD advanced treatment facility, the AWRM Program contemplates procuring supplemental water of sufficient water quality to reduce chloride levels in the surface water in Reach 4B. In order to ensure a reliable supply of supplemental water during these periods, the AWRM proposes to develop agreements with local water purveyors that would implement a water banking program when supplemental water is

<sup>xvii</sup> Trussell, 2008 (b), Technical Memorandum No. 50.001 (TM 23): *Opinion of Probable Construction Costs for 3 mgd RO Facilities*, July 2008

<sup>xviii</sup> CH2M Hill, 2008(b). Technical Memorandum: Valencia WRP – Deep Injection Well Disposal of RO Concentrate – Preliminary Feasibility. April 2008.

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not required. The water purveyors would then have this banked water supply available to deliver to their customers when the District requires supplemental water from local groundwater to enhance the assimilative capacity of the river and meet proposed water quality objectives. Through the GSWIM Study, it is estimated that approximately 30,000 AF of supplemental water would be required during the study period. Preliminary discussions with water purveyors indicate costs for banking and delivering SWP water would be approximately \$1,000 per AF, resulting in a cost of approximately \$30 Million. Additionally, it is assumed some infrastructure for conveyance of the supplemental water (extracted groundwater) would be required at a cost of approximately \$7.5 Million.

*Ventura Water Supply Facilities*

As indicated above, in order to achieve salt export from the Piru groundwater basin, the permeate from the 3-MGD advanced treatment facilities would be conveyed to water supply facilities in Ventura County. These facilities would blend the RO permeate with saline groundwater from the Piru basin and discharge the blended water supply to the SCR at a point where the water, and therefore salt, would be exported from the basin and utilized in Ventura County. The water supply facilities would be comprised of:

- 10 groundwater extraction wells
- 12 mile RO permeate conveyance pipeline
- 6 mile blended water supply (RO permeate and Piru groundwater) conveyance pipeline

Cost estimate for construction of extraction well facilities was developed for the District by Dr. Steven Bachman.<sup>xix</sup> Conveyance pipeline cost estimates were based on 6-miles of 54" pipeline and 12 miles of 24" pipeline for the blended water supply conveyance pipeline and RO permeate conveyance pipeline, respectively, and a cost of approximately \$20 per inch per foot for pipeline materials and installation, consistent with estimates provided by MWH. Cost estimates for the proposed water supply facilities are presented in Table 11.

**Table 11: AWRM Ventura County Water Supply Facilities**

AWRM Element	Capital Cost	Annual O&M
10 Groundwater Extraction Wells	\$5,500,000	N/A
12 Mile RO Permeate Conveyance	\$34,200,000	\$130,000
6 Mile Blended Water Conveyance	\$30,400,000	\$170,000
<b>TOTAL AWRM Ventura Water Supply Facilities</b>	<b>\$70,100,000</b>	<b>\$300,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the present worth of the estimated O&M costs for the Ventura County water supply facilities is approximately \$3.6 Million, resulting in a combined Present Worth Capital and O&M cost of

<sup>xix</sup> Bachman, 2007. Memorandum: *Alternative Water Resources Management Santa Clara River Chloride TMDL Task 2: Piru Groundwater Extraction Wells*, January 2008.

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approximately \$73.7 Million for this element of the AWRM Program. A summary of the cost estimate for the AWRM Program is presented in Table 12.

**Table 12: AWRM Program Costs Summary**

AWRM Element	Capital Cost	Present Worth O&M	TOTAL
Source Control Measures	\$18,900,000	\$6,000,000	\$24,900,000
Advanced Treatment and Brine Disposal	\$78,400,000	\$44,200,000	\$122,000,000
Supplemental Water	\$37,500,000	N/A	\$37,500,000
Ventura Water Supply Facilities	\$70,100,000	\$3,600,000	\$73,700,000
<b>TOTAL AWRM Program</b>	<b>\$204,900,000</b>	<b>\$53,800,000</b>	<b>\$258,700,000</b>

Note: All costs are as of September 2007

Therefore, the costs for the AWRM facilities required to comply with the proposed site-specific objectives is estimated at approximately \$259 Million.

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## 6.0 References

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# **EXHIBIT**

# **“22”**

4837-0090-6752.2



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***FINAL REPORT  
RESOLUTIONS APPROVED***



***112<sup>th</sup> Annual Conference***

***San Diego  
September 15-17, 2010***

activities, eliminating the sale of junk food in city, county, or school facilities, providing incentives for stores that sell fresh produce to locate in depressed neighborhoods, and providing exercise opportunities for their residents; and

WHEREAS, city officials believe there are important, long-term community benefits to be gained by encouraging healthy lifestyles, including a decrease in the rate of childhood obesity and its negative health-related impacts; and

WHEREAS, cities and other community partners can work together to understand the relationship between obesity, land-use policies, redevelopment, and community planning; and

WHEREAS, cities and other community partners can work together to ensure that there are safe places for their residents to be active such as in parks, ball fields, pools, gyms, and recreation centers; and

WHEREAS, access to healthy foods has a direct impact on the overall health of our community and planning for fresh food, open space, sidewalks, and parks should be a priority; and

WHEREAS, the League has partnered with the Healthy Eating Active Living (HEAL) Cities Campaign to provide training and technical assistance to help city officials adopt policies that improve their communities' physical activity and retail food environments; and

WHEREAS, the League wants to partner with and support the *Let's Move!* Campaign headed by the First Lady of the United States, the President's Task Force on Childhood Obesity and the Secretary of Health and Human Services, in an effort to solve the challenge of childhood obesity within a generation; now, therefore, be it

RESOLVED, by the General Assembly of the League of California Cities, assembled during the Annual Conference in San Diego, September 17, 2010, that the League encourages the existing 480 California cities to adopt preventative measures to fight obesity as set forth by the First Lady of the United States of America in the *Let's Move* campaign; and, be it further

RESOLVED, that California cities be encouraged to sign-up with the United States Department of Health and Human Services – Region IX office as a *Let's Move!* City; and, be it further

RESOLVED, that California cities are encouraged to: (1) help parents make healthy family choices; (2) create healthy schools; (3) provide access to healthy and affordable foods; and (4) promote physical activity; and, be it further

RESOLVED, that cities are encouraged to involve youth, especially middle and high school students, with city health-related programs.

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**5. RESOLUTION RELATING TO UNFUNDED STATE-MANDATES**

Source: City of Santa Clarita  
Referred to: Revenue and Taxation Policy Committee

WHEREAS, unfunded mandates imposed upon local governments, including cities, counties and special districts, by the State of California place a tremendous financial burden upon local governments; and

WHEREAS, some of the mandates placed upon local governments are the result of actions by Boards and Commissions not directly accountable to the electorate; and

WHEREAS, the State of California and many local governments within the state are under financial duress due to the continuing national economic crisis, and

WHEREAS, approximately twelve percent of Californians, are currently unemployed and struggling to pay for basic life necessities, well above the national average; and

WHEREAS, mandates enacted by the State of California may result in the need for local agencies to increase fees or taxes to satisfy the requirements of the mandate; and

WHEREAS, as cited in a 2005 report on state mandates published by the League of California Cities, the original intent of Property Tax Relief Act of 1972, which established the concept of state reimbursement of local agencies for state mandated activities, was to limit the ability of local agencies to levy taxes; and

WHEREAS, in 1979 the voters of the State of California approved Proposition 4 adding Article XIII B to the California Constitution, requiring the state to provide a subvention of funds to local governments for costs associated with state mandated programs, under specified conditions, and through subsequent legislation creating the Commission on State Mandates; and

WHEREAS, in 2004, the voters of the State of California adopted Proposition 1A expanding the constitutional protections for local governments regarding state mandates; and

WHEREAS, the State of California has struggled to balance its budget for the past several years and has chosen to borrow funds from local governments, thus reducing traditional revenues to local governments, forcing additional local program and service reductions and cutbacks; and

WHEREAS, various federal and state laws and regulations may result in the imposition of state mandates on local governments; and

WHEREAS, an example of state imposed mandates are the establishment of Total Maximum Daily Loads (TMDL's) for such things as bacteria, chloride, metals, and toxicity; and

WHEREAS, for example, in order to meet the obligations imposed by Regional Water Quality Control Boards (RWQCB) throughout California, local agencies may need to implement or increase fees and taxes to pay for new programs or facilities, in order to avoid penalties for non-compliance; now, therefore be it

RESOLVED, by the General Assembly of the League of California Cities, assembled during the Annual Conference in San Diego, September 17, 2010, that:

1. The League of California Cities work with its member cities and other local government partners to identify situations in which local governments must increase fees or taxes to meet state mandated requirements.
2. The League of California Cities reaffirms its historic stance that anytime the state imposes a new duty, responsibility, or obligation on local government it must provide an adequate source of funding to accompany the action, and not presume that the new duty, responsibility, or obligation can be covered by a new local fee, assessment, or tax.
3. That the League of California Cities work with the applicable state and federal regulatory agencies through the League's policy making process, and the National League of Cities, to

develop reasonably achievable, environmentally sound and cost-effective policy based on monitoring and sound science and addressing local water conditions and the fiscal condition of the local government.

4. That the League of California Cities will review and consider supporting through its policy committee process legislation to suspend, eliminate, or otherwise modify the negative impacts of state mandates on local agencies, particularly in which a new local tax or fee increase is necessary to implement the mandate.

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6. **RESOLUTION RELATED TO ENHANCING PUBLIC SAFETY WHILE DRIVING  
A MOTOR VEHICLE**

Source: City of Elk Grove

Referred to: Transportation, Communication & Public Works Policy Committee

WHEREAS, cities throughout the State of California hold the health and safety of their residents as a paramount concern; and

WHEREAS, the use of text messages has grown exponentially in recent years; and

WHEREAS, any time a driver attempts to send an electronic text message while driving, his or her attention is diverted from the road; and

WHEREAS, a recent Virginia Tech study showed sending electronic text messages while driving makes an accident 23 times more likely; and

WHEREAS, a study conducted by The Transport Research Laboratory in the United Kingdom showed that sending text messages while driving is riskier than driving under the influence of alcohol or drugs; and

WHEREAS, Senate Bill 28 and California Vehicle Code Section 23123.5 ban writing, sending, or reading electronic text messages while operating a motor vehicle in the state of California; and

WHEREAS, the League supports this type of traffic safety enhancement as demonstrated through their support of motorcycle helmets, child restraints, seat belt and speed limit laws; now, therefore, be it

RESOLVED, by the General Assembly of the League of California Cities, assembled during the Annual Conference in San Diego, September 17, 2010, that the League encourages cities to promote safe driving across California and the education of the general public about the dangers of texting while driving.

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# EXHIBIT "23"

4837-0090-6752.2



STEPHEN R. MAGUIN  
 Chief Engineer and General Manager

# Memorandum

**Date:** October 8, 2009

**To:** Steve Maguin

**Through:** Phil Friess  
 Departmental Engineer, Technical Services

**From:** Brian Louie  
 Division Engineer, Water Quality and Soils Engineering

**Subject:** Red-line Version of Chloride TMDL

As requested, attached are red-line edits for the Upper Santa Clara River Chloride TMDL that are designed to reduce the upfront capital expenditures for the program through revision of conditional site-specific objectives that would allow for project implementation in phases and eliminate the need to purchase and bank supplemental water. In addition, implementation schedule extensions are being sought. The key changes to the TMDL are summarized as follows:

**I. Revisions to Conditional Site-Specific Objectives by Phase**

TMDL Element	Phase I	Phase II
Reach 6 SSO	Interim WLAs (a)	150
Reach 5 SSO	Interim WLAs (a)	150
Reach 4B SSO	Interim WLAs (a)	117 / 150 (b)(c)
	150 during stormflow conditions > 100 cfs (c)	
Advanced Treatment Requirement	1 MGD MF-RO	3 MGD MF-RO

(a) Interim WLAs for Saugus and Valencia WRPS are as follows:

WRP	By May 2017 (Pre-Phase I)	May 2017 – May 2022 (Pre-Phase II)
Saugus	80 mg/L + SWP Cl (12-mo average)	165 mg/L (12-mo average)
Valencia	100 mg/L + SWP Cl (12-mo average)	165 mg/L (12-mo average)

- (b) Critical condition SSO for Reach 4B applies when imported water is  $\geq 70$  mg/L, SCVSD provides Camulos Ranch with an alternative water supply, and SCVSD maintains a salt balance by salt extraction from the Piru Basin.
- (c) Applies only for groundwater extraction for direct discharge to Reach 4B during stormflow conditions exceeding 100 cfs in the river, to facilitate chloride export to the ocean and expedite removal of excess chloride in the Piru Basin.

**II. Revisions to TMDL Implementation Schedule**

- a. 1-year schedule extension to complete EIR (May 2012).
- b. 2-year schedule extension to construct Phase I facilities (May 2017).
- c. 7-year schedule extension to construct Phase II facilities (May 2022).
- d. TMDL Reopener (Task 19) for Regional Board to consider cost-saving modifications to the TMDL for Phase II control measures and revise interim WLAs during implementation of Phase II facilities (Nov 2016)
- e. TMDL Task 19: New Interim WLAs established for Saugus and Valencia WRP and extended to May 2022.

The Phase I and Phase II facilities are comprised of the following elements:

Phase I Elements	Phase II Elements
Phase I MF-RO (1 MGD)	Phase II MF-RO (2 MGD)
Phase I Brine Disposal (0.15 MGD)	Phase II Brine Disposal (0.30 MGD)
10 East Piru Extraction Wells	6-mile Ventura County conveyance line
12-mile RO conveyance line	UV at Valencia WRP
UV at Saugus WRP	

The implementation of these facilities in phases is subject to modification of the Alternative Compliance Plan MOU, agreements with United Water and Camulos Ranch on the operation of extraction wells during Phase I and II, and the Regional Board issuance of applicable NPDES permits to support the revised ACP.

State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-20082009-012###  
December 11, 2008Date

Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt Site  
Specific Chloride Objectives and to Revise the Upper Santa Clara River  
Chloride TMDL

WHEREAS, the California Regional Water Quality Control Board, Los Angeles  
Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.
2. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91-001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
3. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
4. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

(1)

5. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303e list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD), are two major point sources that discharge to the USCR.
6. On October 24, 2002, the Regional Board adopted Resolution No. 02-018, amending the Basin Plan to include a TMDL for chloride in the USCR. Resolution 02-018 assigned waste load allocations (WLAs) to the Valencia and Saugus WRPs, minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River. The TMDL included interim WLAs for chloride for the WRPs. These interim WLAs provide the WRPs the necessary time to implement chloride source reduction, complete site-specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
7. On February 19, 2003 the State Water Resources Control Board (State Board) adopted State Board Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board. The Remand Resolution directed the Regional Board to consider a phased implementation approach to allow SCVSD to complete special studies prior to planning and construction of advanced treatment technologies.
8. On July 10, 2003, in response to the Remand Resolution, the Regional Board adopted Resolution 03-008, revising the implementation Plan for the TMDL. The revised TMDL allowed 13 years to implement the TMDL.
9. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan required the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
10. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," found that the best estimate of a chloride

(2)

hazard concentration for avocado crops falls within the range of 100 to 120 mg/L. A similar range of 100 to 117 mg/L was found by an independent technical advisory panel (TAP). An additional study completed in January 2008, entitled “Compliance Averaging Period for Chloride Threshold Guidelines in Avocado,” found that a 3-month averaging period of the LRE guidelines would be protective of avocados. The TAP co-chairs reviewed this study and agreed that a 3-month averaging period is appropriate.

11. On August 3, 2006, the Regional Board revised the Implementation Schedule for the TMDL in Resolution No. 04-004 (Resolution No. 06-016). The revised TMDL accelerated the schedule from 13 years to 11 years based on findings from the LRE. The State Board approved the Regional Board amendment on May 22, 2007 (State Board Resolution No. 2007-0029). In approving the amendment, the State Board directed the Regional Board to consider variability in the SSO for chloride to account for the effects of drought on source water quality.
12. Prior to completion of the special studies, the presumed implementation plan included two options: advanced treatment of effluent from the Valencia and Saugus WRPs and disposal of brine in the ocean through an ocean outfall, or disposal of tertiary treatment effluent in the ocean through an ocean outfall. Both options entail construction of a pipeline from the Santa Clarita Valley WRPs to the ocean and an ocean outfall.
13. The second special study required by the Implementation Plan is the “Groundwater/Surface Water Interaction (GSWI) Model.” The GSWI study model has been completed, reviewed and approved as an appropriate and adequate modeling tool by the stakeholders and an independent GSWI TAP. The GSWI model has been used to examine feasibility of various implementation alternatives. The GSWI study predicts that none of the alternatives, including the advanced treatment of WRP effluent and disposal of brine in a new ocean outfall or disposal of tertiary treatment effluent in an ocean outfall, would achieve compliance with the existing chloride WQO of 100 mg/L at all times and at all locations and that ~~and an~~ alternative water resources management approach could achieve attainment for certain reaches.
14. The third special study required by the Implementation Plan is the “Evaluation of Appropriate Chloride Threshold for Endangered Species Protection (ESP).” This special study has been completed and found that the existing USEPA chloride criteria of 230 mg/L as a chronic threshold and 860 mg/L as an acute threshold are protective of aquatic life in the USCR, including Threatened and Endangered species. These conclusions indicate that endangered species can tolerate higher levels of chloride than salt-sensitive agricultural crops. The independent ESP TAP concurred with the study findings and conclusions.
15. The Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos

(3)

3, 4, 5, 6, 7, 8, 9, 10n, and 10c). The completion of these TMDL special studies, all conducted in a facilitated stakeholder process in which stakeholders participated in scoping and reviewing the studies, has led to development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater. The alternative, termed the alternative water resources management approach (AWRM), develops site specific objectives (SSOs) for chloride while protecting beneficial uses. The AWRM provides water quality and water supply benefits in Los Angeles and Ventura Counties. The AWRM consists of chloride source reduction actions and chloride load reduction through advanced treatment (microfiltration and reverse osmosis) of a portion of the Valencia WRP effluent in conformance with SSOs.

16. To support the development of the AWRM compliance option by stakeholders, Regional Board adopted Resolution 07-018 on November 1, 2007. Resolution No. 07-018 modified the regulatory provisions of the Basin Plan by subdividing Reach 4 of the Santa Clara River (SCR) as two separate Reaches, Reach 4A between the confluence of Piru Creek and the A Street Bridge in the City of Fillmore and Reach 4B between the Blue Cut Gauging Station and the confluence of Piru Creek. The Regional Board stated that this action would allow the development of more geographically precise SSOs.
17. On December 11, 2008, the Regional Board adopted an ~~This~~ amendment to the Basin Plan ~~will to~~ incorporate SSOs for chloride in Reaches 4B, 5, and 6 of the Santa Clara River and groundwater basins underlying those reaches. The SSOs are protective of beneficial uses of these waterbodies. The GSWI study found that the AWRM compliance alternative will result in timely attainment of the SSOs for Reaches 4B, 5, and 6 and reduce the chloride load to the USCR and underlying groundwater basins. The proposed implementation activities under AWRM, which will increase chloride export from the East Piru groundwater basin underlying Reach 4B, will offset any increases in chloride discharges.
18. ~~This~~ The amendment to the Basin Plan ~~will include~~ implementation language, including minimum salt export requirements to ensure that excess salt loadings to the groundwater basin due to periods of elevated water supply concentrations are removed from the groundwater basin through pumping and export.
19. The adoption of SSOs for chloride is part of a comprehensive strategy for addressing the buildup of salts in the Santa Clara watershed, which includes development and implementation of Total Maximum Daily Loads and corresponding effluent and receiving water limitations in NPDES permits.
20. The TMDL numeric targets, WLAs, and Implementation Plan are based on the SSOs for chloride. The TMDL provides interim WLAs for chloride, as

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well as interim WLAs for sulfate and TDS to support the supplemental water and water recycling components of the AWRM.

21. The TMDL ~~provides~~ provided a ten-year schedule to attain compliance with the SSOs for chloride. The SSOs are conditioned on full and ongoing implementation of the AWRM program; if the AWRM system is not built and operated, the water quality objectives for chloride revert back to the current levels in the Basin Plan, which are 100 mg/L.
22. The SCVSD, Ventura County Agricultural Water Quality Coalition, the United Water Conservation District, and Upper Basin Water Purveyors, consisting of the Castaic Lake Water Agency (CLWA), Valencia Water Company, Newhall County Water District, Santa Clarita Water Division of the CLWA, and the Los Angeles County Waterworks District NO. 36, herein referred to as the AWRM Stakeholders have entered into a memorandum of understanding (MOU), effective October 23, 2008 to implement the AWRM Program. The AWRM MOU specifies the agreed-upon responsibilities of AWRM Stakeholders for the implementation of the ultra-violet light disinfection and advanced treatment facilities (i.e., microfiltration-reverse osmosis and brine disposal), salt management facilities (i.e., extraction wells and water supply conveyance pipelines), supplemental water (i.e., water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. The AWRM MOU also specifies the various uses of desalinated recycled water, which include: (1) compliance with water quality objectives for Reaches 4A, 4B, and 5; (2) protection of salt-sensitive agricultural beneficial uses; (3) removal of excess chloride load above 117 mg/L from the East Piru Basin; and (4) enhancement of water supplies in Ventura and Los Angeles Counties. In addition, the AWRM MOU will implement an extension of the GSWI model to assess the groundwater and surface water interactions and impacts to surface water and groundwater quality from the AWRM program to the Fillmore and Santa Paula basins.
23. Implementation actions to achieve SSOs in Reaches 4B, 5, and 6 and the TMDL must also result in compliance with downstream water quality objectives for chloride. Surface water chloride concentrations will comply with the existing water quality objective of 100 mg/L in Reach 4A.
24. The proposed amendment to the Basin Plan will revise SSOs in Reach 4B of the Santa Clara River during critical drought periods and revise the TMDL implementation schedule to include a phased implementation of the project and to lessen the economic impact to the community during the ongoing economic downturn and allow the opportunity to secure federal and state funding for project implementation. Regional Board staff prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this amendment. The technical document entitled "Upper Santa Clara River Chloride TMDL Reconsideration and Conditional Site Specific Objectives" (Staff Report) is an integral part of this

(5)

~~Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting on December 11, 2008. The Staff Report relies upon the scientific background and data collection and analysis document in the TMDL special studies.~~

~~The TMDL special studies are distinguished from the Regional Board's staff report in that they do not present recommendations of Regional Board staff.~~

25. The proposed TMDL revision provides a twelve-year and seventeen-year schedule to attain compliance with the Phase I and II SSOs for chloride, respectively. The SSOs are conditioned on phased implementation of the AWRM program; if the AWRM system is not built and operated in accordance with the implementation section in Table 7-6.1, the water quality objectives for chloride revert back to the current levels in the Basin Plan, which are 100 mg/L.

~~25.26.~~ The Staff Report, as well as a Notice of Exemption, and tentative Basin Plan Amendment were released for public review and comment on ~~DATE~~ the public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. Stakeholders have participated extensively in the special studies since 2005 through a facilitated process in which meetings are held monthly in the cities of Fillmore, Santa Paula, and Santa Clarita. Technical working groups (TWGs) have executed the implementation studies and stakeholder selected TAPs have reviewed the studies. All meetings are open to the public, and agendas and minutes from meetings are published on the Santa Clara River Chloride TMDL website: [www.santaclarariver.org](http://www.santaclarariver.org). A draft of the amendment was released for public comment on September 30, 2008; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; a notice of hearing published in the Los Angeles Daily News, the Santa Clarita Signal, and the Ventura County Star on ~~September 30, 2008~~ ~~DATE~~; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on ~~December 11, 2008~~ ~~DATE~~ to consider adoption of the amendment.

26.27. In amending the Basin Plan to ~~establish-revise~~ SSOs during critical drought periods and to revise this TMDL Implementation Schedule, the Regional Board considered the requirements set forth in Sections 13240, 13241, and 13242 of the California Water Code. The 13241 factors are set forth and considered in the staff report.

27.28. The proposed amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives and revisions to the implementation schedule (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).

(6)

28.29. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251 (g); 23 Cal. Code Regs. § 3782.) The Regional Water Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report, the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.

29.30. A CEQA Scoping hearing was conducted on ~~July 29, 2008~~DATE at the Council Chamber of City of Fillmore – 250 Central Avenue, Fillmore, California. A notice of the CEQA Scoping hearing was sent to interested parties. The notice of CEQA Scoping hearing was also published in the Los Angeles Daily News on ~~July 11, 2008~~DATE and Ventura County Star on ~~July 11, 2008~~DATE.

30.31. In preparing the accompanying CEQA substitute documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid or eliminate the identified impacts. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

31.32. The propose amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however, such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Water Code section 13360 precludes the Regional Board

(7)

form dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)

32.33. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents may not ~~foreseeably~~foreseeably reduce impacts to less than significant levels.

33.34. The substitute documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.

34.35. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents (14 Cal. Code Regs. § 15093.)

35.36. Considering the record as a whole, this Basin Plan amendment will result in no effect, either individually or cumulatively, on wildlife resources.

36.37. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).

37.38. The Basin Plan amendment incorporating SSOs and a revision of the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.

38.39. Occasionally during its approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided she informs the Board of any such changes.

**Therefore, be it resolved that:**

(8)

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire records, including oral testimony at the hearing, hereby adopts the amendment to Chapter 3 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, to ~~incorporate~~ revise SSOs for chloride for Reaches 4B, 5, and 6 in the Santa Clara River watershed and underlying groundwater basins (as identified in Tables 3-8 and 3-10), which will replace the previously applicable water quality objectives in Reaches 4B, 5, and 6 of the Santa Clara River and underlying groundwater basins.

~~40.2. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 4 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment B hereto, to include USCR SSOs for chloride.~~

~~41.3. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment C B hereto, to incorporate the revisions to the Upper Santa Clara river Chloride TMDL.~~

~~42. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)~~

~~43.4. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.~~

~~44.5. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.~~

~~45.6. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL and U.S. EPA.~~

(9)

46.7. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 11, 2008.

\_\_\_\_\_  
Tracy J. Egoscue  
Executive Officer

\_\_\_\_\_  
Date

**Attachment A to Resolution R4-~~20082009-012###~~**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

The following language will be added to Chapter 3, Water Quality Objectives of the Basin Plan, under “Mineral Quality”:

*Add table after Table 3-8.*

**Table 3-8a. Conditional Site Specific Objectives for Santa Clara River Surface Waters**

<b>WATERSHED/STREAM REACH</b>	<b>Chloride (mg/L)</b>
<b>Santa Clara River Watershed:</b>	
Between Bouquet Canyon Road Bridge and West Pier Highway 99	150 (12-month average)
Between West Pier Highway 99 and Blue Cut gaging station	150 (12-month average)
Between Blue Cut gaging station and confluence of Piru Creek	117 <del>(3-month average)</del> 1530 <sup>a,b</sup> <del>(312-month average)</del> <sup>b</sup>

- a. The conditional site specific objective of ~~+30~~ 150 mg/L applies only if the following conditions and implementation requirements are met:
1. Water supply chloride concentrations measured in Castaic Lake are  $\geq$  780 mg/L.
  2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide ~~supplemental-alternative~~ water supply to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B (between Blue Cut gaging station and confluence of Piru Creek) surface water exceeds 117 mg/L.
  3. By May 4, ~~2020~~ 2027, the 10-year cumulative net chloride loading above 117 mg/L (CNCI117)<sup>i</sup> to Reach 4B of the Santa Clara River (SCR), calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.

$${}^i \text{CNCI}_{117} = \text{Cl}_{(\text{Above } 117)} - \text{Cl}_{(\text{Below } 117)} - \text{Cl}_{(\text{Export Ews})}$$

Where:

$$\text{Cl}_{(\text{Above } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{>117}^3]$$

$$\text{Cl}_{(\text{Below } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{\leq 117}^4]$$

$$\text{Cl}_{(\text{Export EWS})} = \text{Cl Load Removed by Extraction Wells}$$

**Attachment A to Resolution R4-20082009-012###**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

- <sup>1</sup> WRP Cl Load is determined as the monthly average chloride (Cl) concentration multiplied by the monthly average flow measured at the Valencia WRP.
- <sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).
- <sup>3</sup> Reach 4B Cl Load<sub>>117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.
- <sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.

4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.

b. A conditional site-specific objective of 150 mg/L for storm-flow conditions shall also apply for discharges of extracted groundwater from the East Piru Basin to Reach 4B during storm flows exceeding 100 cfs in the river as measured at that USGS Gauging Station 11109000 (Las Brisas Bridge) to facilitate chloride export to the ocean. ~~The averaging period for the critical condition SSO of 130 mg/L may be reconsidered based on results of chloride trend monitoring after the alternative water resources management (AWRM) system is applied.~~

The conditional site specific objectives for chloride in the surface water between Bouquet Canyon Road bridge and West Pier Highway 99, between West Pier Highway 99 and Blue Cut gaging station, and between Blue Cut gaging station and confluence of Piru Creek shall apply and supersede the existing water quality objectives in Table 3-8 only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.

*Add table after Table 3-10.*

**Table 3-10a. Conditional Site Specific Objectives for Selected Constituents in Regional Groundwaters**

DWR Basin No.	BASIN	Chloride (mg/L)
4-4	<b>Ventura Central</b> <sup>d</sup> Lower area east of Piru Creek <sup>1</sup>	150 (rolling 12-month average)
4-4.07	<b>Eastern Santa Clara</b> Santa Clara—Bouquet & San Francisquito Canyons  Castaic Valley	150 (rolling 12-month average)

**Attachment A to Resolution R4-~~20082009-012###~~**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

	150 (rolling 12-month average)
--	--------------------------------

1. This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.

The conditional site specific objectives for chloride in the groundwater in Santa Clara--Bouquet & San Francisquito Canyons, Castaic valley, and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing regional groundwater quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.

**DRAFT**

Resolution No. R4-2008-012

Page 1

**Attachment B to Resolution No. R4R#-20082009-012###**

**Revision of the TMDL for Chloride in the Upper Santa Clara River**

Adopted by the California Regional Water Quality Control Board, Los Angeles Region on December 11, 2008.

**Amendments**

Table of Contents

Chapter 7. Total Maximum Daily Loads (TMDLs)

7-6 Upper Santa Clara River Chloride TMDL

List of Figures, Tables, and Inserts

Chapter 7. Total Maximum Daily Loads (TMDLs) Tables

7-6.1. Upper Santa Clara River Chloride TMDL: Elements (Revised)

7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule (Revised)

Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.  
This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003  
This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.  
This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6, 2004.

This TMDL was approved by: The State Water Resource Control Board on July 22, 2004  
The Office of Administrative Law on November 15, 2004

The U.S. Environmental Protection Agency on April 28, 2005

This TMDL was revised and adopted by: The Regional Water Quality Control Board on August 3, 2006.

This TMDL was approved by: The State Water Resource Control Board on May 22, 2007.  
The Office of Administrative Law on July 3, 2007.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on December 11, 2008.

This TMDL was approved by: The State Water Resource Control Board on xxx xx, 200x.  
The Office of Administrative Law on xxx xx, 200x.

<b>Element</b>	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>															
<b><i>Problem Statement</i></b>	<p style="text-align: center;"><b>Santa Clara River Chloride</b></p> <p>Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River (SCR). These reaches are on the 1998 and 2002 Clean Water Act (CWA) 303(d) lists of impaired water bodies as impaired due to chloride. The objectives for these reaches were set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River (USCR). Irrigation of salt sensitive crops such as avocados, strawberries, and nursery crops with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater in Piru Basin underlying the reach downstream of Reach 5 are also rising.</p>															
<b><i>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</i></b>	<p>Numeric targets are equivalent to conditional site specific objectives (SSOs) that are based on technical studies regarding chloride levels which protect salt sensitive crops and endangered and threatened species, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River and underlying groundwater basin. The TMDL special study, Literature Review Evaluation, shows that the most sensitive beneficial uses can be supported with rolling averaging periods as shown in the tables below.</p> <p>1. Conditional Surface Water SSOs</p> <p>The conditional SSOs for chloride in the surface water of Reaches 4B, 5, and 6 shall apply and supersede the existing water quality objectives of 100 mg/L only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. Conditional surface water SSOs for Reaches 4B, 5, and 6 of the Santa Clara River are listed as follows:</p> <table border="1" data-bbox="511 1482 1377 1827"> <thead> <tr> <th data-bbox="511 1482 803 1610"><b>Reach</b></th> <th data-bbox="803 1482 1015 1610"><b>Conditional SSO for Chloride (mg/L)</b></th> <th data-bbox="1015 1482 1377 1610"><b>Rolling Averaging Period</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="511 1610 803 1654">6</td> <td data-bbox="803 1610 1015 1654">150</td> <td data-bbox="1015 1610 1377 1654">12-month</td> </tr> <tr> <td data-bbox="511 1654 803 1698">5</td> <td data-bbox="803 1654 1015 1698">150</td> <td data-bbox="1015 1654 1377 1698">12-month</td> </tr> <tr> <td data-bbox="511 1698 803 1743">4B</td> <td data-bbox="803 1698 1015 1743">117</td> <td data-bbox="1015 1698 1377 1743">3-month</td> </tr> <tr> <td data-bbox="511 1743 803 1827">4B Critical Conditions</td> <td data-bbox="803 1743 1015 1827">130<sup>a</sup> 150<sup>a</sup></td> <td data-bbox="1015 1743 1377 1827">123-month<sup>b</sup></td> </tr> </tbody> </table>	<b>Reach</b>	<b>Conditional SSO for Chloride (mg/L)</b>	<b>Rolling Averaging Period</b>	6	150	12-month	5	150	12-month	4B	117	3-month	4B Critical Conditions	130 <sup>a</sup> 150 <sup>a</sup>	123-month <sup>b</sup>
<b>Reach</b>	<b>Conditional SSO for Chloride (mg/L)</b>	<b>Rolling Averaging Period</b>														
6	150	12-month														
5	150	12-month														
4B	117	3-month														
4B Critical Conditions	130 <sup>a</sup> 150 <sup>a</sup>	123-month <sup>b</sup>														

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL:                      Elements</b>		
	<b>Santa Clara River Chloride</b>		
	<b>4B Storm-flow                      Conditions<sup>b</sup></b>	<b>150</b>	<b>12-month</b>
	<p>a. The conditional SSO for chloride in Reach 4B under critical condition shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 780</math> mg/L.</li> <li>2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide <del>supplemental</del>-<del>alternative</del> water supply to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</li> <li>3. By May 4, <del>2020</del>2027, the 10-year cumulative net chloride loading above 117 mg/L (CNCI<sub>117</sub>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.</li> </ol> <p><sup>1</sup> CNCI<sub>117</sub> = Cl<sub>(Above 117)</sub> – Cl<sub>(Below 117)</sub> – Cl<sub>(Export Ews)</sub></p> <p>Where:</p> <p>Cl<sub>(Above 117)</sub> = [WRP CI Load<sup>1</sup>/Reach 4B CI Load<sup>2</sup>] * [Reach 4B CI Load<sub>&gt;117</sub><sup>3</sup>]</p> <p>Cl<sub>(Below 117)</sub> = [WRP CI Load<sup>1</sup>/Reach 4B CI Load<sup>2</sup>] * [Reach 4B CI Load<sub>&lt;=117</sub><sup>4</sup>]</p> <p>Cl<sub>(Export Ews)</sub> = CI Load Removed by Extraction Wells</p> <p><sup>1</sup> WRP CI Load is determined as the monthly average CI concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B CI Load is determined as the monthly average CI concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B CI Load<sub>&gt;117</sub> means the calculated CI load to Reach 4B when monthly average CI concentration in Reach 4B is above 117 mg/L.</p> <p><sup>4</sup> Reach 4B CI Load<sub>&lt;=117</sub> means the calculated CI load to Reach 4B when monthly average CI concentration in Reach 4B is below or equal to 117 mg/L.</p> <ol style="list-style-type: none"> <li>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Los Angeles Regional Water Quality Control</li> </ol>		

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements												
	<p style="text-align: center;"><b>Santa Clara River Chloride</b></p> <p>Board (Regional Board) a letter documenting the fulfillment of conditions 1, 2, and 3.</p> <p>b. <u>The conditional SSO for storm-flow conditions shall also apply for discharges of extracted groundwater from the East Piru Basin to Reach 4B during storm flows exceeding 100 cfs in the river as measured at that USGS Gauging Station 11109000 (Las Brisas Bridge) to facilitate chloride export to the ocean.</u></p> <p><del>The averaging period for the critical condition SSO may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</del></p> <p>2. Conditional SSOs for Groundwater</p> <p>Conditional groundwater SSOs are listed as follows:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Groundwater Basin</th> <th style="text-align: center;">Conditional Groundwater SSO for Chloride (mg/L)</th> <th style="text-align: center;">Rolling Averaging Period</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Santa Clara-- Bouquet &amp; San Francisquito Canyons</td> <td style="text-align: center;">150</td> <td style="text-align: center;">12-month</td> </tr> <tr> <td style="text-align: center;">Castaic Valley</td> <td style="text-align: center;">150</td> <td style="text-align: center;">12-month</td> </tr> <tr> <td style="text-align: center;">Lower area east of Piru Creek <sup>a</sup></td> <td style="text-align: center;">150</td> <td style="text-align: center;">12-month</td> </tr> </tbody> </table> <p><sup>a</sup> This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.</p> <p>The conditional SSOs for chloride in the groundwater in Santa Clara--Bouquet &amp; San Francisquito Canyons, Castaic Valley and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing groundwater quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1.</p>	Groundwater Basin	Conditional Groundwater SSO for Chloride (mg/L)	Rolling Averaging Period	Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month	Castaic Valley	150	12-month	Lower area east of Piru Creek <sup>a</sup>	150	12-month
Groundwater Basin	Conditional Groundwater SSO for Chloride (mg/L)	Rolling Averaging Period											
Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month											
Castaic Valley	150	12-month											
Lower area east of Piru Creek <sup>a</sup>	150	12-month											

<b>Element</b>	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>  <b>Santa Clara River Chloride</b>						
<b>Source Analysis</b>	<p>The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus WRP and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6. These sources of chloride accumulate and degrade groundwater in the lower area east of Piru Creek in the basin.</p>						
<b>Linkage Analysis</b>	<p>A groundwater-surface water interaction (GSWI) model was developed to assess the linkage between chloride sources and in-stream water quality and to quantify the assimilative capacity of Reaches 4A, 4B, 5, and 6 and the groundwater basins underlying those reaches. GSWI was then used to predict the effects of WRP discharges on chloride loading to surface water and groundwater under a variety of future hydrology, land use, and water use assumptions including future discharges from the Newhall Ranch WRP in order to determine appropriate wasteload allocations (WLAs) and load allocations (LAs).</p> <p>The linkage analysis demonstrates that beneficial uses can be protected through a combination of SSOs for surface water and groundwater and reduction of chloride levels from the Valencia WRP effluent through advanced treatment.</p>						
<b>Waste Load Allocations (for point sources)</b>	<p>The conditional WLAs for chloride for all point sources shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, WLAs shall be based on existing water quality objectives for chloride of 100 mg/L.</p> <p>Conditional WLAs for chloride for discharges to Reach 4B by the Saugus and Valencia WRPs associated with SCVSD facilities are as follows:</p> <table border="1" data-bbox="649 1459 1218 1813"> <thead> <tr> <th data-bbox="649 1459 876 1636"><b>Reach</b></th> <th data-bbox="876 1459 1218 1636"><b>Concentration-based Conditional WLA for Chloride  (mg/L)</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="649 1636 876 1747">4B</td> <td data-bbox="876 1636 1218 1747">117 (3-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="649 1747 876 1831">4B Critical /</td> <td data-bbox="876 1747 1218 1831">130<sup>a</sup>-150<sup>a</sup> (312-month</td> </tr> </tbody> </table>	<b>Reach</b>	<b>Concentration-based Conditional WLA for Chloride  (mg/L)</b>	4B	117 (3-month Average), 230 (Daily Maximum)	4B Critical /	130 <sup>a</sup> -150 <sup>a</sup> (312-month
<b>Reach</b>	<b>Concentration-based Conditional WLA for Chloride  (mg/L)</b>						
4B	117 (3-month Average), 230 (Daily Maximum)						
4B Critical /	130 <sup>a</sup> -150 <sup>a</sup> (312-month						

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL:                      Elements</b>
	<p style="text-align: center;"><b>Santa Clara River Chloride</b></p> <p style="text-align: center;"><u>Stormflow</u>                      <u>Average<sup>b</sup></u>,                      Conditions<sup>b</sup>                      230 (Daily Maximum)</p> <p>a. The Conditional WLA under critical conditions shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 780</math> mg/L.</li> <li>2. SCVSD shall provide <del>supplemental</del>-<del>alternative</del> water <u>supply</u> to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</li> <li>3. By May 4, <del>2020</del>2027, the 10-year cumulative net chloride loading above 117 mg/L (CNCI<sub>117</sub>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the Saugus and Valencia WRPs shall be zero or less.</li> </ol> <p><sup>1</sup> CNCI<sub>117</sub> = Cl<sub>(Above 117)</sub> - Cl<sub>(Below 117)</sub> - Cl<sub>(Export Ews)</sub></p> <p>Where:</p> $Cl_{(Above\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{>117}^3]$ $Cl_{(Below\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{\leq 117}^4]$ <p>Cl<sub>(Export EWs)</sub> = Cl Load Removed by Extraction Wells</p> <p><sup>1</sup> WRP Cl Load is determined as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B Cl Load<sub>&gt;117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is</p>

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL:                      Elements</b>  <b>Santa Clara River Chloride</b>									
	<p>above 117 mg/L.  <sup>4</sup> Reach 4B Cl Load<sub>&lt;=117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.</p> <p>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.</p> <p><del>The averaging period for the critical condition WLA may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</del></p> <p><u>b. The conditional WLA for storm-flow conditions shall only apply for discharges of extracted groundwater from the East Piru Basin to Reach 4B during storm flows exceeding 100 cfs in the river as measured at that USGS Gauging Station 11109000 (Las Brisas Bridge) to facilitate chloride export to the ocean.</u></p> <p>Discharges to Reaches 5 and 6 by the Saugus and Valencia WRPs will have final concentration-based and mass-based conditional WLAs for chloride based on conditional SSOs as follows:</p> <table border="1" data-bbox="495 1194 1385 1581"> <thead> <tr> <th data-bbox="495 1194 673 1360">WRP</th> <th data-bbox="673 1194 1031 1360">Concentration-based Conditional WLA for Chloride (mg/L)</th> <th data-bbox="1031 1194 1385 1360">Mass-based Conditional WLA for Chloride (pounds/day)</th> </tr> </thead> <tbody> <tr> <td data-bbox="495 1360 673 1459">Saugus</td> <td data-bbox="673 1360 1031 1459">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1031 1360 1385 1459"><math>Q_{Design} * 150 \text{ mg/L} * 8.34</math> (12-month Average)</td> </tr> <tr> <td data-bbox="495 1459 673 1581">Valencia</td> <td data-bbox="673 1459 1031 1581">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1031 1459 1385 1581"><math>Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}</math> (12-month Average)</td> </tr> </tbody> </table> <p>Where <math>Q_{design}</math> is the design capacity of WRPs in units of million gallons per day (MGD) and <math>AF_{RO}</math> is the chloride mass loading adjustment factor for operation of reverse osmosis (RO) facilities, where:</p> <p>If RO facilities are operated at <math>\geq 50\%</math> Capacity Factor<sup>a</sup> in preceding 12 months</p>	WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)	Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)	Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)
WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)								
Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)								
Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)								

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL:                      Elements</b>  <b>Santa Clara River Chloride</b>				
	<p style="text-align: center;"><math>AF_{RO} = 0</math></p> <p>If RO facilities are operated at &lt; 50% Capacity Factor<sup>b</sup> in preceding 12 months</p> <p style="text-align: center;"><math>AF_{RO} = (50\% \text{ Capacity Factor} - \%RO \text{ Capacity}) * \text{ChlorideLoadRO}^c</math></p> <p><sup>a</sup> Capacity Factor is based on 3 MGD of recycled water treated with RO, 90% of the time.</p> <p><sup>b</sup> If operation of RO facilities at &lt;50% rated capacity is the result of conditions that are outside the control of SCVSD, then under the discretion of the Executive Officer of the Regional Board, the <math>AF_{RO}</math> may be set to 0.</p> <p><sup>c</sup> Chloride load reduction is based on Phase II operation of a RO treatment plant treating 3 MGD of recycled water with <u>annual average chloride concentration of 50 mg/L + Water Supply Chloride</u>. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of chloride load based on the following:</p> $\text{ChlorideLoadRO} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$ <p>Where:</p> <p><math>Q_{RO}</math> = 3 MGD of recycled water treated with RO during Phase II.</p> <p><math>C_{WRP}</math> = Chloride concentration in water supply + 50 mg/L</p> <p><math>r</math> = % Reverse Osmosis chloride rejection (95% or 0.95)</p> <p>8.34 = Conversion factor (ppd/(mg/L*MGD))</p> <p>The final WLAs for TDS and sulfate are equal to existing surface water and groundwater quality objectives for TDS and sulfate in Tables 3-8 and 3-10 of the Basin Plan. The Regional Board may revise the final WLAs based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p> <p>Other minor NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive conditional WLAs. The conditional WLA for these point sources is as follows:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="673 1736 868 1802">Reach</th> <th data-bbox="868 1736 1209 1802">Concentration-based Conditional WLA for</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Reach	Concentration-based Conditional WLA for		
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Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL:                      Elements</b>								
	<p style="text-align: center;"><b>Santa Clara River Chloride</b></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;"><b>Chloride (mg/L)</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td style="text-align: center;">4B</td> <td style="text-align: center;">117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>Other major NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive WLAs equal to 100 mg/L. The Regional Board may consider assigning conditional WLAs to other major dischargers based on an analysis of the downstream increase in net chloride loading to surface water and groundwater as a result of implementation of conditional WLAs.</p>	<b>Chloride (mg/L)</b>		6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
<b>Chloride (mg/L)</b>									
6	150 (12-month Average), 230 (Daily Maximum)								
5	150 (12-month Average), 230 (Daily Maximum)								
4B	117 (3-month Average), 230 (Daily Maximum)								
<p><i>Load Allocation                      (for non point                      sources)</i></p>	<p>The source analysis indicates nonpoint sources are not a major source of chloride. The conditional LAs for these nonpoint sources_ are as below:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;"><b>Reach</b></th> <th style="text-align: center;"><b>Concentration-based                      Conditional LA for                      Chloride (mg/L)</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td style="text-align: center;">4B</td> <td style="text-align: center;">117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>The conditional LAs shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, LAs are based on existing water quality objectives of 100 mg/L.</p>	<b>Reach</b>	<b>Concentration-based                      Conditional LA for                      Chloride (mg/L)</b>	6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
<b>Reach</b>	<b>Concentration-based                      Conditional LA for                      Chloride (mg/L)</b>								
6	150 (12-month Average), 230 (Daily Maximum)								
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4B	117 (3-month Average), 230 (Daily Maximum)								

**Implementation**

Refer to Table 7-6.2.

Implementation of Upper Santa Clara River Conditional Site Specific Objectives for Chloride

In accordance with Regional Board resolution 97-002, the Regional Board and stakeholders have developed an integrated watershed plan to address chloride impairments and protect beneficial uses of surface waters and groundwater basins underlying Reaches 4B, 5, and 6 of the Santa Clara River. The plan involves: 1) Reducing chloride loads and/or increasing chloride exports from the USCR watershed through **phased** implementation of advanced treatment (RO) of a portion of the effluent from the Valencia WRP **and the use of groundwater extraction wells.** **During Phase I, the advanced treated effluent will be discharged into Reach 4B-5 or be utilized to provide for a suitable alternative water supply for salt-sensitive crops in Reach 4B. Groundwater extractions during Phase I would be discharged to Reach 4B during storm-flow conditions greater than 100 cfs to facilitate chloride export to the ocean. During Phase II, when not needed for compliance with effluent/receiving water limits or for an alternative water supply for salt-sensitive crops in Reach 4B, the advanced treated effluent will be blended with extracted groundwater from the Piru Basin underlying Reach 4B and discharged into Reach 4A.** The resultant brine from the advanced treatment process will be disposed in a legal and environmentally sound manner. 2) Implementing the conditional SSOs for chloride in surface waters and underlying groundwater basins of the USCR watershed provided in Chapter 3.

The watershed chloride reduction plan will be implemented **in phases** through NPDES permits for the Valencia WRP and a new NPDES permit for discharge into Reach 4A. The conditional SSOs for chloride in the USCR watershed shall apply and supersede the regional water quality objectives only when chloride load reductions and/or chloride export projects are in operation and reduce chloride loading in accordance with the following table:

<b>Water Supply Chloride<sup>1</sup></b>	<b><u>Phase 1 Chloride Load Reductions<sup>2</sup></u></b>	<b><u>Phase 2 Chloride Load Reductions<sup>32</sup></u></b>
40 mg/L	<u>19,000 lbs per month</u>	58,000 lbs per month
50 mg/L	<u>21,000 lbs per month</u>	64,000 lbs per month
60 mg/L	<u>24,000 lbs per month</u>	71,000 lbs per month
70 mg/L	<u>26,000 lbs per month</u>	77,000 lbs per month
80 mg/L	<u>28,000 lbs per month</u>	83,000 lbs per month
90 mg/L	<u>30,000 lbs per month</u>	90,000 lbs per month

100 mg/L	32,000 lbs per month	96,000 lbs per month
<p><sup>1</sup> Based on measured chloride of the State Water Project (SWP) water stored in Castaic Lake.</p>		
<p><sup>2</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3-1 MGD of recycled water with <u>annual average</u> chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of chloride load based on the following:</p>		
$\text{Chloride Load} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$		
<p>where r = % chloride rejection (95%)  <math>Q_{RO}</math> = 3-1 MGD of recycled water treated</p>		
<p>with RO</p>		
<p><math>C_{WRP}</math> = SWP Cl + 50 mg/L</p>		
<p><sup>3</sup> <u>Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with annual average chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of chloride load based on the following:</u></p>		
$\text{Chloride Load} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$		
<p>where r = % chloride rejection (95%)  <math>Q_{RO}</math> = 3 MGD of recycled water treated</p>		
<p>with RO</p>		
<p><math>C_{WRP}</math> = SWP Cl + 50 mg/L</p>		
<p><i>Conditional WLAs</i></p>		
<p>Conditional WLAs for the Saugus and Valencia WRPs will be implemented through effluent limits, receiving water limits and monitoring requirements in NPDES permits. Conditional WLAs for Reach 4B will be implemented as receiving water limits. Conditional WLAs for Reaches 5 and 6 will be implemented as effluent limits.</p>		
<p>The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluent limits <u>and will be evaluated in accordance with interim WLAs associated with Phase I and Phase II chloride load reduction facilities.</u></p>		
<p><u>Saugus WRP:</u></p>		
<p>The Phase I interim WLA for chloride is equal to the interim limit for chloride specified in order No. R4-04-00480 mg/L above water supply, with compliance based on a 12-month rolling average. The Phase II interim WLA for chloride will be 165 mg/L, with compliance based on a</p>		

	<p><u>12-month rolling average.</u> The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Saugus WRP instead of existing water quality objectives.</p> <p><u>Valencia WRP:</u></p> <p>The Phase I interim WLA for chloride is equal 100 mg/L above water supply, with compliance based on a 12-month rolling average. The Phase II interim WLA for chloride will be 165 mg/L, with compliance based on a 12-month rolling average. <del>to the interim limit for chloride specified in order No. R4-04-004.</del> The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Valencia WRP instead of existing water quality objectives.</p> <p><u>Other Major NPDES Permits (including Newhall Ranch WRP):</u></p> <p>The Regional Board may consider assigning conditional WLAs for other major NPDES permits, including the Newhall Ranch WRP, pending implementation of a chloride mass removal quantity that is proportional to mass based chloride removal required for the Valencia WRP.</p> <p><u>Supplemental Water released to Reach 6 of Santa Clara River:</u></p> <p>In order to accommodate the discharge of supplemental water to Reach 6, interim WLAs are provided for sulfate of 450 mg/L and TDS of 1000 mg/L as annual averages. The final WLAs are equal to the existing water quality objectives for sulfate and TDS in Table 3-8 of the Basin Plan. The Regional Board may revise the final WLA based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p>
<p><b>Monitoring</b></p>	<p>NPDES monitoring: NPDES Permittees will conduct chloride, TDS, and sulfate monitoring to ensure that water quality objectives are being met.</p> <p>Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures.</p>

	<p>The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p> <p>Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>
<p><i>Margin of Safety</i></p>	<p>An implicit margin of safety is incorporated through conservative model assumptions and chloride mass balance analysis. The model is an integrated groundwater surface water model which shows that chloride discharged from the WRPs accumulates in the east Piru Basin. Further mass balance analysis shows that the chloride mass removed from the Piru Basin exceeds the chloride loaded into the Piru Basin from implementation of the conditional SSOs.</p>

<p><i>Seasonal Variations and Critical Conditions</i></p>	<p>During dry weather conditions, less surface flow is available to dilute effluent discharge, groundwater pumping rates for agricultural purposes are higher, groundwater discharge is lower, poorer quality groundwater may be drawn into the aquifer, and evapotranspiration effects are greater than in wet weather conditions. During drought, reduced surface flow and increased groundwater extraction continues through several seasons with greater impacts on groundwater resources and discharges. Dry and critically dry periods affecting the Sacramento and San Joaquin River Valleys reduce fresh-water flow into the Sacramento-San Joaquin Delta and result in higher than normal chloride concentrations in the State Water Project supply within the California aqueduct system. These increased chloride levels are transferred to the upper Santa Clara River. This critical condition is defined as when water supply concentrations measured in Castaic Lake are <math>\geq 80</math> <del>70</del> mg/L.</p> <p>These critical conditions were included in the GSWI model to determine appropriate allocations and implementation scenarios for the TMDL.</p>
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<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>1. Alternate Water Supply</p> <p>a) Should (1) the in-river concentration at Blue Cut, the Reach 4B boundary, exceed the conditional SSO of 117 mg/L, measured for the purposes of this TMDL as a rolling three-month average, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and Santa Clarita Valley County Sanitation Districts of Los Angeles County (SCVSD) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provides photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then the SCVSD will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between the SCVSD and the agricultural diverter at the direction of the Regional Water Quality Control Board until such time as the in-river chloride concentrations do not exceed the conditional SSO.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in the three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p>	<p>Effective Date of TMDL                      (05/04/2005)</p>
<p>2. Progress reports will be submitted by the SCVSD to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4, 6, and 7, and on an annual basis for Tasks 5 and 11.</p> <p>Progress reports will be submitted by the Reach 4A Permittee to Regional Board staff on an annual basis for Task 12.</p>	<p>Semiannually and annually</p>
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, the SCVSD will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by the SCVSD, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in</p>	<p>6 months after Effective Date of TMDL                      (11/04/2005)</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b>	<b>Completion Date</b>
<p style="text-align: center;"><b>Implementation Tasks</b></p> <p>controlling chloride. The SCVSD shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.</p>	
<p>4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.</p>	<p>12 months after Effective Date (05/04/2006)</p>
<p>5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>
<p>6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>7. Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p> <p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p> <p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.</p>	<p>2.8 years after Effective Date of TMDL (02/20/2008)</p>
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: The SCVSD will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Conditional Wasteload Allocations for Proposed Chloride Objective. The SCVSD will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Conditional Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p>3.5 years after Effective Date of TMDL (12/11/2008)</p>
<p>11. Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin,</p>	<p>4 years after Effective Date of TMDL (05/04/2009)</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b>	<b>Completion Date</b>
<p style="text-align: center;"><b>Implementation Tasks</b></p> <p>and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	
<p>12. Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	<p>Submitted with permit application</p>
<p>13. Begin monitoring per approved SVCSD monitoring plan completed in Task 11.</p>	<p>One year after Executive Officer approval of Task 11 monitoring plan for SCVSD</p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
14. Begin monitoring per approved Reach 4A Permittee monitoring plan.	One year after Executive Officer approval of Task 12 monitoring plan for Reach 4A Permittee
15. a) Implementation of Compliance Measures, Planning: The SCVSD shall submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Wastewater Facilities Plan and Programmatic EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Wastewater Facilities Plan and Programmatic EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision.  b) Implementation of Compliance Measures, Planning: The SCVSD shall provide a schedule of related tasks and subtasks related to Task 15a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Wastewater Facilities Plan and Programmatic EIR.	5 years after Effective Date of TMDL (05/04/2010)  5 years after Effective Date of TMDL (05/04/2010)
16. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion date of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task.	<del>6-7</del> years after Effective Date of TMDL (05/04/ <del>2011</del> 2012)
17. a) Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.  b) Implementation of Compliance Measures, Engineering Design:	<del>6-7</del> years after Effective Date of TMDL (05/04/ <del>2011</del> 2012)  <del>6-7</del> years after

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>The SCVSD will begin the engineering design of the recommended project wastewater facilities.</p>	<p>Effective Date of TMDL  <del>(05/04/2011)</del> <u>(2012)</u></p>
<p>c) Implementation of Compliance Measures, Engineering Design: The SCVSD will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition the SCVSD will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project wastewater facilities.</p>	<p><u>7-8</u> years after Effective Date of TMDL  <del>(05/04/2011)</del> <u>(2013)</u></p>
<p>d) <u>Phase 1</u> Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of <u>Phase 1</u> of the recommended project wastewater facilities to meet Phase I chloride load reductions.</p>	<p><u>9-11.5</u> years after Effective Date of TMDL  <del>(11/04/2014)</del> <u>(2016)</u></p>
<p>e) <u>Phase 1</u> Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of <u>Phase 1</u> of the recommended project wastewater facilities to meet Phase I chloride load reductions.</p>	<p><u>10-12</u> years after Effective Date of TMDL  <del>(05/04/2015)</del> <u>(2017)</u></p>
<p><u>f) Phase 2</u> Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of <u>Phase 2</u> of the recommended project wastewater facilities to meet Phase I chloride load reductions.</p>	<p><u>16.5</u> years after Effective Date of TMDL  <del>(11/04/2021)</del></p>
<p><u>g) Phase 2</u> Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of <u>Phase 2</u> of the recommended project wastewater facilities to meet Phase II chloride load reductions.</p>	<p><u>17</u> years after Effective Date of TMDL  <del>(05/04/2022)</del></p>
<p>18. The Regional Board Executive Officer may consider conditional SSOs for TDS and sulfate for Reaches 4B, 5, and 6 based on results of groundwater-surface water interaction studies on accumulation of TDS and sulfate in groundwater, potential impacts to beneficial uses, and an anti-degradation analysis.</p>	<p>7 years after Effective Date of TMDL  <del>(05/04/2012)</del></p>

<b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>19. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d), <del>and</del> the schedule for Task 17, potential cost-saving modifications to the TMDL for the required control measures for Phase II, and interim WLAs for chloride for the Saugus and Valencia WRPs to be applied as interim final effluent limits during implementation of the Phase II facilities. The Regional Board, at a public meeting will consider extending the completion of Task 17, <del>and</del> reconsider the schedule to implement control measures to meet final conditional WLAs adopted for chloride pursuant to Task 10 d), consider potential cost-saving modifications to the TMDL for the required control measures for Phase II and reconsider interim WLAs for chloride for the Saugus and Valencia WRPs to be applied as interim final effluent limits during implementation of the Phase II facilities. The SCVSD will provide the justification for the need for an extension and/or cost-saving modifications to the TMDL and required control measures for Phase II to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task. The Regional Board will also consider conditional SSOs and final conditional WLAs for TDS and sulfate based on results of Task 18.</p>	<p><del>9</del>11.5 years after Effective Date of TMDL                  (11/04/<del>2014</del>2016)</p>
<p>20. a) The Phase I interim WLAs for chloride shall remain in effect for no more than 12 years after the effective date of the TMDL. <del>A Conditional WLA of 150 mg/L for groundwater extraction and discharge to Reach 4B during stormflow conditions exceeding 100 cfs in the river shall apply by May 4, 2017.</del></p> <p>b) The Phase II interim WLAs for chloride shall remain in effect for no more than 17 years after the effective date of the TMDL. Conditional SSOs for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2022. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.</p>	<p><del>10-127</del> years after Effective Date of TMDL                  (05/04/<del>2015</del>2017<del>22</del>)</p> <p>17 years after Effective Date of TMDL                  (05/04/2022)</p>
<p>21. The interim WLAs for TDS and sulfate contained in this BPA (Resolution No. R4-2008-012) shall be implemented no sooner than the effective date of this BPA, and shall remain in effect until May 4, 2017<del>5</del>. Final WLAs shall apply by May 5, 2017<del>5</del> unless conditional SSOs and final conditional WLAs for TDS and sulfate are adopted as described in Task 18<del>9</del>.</p>	<p><del>10-127</del> years after Effective Date of TMDL                  (05/04/<del>2015</del>2017<del>22</del>)</p>



# EXHIBIT "24"

4837-0090-6752.2

State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2007-016  
October 4, 2007

Amendment to the *Water Quality Control Plan for the Los Angeles Region to  
Incorporate a Total Maximum Daily Load for Boron, Chloride, Sulfate, and TDS  
(Salts) for Calleguas Creek Watershed*

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to establish water quality standards for each water body within its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. Water bodies that do not meet water quality standards are considered impaired.
2. CWA section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Those waters are placed on the state's "303(d) List" or "Impaired Waters List". For each listed water, the state is required to establish the Total Maximum Daily Load (TMDL) of each pollutant impairing the water quality standards in that waterbody. Both the identification of impaired waters and TMDLs established for those waters must be submitted to U.S. EPA for approval pursuant to CWA section 303(d)(2). For all waters that are not identified as impaired, the states are nevertheless required to create TMDLs pursuant to CWA section 303(d)(3).
3. A consent decree between (U.S. EPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999, which resolved litigation between those parties relating to the pace of TMDL development. The court order directs the U.S. EPA to ensure that TMDLs for all 1998-listed impaired waters be established within 13 years of the consent decree. The consent decree combined water body pollutant combinations in the Los Angeles Region into 92 TMDL analytical units. In accordance with the consent decree, the Calleguas Creek Salts TMDL addresses waterbodies with salts listings in analytical units 3 and 4. Based on the consent decree schedule, a TMDL for chloride was adopted by USEPA in March 2002 to address analytical unit 3. According to the consent decree, the remaining salts in analytical unit 4 (TDS, sulfate, and boron) TMDLs must be approved or established by United States Environmental Protection Agency (USEPA) by March 2012. This TMDL will supercede the chloride TMDL for analytical unit 3 previously established by EPA.
4. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d)(1)(C) and (D) of the CWA, as well as in U.S. EPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal

variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). 40 CFR 130.7 also dictates that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. TMDLs typically include one or more numeric "targets", i.e., numerical translations of the existing water quality standards, which represent attainment of those standards, contemplating the TMDL elements described above. Since a TMDL must represent the "total" load, TMDLs must account for all sources of the relevant pollutants, irrespective of whether the pollutant is discharged to impaired or unimpaired upstream reaches.

5. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment does not implicate Water Code section 13241. Rather, under California Law, TMDLs are programs to implement existing standards (including objectives), and are thus established pursuant to Water Code section 13242. Moreover, they do not create new bases for direct enforcement against dischargers apart from the existing water quality standards they translate. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. WLAs are only enforced for a discharger's own discharges, and then only in the context of the discharger's National Pollutant Discharge Elimination System (NPDES) permit (or other permit, waiver, or prohibition), which must contain effluent limits consistent with the assumptions and requirements of the WLAs (40 C.F.R. 122.44(d)(vii)(B)). The Regional Board will develop permit requirements through subsequent permit actions that will allow all interested persons, including but not limited to municipal storm water dischargers, to provide comments on how the WLAs should be translated into permit requirements.
6. As envisioned by Water Code section 13242, the TMDL contains a "description of surveillance to be undertaken to determine compliance with objectives." The Compliance Monitoring and Special Studies elements of the TMDL recognize that monitoring will be necessary to assess the on-going condition of the Calleguas Creek watershed and to assess the on-going effectiveness of efforts by dischargers to reduce salts loading to the Calleguas Creek. Special studies may also be appropriate to provide further information about new data, new or alternative sources, and revised scientific assumptions. The TMDL does not establish the requirements for these monitoring programs or reports, although it does recognize the type of information that will be necessary to secure. The Regional Board's Executive Officer will issue orders to appropriate entities to develop and to submit monitoring programs and technical reports. The Executive Officer will determine the scope of these programs and reports, taking into account any legal requirements, and issue the orders to the appropriate entities.
7. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6(c)(1); 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan) and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board. Attachment A to this resolution contains the Basin Planning language for this TMDL.
8. The Calleguas Creek Watershed is located in southeast Ventura County, California, and in a small portion of western Los Angeles County, and drains an area of approximately 343 square miles from the Santa Susana Pass in the east, to Mugu Lagoon in the southwest. Current land use is approximately 26 percent agriculture, 24 percent urban,

and 50 percent open space. The tributaries and the streams of the Calleguas Creek Watershed are divided into fourteen segments, or reaches. Eleven out of fourteen reaches in the Calleguas Creek Watershed are identified on the 2002 Clean Water Act Section 303(d) list of water-quality limited segments as impaired due to elevated levels of boron, chloride, sulfate, and TDS. The listings were approved by the State Water Resources Control Board on February 4, 2003. Additionally, USEPA added listings in Revolon Slough for TDS, sulfate and boron. The proposed TMDL addresses impairments of water quality caused by these salts, and the Implementation Plan is developed to achieve water quality objectives for salts in the Calleguas Creek Watershed.

9. Over the past forty years, large volumes of salts have been imported into the Calleguas Creek watershed from the State Water Project, the Santa Clara River through the Freeman Diversion, and deep aquifers which are pumped for water supply purposes. The Calleguas Creek watershed also contains naturally occurring or background concentrations of salts because soils are derived from marine sediments. Salts become stranded on the watershed and accumulate over time. The result is a general salt imbalance on the watershed that manifests itself in higher surface water and groundwater concentrations of salts throughout the watershed. High salts concentrations have limited the beneficial uses of surface water and groundwater from unconfined aquifers of the Calleguas Creek Watershed. Therefore, salt export will be required throughout the watershed to effectively reduce the salts loads to surface and groundwater. The overall goal of this TMDL is to achieve a salt balance within each subwatershed, reduce salt load to surface water, and achieve and maintain water quality objective for salts in the watershed. All stakeholders and the Regional Board agree that an approach that integrates water supply and water quality is the preferred approach to addressing salt impairments in the Calleguas Creek Watershed. The Regional Board's endorsement of this approach is in part conditioned upon the stakeholders' agreement to ensure maintenance of in-stream flows necessary to protect beneficial uses.
10. Boron is only listed in the Simi and Pleasant Valley (Revolon) subwatershed including Revolon Slough (reach 4), Arroyo Simi (reach 7), and tributaries to Arroyo Simi (reach 9). Therefore, boron allocations are only included for the Simi Valley WWTP and not for the other POTWs that discharge to other subwatersheds.
11. Numeric targets for the TMDL are based on the specific numeric water quality objectives (WQOs) provided in the Basin Plan. Surface water quality objectives for the Calleguas Creek watershed are applicable upstream of Potrero Road. Site specific objectives have not been determined for Calleguas Creek below Potrero Road. However, the Basin Plan provides beneficial use guidelines to determine criteria for selection of effluent limits to protect sensitive beneficial uses including agricultural supply. The Basin Plan also includes objectives for groundwater basins.
12. The Regional Board's goal in establishing the TMDL for salts in Calleguas Creek Watershed is to protect the agriculture irrigation and groundwater recharge beneficial uses of the Calleguas Creek Watershed and to achieve the numeric and narrative water quality objectives set to protect those uses.
13. Calleguas Creek stakeholders have been actively engaged with USEPA and the Regional Board on a variety of watershed planning initiatives in the Calleguas Creek Watershed. Key stakeholders have formed the Calleguas Creek Watershed Management Plan

(CCWMP), an established, stakeholder-led watershed management group that has been continually operating since 1996. The CCWMP has broad participation from federal, State and county agencies, municipalities, POTWs, water purveyors, groundwater management agencies, and agricultural and environmental groups. As part of its mission to address issues of long-range comprehensive water resources, land use, economic development, open space preservation, enhancement and management, the CCWMP proposed to USEPA and Regional Board to take the lead on development of the TMDLs.

14. Regional Board staff has worked with the CCWMP and USEPA in the development of a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Calleguas Creek Watershed Boron, Chloride, Sulfate, and TDS TMDL" (Technical Report) prepared by Larry Walker Associates is an integral part of this Regional Board action and was reviewed, and accepted by the Regional Board as a supporting technical analysis before acting. The technical document provides the detailed factual basis and analysis supporting the problem statement, numeric targets (interpretation of the narrative and numeric water quality objectives, used to calculate the pollutant allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocation (for nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL. Final Technical Report was submitted to the Regional Board on May 31, 2007. The Regional Board staff report for this TMDL, "Calleguas Creek Watershed Boron, Chloride, Sulfate, and TDS (Salts) TMDL", is based on the analysis in the Technical Report prepared by Larry Walker Associates.
15. On October 4, 2007, prior to the Board's action on this resolution, public hearings were conducted on the TMDL for boron, chloride, sulfate, and TDS in the Calleguas Creek Watershed. Notice of the hearing for the TMDL boron, chloride, sulfate, and TDS in the Calleguas Creek Watershed was published in accordance with the requirements of Water Code Section 13244. This notice was published in the Ventura County Stars on June 2, 2007.
16. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A draft of the TMDL was released for public comment on June 4, 2007; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on October 4, 2007 to consider adoption of the TMDL.
17. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242 of the California Water Code.
18. Because the TMDL implements existing numeric water quality objectives (i.e., numeric water quality objectives in the Basin Plan), the Regional Board (along with the State Water Resources Control Board) have determined that adopting a TMDL does not require the water boards to consider the factors of Water Code section 13241. The consideration of the Water Code section 13241 factors, by section 13241's express terms, only applies "in establishing water quality objectives." Here the Regional Board is not establishing water quality objectives, but as required by section 303(d)(1)(C) of the Clean Water Act is adopting a TMDL that will implement the previously established objectives that have not been achieved. In making this determination, the Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Water

Board's basin planning staff detailing why TMDLs cannot be considered water quality objectives. (See Memorandum from the Staff Counsel Michael J. Levy, Office of Chief Counsel, to Ken Harris and Paul Lillebo, Division of Water Quality: *The Distinction Between A TMDL's Numeric Targets and Water Quality Standards*, dated June 12, 2002.)

19. While the Regional Board is not required to consider the factors of Water Code section 13241, it, nonetheless, has developed and received significant information pertaining to the Water Code section 13241 factors and has considered that information in developing and adopting this TMDL. The past, present, and probable future beneficial uses of water have been considered in that the Calleguas Creek watershed is designated for a multitude of beneficial uses in the Basin Plan. Various living organisms (including vegetation, fish, invertebrates, and wildlife) are present in, transient through, and will be present in the Calleguas Creek. Dry weather surface water in the Calleguas Creek watershed is primarily composed of groundwater, municipal wastewater, urban non-stormwater discharges, and agricultural runoff. In the upper reaches of the watershed, upstream of any wastewater discharges, groundwater discharge from shallow surface aquifers provide a constant base flow. The environmental characteristics of the Calleguas Creek are spelled out at length in the Basin Plan and in the technical documents supporting this Basin Plan amendment, and have been considered in developing this TMDL. Water quality conditions that reasonably could be achieved through the coordinated control of implementation actions including integrating watershed-scale infrastructure projects to desalt groundwater and wastewater, and administrative programs to reduce salt loadings to the Calleguas Creek watershed. TMDL implementation will be carried out by water agencies, municipalities, POTWs, and non-point dischargers in the Calleguas Creek Watershed to desalt groundwater and wastewater. These projects focus on desalting groundwater underlying Calleguas Creek and discharging salts to the Pacific Ocean through a brine line and ocean outfall outside of southern Ventura County. Water quality in Calleguas Creek will be attained by reducing the amount of salts imported and added to water in the watershed, reducing salts loads from groundwater exfiltration, transporting salts downgradient and exporting salts out of the watershed. Responsible agencies also have several options for implementing structural and nonstructural BMPs to attain a salt balance and attain water quality objectives. Authorizing certain storm water dischargers to rely on BMPs in the first instances reflects the reasonableness of the action in terms of the ability to implement the requirements, as well as an understanding that the water quality conditions can reasonably be attained under different hydrological conditions. However, to the extent that there would be any conflict between the consideration of the factor in Water Code section 13241 subdivision (c), if the consideration were required, and the Clean Water Act, the Clean Water Act would prevail. Economic considerations were considered throughout the development of the TMDL. Some of these economic considerations arise in the context of Public Resources Code section 21159 and are equally applicable here. The implementation program for this TMDL recognizes the economic limitations on achieving immediate compliance. The TMDL also authorizes the use of BMPs, to the extent authorized by law, for various storm water dischargers. Economic considerations were considered and are reflected in an implementation program that is flexible and allows 15 years for POTWs, permitted stormwater and non-permitted stormwater dischargers, and agricultural dischargers to comply with the final allocations. The need for housing within the region has been considered, but this TMDL is unlikely to affect housing needs. Whatever housing

impacts could materialize are ameliorated by the flexible nature of this TMDL and the implementation schedule.

20. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
21. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Water Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report entitled "Calleguas Creek Watershed Boron, Chloride, Sulfate, and TDS TMDL", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of a TMDL for boron, chloride, sulfate, and TDS in the Calleguas creek watershed. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
22. A CEQA Scoping hearing was conducted on November 15, 2006 at the City of Camarillo - City Council Chambers, 601 Carmen Drive, Camarillo, California. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the watershed. The notice of CEQA Scoping hearing was also published in the Ventura County Stars on October 10, 2006
23. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends those documents to serve as a tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. Many compliance obligations will be undertaken directly by public agencies that will have their own obligations under CEQA. In addition, public agencies including but not limited to Calleguas MWD, Camrosa Water District, CamSan, City of Thousand Oaks, Simi Valley, Moorpark, VCWW, and Camarillo are foreseeably expected to facilitate compliance obligations. The "Lead" agencies for such tier 2 projects, will assure compliance with project-level CEQA analysis of this programmatic project. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

24. The foreseeable methods of compliance of this TMDL entail construction and operation of an infrastructure of extraction wells, surface water diversions, pipelines, reverse osmosis facilities, reclaimed water distribution facilities, a brine export pipeline, and an ocean outfall. These facilities require planning and implementation which has been underway for a number of years. Construction activities on several pipeline alignments have been completed and environmental review of the project has been completed for a key area and the ocean outfall. The above projects have already been subject to extensive environmental review. Both Camrosa Water District and Calleguas Municipal Water District have certified program level EIRs for the Renewable Water Resource Management Program for the Southern Reaches of the Calleguas Creek Watershed and the Regional Salinity Management Project that examine the foreseeable environmental impacts from constructing and operating a system to comply with the salts TMDL.
25. Consistent with the Regional Board's substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture, and only consider the reasonably foreseeable environmental impacts, including those relating to the methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.
26. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)
27. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents may not foreseeably reduce impacts to less than significant levels.
28. The substitute documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
29. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)

30. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. Prior to public notice of the draft TMDL, the Regional Board submitted the scientific basis and scientific portions of the Calleguas Creek Watershed Salts TMDL to Professor Ferdi L. Hellweger for external scientific peer review. The peer review report was received by the Regional Board on April 23, 2007. The peer review found that the proposed TMDL included an appropriate conceptual model, and reasonable allocations and implementation plan to attain water quality objectives. Minor modifications were made to the scientific portions of the TMDL to address concerns identified during the peer review process.
31. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified above, Federal law and regulations require that TMDLs be incorporated into the water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative, planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives, and is, therefore, appropriately a component of the Basin Plan under Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the salts impairments of the Calleguas Creek Watershed.
32. The Basin Plan amendment incorporating a TMDL for salts for the Calleguas Creek Watershed must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed with the Resources Agency.
33. If during the State Board's approval process Regional Board staff, the SWRCB or State Board staff, or OAL determines that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this TMDL, and should inform the Board of any such changes.

**THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:**

1. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the Calleguas Creek Watershed Salts TMDL.
2. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation and the referenced Environmental Impact Reports entitled "Program Environmental Impact Report/Environmental Assessment for the Renewable Water Resource Management Program for the Southern Reaches of the Calleguas Creek Watershed," and "Supplemental Environmental Impact Report/Environmental Assessment for the Regional Salinity Management Project", including all findings contained therein, which was prepared

in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.

3. The Regional Board shall reconsider this TMDL if the Executive Officer determines that adequate flows to protect in-stream beneficial uses may not be maintained.
4. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
5. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the U.S. EPA.

If during the State Board's approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Deborah J. Smith, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on October 4, 2007.

  
\_\_\_\_\_  
Deborah J. Smith  
Interim Executive Officer

October 4, 2007  
\_\_\_\_\_  
Date

**Attachment A to Resolution No. R4-2007-016**

**Proposed Amendment to the Water Quality Control Plan – Los Angeles Region  
to Incorporate the  
Total Maximum Daily Load for Boron, Chloride, Sulfate, and TDS (Salts) in the  
Calleguas Creek Watershed**

Adopted by the California Regional Water Quality Control Board, Los Angeles Region  
on October 4, 2007

**Amendments**

**Table of Contents**

Add:

Chapter 7. Total Maximum Daily Loads (TMDLs)

7-22 Calleguas Creek Watershed Salts TMDL

**List of Figures, Tables, and Inserts**

Add:

Chapter 7. Total Maximum Daily Loads (TMDLs)

Tables

7-22 Calleguas Creek Watershed Salts TMDL

7-22.1. Calleguas Creek Watershed Salts TMDL: Elements

7-22.2. Calleguas Creek Watershed Salts TMDL: Implementation Schedule

**Chapter 7. Total Maximum Daily Loads (TMDLs)  
Calleguas Creek Watershed Salts TMDL**

This TMDL was adopted by:

The Regional Water Quality Control Board on October 4, 2007.

This TMDL was approved by:

The State Water Resources Control Board on May 20, 2008.

The Office of Administrative Law on November 6, 2008.

The U.S. Environmental Protection Agency on December 2, 2008.

This TMDL is effective on December 2, 2008.

The elements of the TMDL are presented in Table 7-22.1 and the Implementation Plan in  
Table 7-22.2

Attachment A to Resolution No. R4-2007-016

Table 7-22.1. Calleguas Creek Watershed Salts TMDL: Elements

TMDL Element	Key Findings and Regulatory Provisions																						
<p><b>Problem Statement</b></p>	<p>Eleven of fourteen reaches in the Calleguas Creek Watershed (CCW) are identified on the 2002 Clean Water Act Section 303(d) list of water-quality limited segments as impaired due to elevated levels of boron, chloride, sulfate, or total dissolved solids (TDS) (these constitutions are commonly referred to as salts). Salts primarily impact two beneficial uses: agricultural supply and groundwater recharge. Below is 2002 303(d) list of water quality limited segments of the Calleguas Creek watershed:</p> <table border="1" data-bbox="524 754 1365 1086"> <thead> <tr> <th data-bbox="524 754 1032 787">Reach Name</th> <th data-bbox="1032 754 1365 787">Pollutant/Stressor</th> </tr> </thead> <tbody> <tr> <td data-bbox="524 787 1032 820">▪ Calleguas Creek Reach 3</td> <td data-bbox="1032 787 1365 820">Chloride, TDS</td> </tr> <tr> <td data-bbox="524 820 1032 853">▪ Calleguas Creek Reach 6</td> <td data-bbox="1032 820 1365 853">Chloride, Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 853 1032 887">▪ Calleguas Creek Reach 7</td> <td data-bbox="1032 853 1365 887">Boron, Chloride, Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 887 1032 920">▪ Calleguas Creek Reach 8</td> <td data-bbox="1032 887 1365 920">Boron, Chloride, Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 920 1032 953">▪ Calleguas creek Reach 9A</td> <td data-bbox="1032 920 1365 953">Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 953 1032 986">▪ Calleguas Creek Reach 9B</td> <td data-bbox="1032 953 1365 986">Chloride, Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 986 1032 1019">▪ Calleguas Creek Reach 10</td> <td data-bbox="1032 986 1365 1019">Chloride, Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 1019 1032 1052">▪ Calleguas Creek Reach 11</td> <td data-bbox="1032 1019 1365 1052">Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 1052 1032 1086">▪ Calleguas Creek Reach 12</td> <td data-bbox="1032 1052 1365 1086">Sulfate, TDS</td> </tr> <tr> <td data-bbox="524 1086 1032 1119">▪ Calleguas Creek Reach 13</td> <td data-bbox="1032 1086 1365 1119">Chloride, Sulfate, TDS</td> </tr> </tbody> </table> <p>The list of impaired segments of the Calleguas Creek watershed in the 2002 303(d) list was maintained in the 2006 303(d) list.</p> <p>The segment of Reach 4 below Laguna Road is tidally influenced and therefore not impaired for chloride, boron, sulfate, and TDS. Consequently, the waste load and load allocations developed for Reach 4 in this TMDL do not apply below Laguna Road.</p> <p>The goal of this TMDL is to protect and restore the water quality in the Calleguas Creek watershed by controlling the loading and accumulation of salts.</p>	Reach Name	Pollutant/Stressor	▪ Calleguas Creek Reach 3	Chloride, TDS	▪ Calleguas Creek Reach 6	Chloride, Sulfate, TDS	▪ Calleguas Creek Reach 7	Boron, Chloride, Sulfate, TDS	▪ Calleguas Creek Reach 8	Boron, Chloride, Sulfate, TDS	▪ Calleguas creek Reach 9A	Sulfate, TDS	▪ Calleguas Creek Reach 9B	Chloride, Sulfate, TDS	▪ Calleguas Creek Reach 10	Chloride, Sulfate, TDS	▪ Calleguas Creek Reach 11	Sulfate, TDS	▪ Calleguas Creek Reach 12	Sulfate, TDS	▪ Calleguas Creek Reach 13	Chloride, Sulfate, TDS
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▪ Calleguas Creek Reach 12	Sulfate, TDS																						
▪ Calleguas Creek Reach 13	Chloride, Sulfate, TDS																						
<p><b>Numeric Targets</b></p>	<p>Numeric targets are based on the site-specific numeric water quality objectives (WQOs) provided in the Basin Plan.</p> <p>1. <u>Surface Water Quality Objectives</u></p> <p>Site-specific surface water quality objectives for the Calleguas Creek watershed are applicable upstream of Potrero Road. Site specific objectives have not been determined for Calleguas Creek below Potrero Road because the reach is tidally influenced. Below are WQOs for Calleguas Creek upstream of Potrero Road.</p>																						

Attachment A to Resolution No. R4-2007-016

TMDL Element	Key Findings and Regulatory Provisions																																																																																													
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Groundwater basins are numbered in the first column according to Bulletin 118-80 (Department of Water Resources, 1980). Designated groundwater basins in the 1994 Basin Plan are specified in the second column and groundwater basin descriptions of Calleguas Creek used in this TMDL are listed in the third column of the table.</p>							Constituent	Water Quality Objective Upstream Potrero Road (mg/L)	<b>Boron</b>	1	<b>Chloride</b>	150	<b>Sulfate</b>	250	<b>TDS</b>	850	Groundwater Basin <sup>1</sup>			Boron (mg/L)	Chloride (mg/L)	Sulfate (mg/L)	TDS (mg/L)	DWR Basin No.	Groundwater Basin as Listed in the 1994 Basin Plan	Implementation Areas for Salts TMDL					4-6	Pleasant Valley	Conejo and Calleguas/Pleasant Valley	1.0	150	300	700	4-7	Arroyo Santa Rosa	Arroyo Santa Rosa and Conejo/Arroyo Santa Rosa	1.0	150	300	900	4-8	Las Posas Valley – East of Grimes Canyon and Hitch Blvd	Arroyo Simi/South Las Posas	3.0	400	1200	2500	4-8	Las Posas Valley – South of LA Ave between Somis Rd & Hitch Blvd	Arroyo Las Posas/South Las Posas	1.0	250	700	1500	4-8	Las Posas Valley – North Las Posas Area	Arroyo Las Posas/North Las Posas	1.0	150	250	500	4-9	Simi Valley	Arroyo Simi/Simi Valley	1.0	150	600	1200	4-10	Conejo Valley	Arroyo Conejo/Conejo Valley	1.0	150	250	800	4-15	Tierra Rejada	Arroyo Santa Rosa/Tierra Rejada	0.5	100	250	700	4-19	Thousand Oaks	Arroyo Conejo/Thousand Oaks	1.0	150	700	1400
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<b>Source Analysis</b>	Sources of salts in the watershed include water supply (water imported from the State Water Project or Freeman Diversion and deep aquifer groundwater pumping), water softeners that discharge to publicly owned treatment works (POTWs), POTW treatment chemicals, atmospheric deposition, pesticides and fertilizers, and indoor water use (chemicals, cleansers, food, etc.). These salts are then transported through POTW discharges and runoff to surface water, shallow groundwater, and/or stranded on the watershed in the soils. Salts transported in the surface water to the ocean are currently the only salts																																																																																													

**Attachment A to Resolution No. R4-2007-016**

<b>TMDL Element</b>	<b>Key Findings and Regulatory Provisions</b>
	<p>that are exported from the watershed. While the concentration of salts in the introduced water is usually below the Basin Plan Objectives, the quantity of water brought into the watershed is sufficient to rank introduced water as the greatest source of salts to the watershed.</p> <p>Salts that are transported during dry weather to the surface water are quantified via the following mechanisms: groundwater pumping, groundwater exfiltration, POTWs, dry weather urban and agricultural runoff. Wet weather loadings from each of these sources have the potential to be significant, but tend to be lower in concentration and do not occur during the critical conditions for salts. Wet weather loads are significant from the perspective of transporting stranded salts off the watershed.</p>
<b>Linkage Analysis</b>	<p>The linkage analysis for salts focuses on the surface water concentrations of salts. However, surface water concentrations are only one component of the watershed salts issue. Because it is difficult to model other aspects of the salt problem (i.e. surface water and groundwater interactions, stranded salts), two simplified approaches have been used to demonstrate that salts will be removed from the watershed, which should have a correspondingly positive impact on surface water and groundwater salts concentrations. First, a surface water model was developed to provide a linkage between sources and surface water quality and to demonstrate the impact of projects on receiving water quality in the watershed. Second, a salt balance was developed to quantify the removal of salts from the watershed with the goal of achieving a mass balance in which the mass of boron, sulfate, TDS and chloride imported into Calleguas Creek subwatersheds is no more than the mass of boron, sulfate, TDS and chloride exported from the Calleguas Creek subwatershed. Achieving a salt balance in the watershed will prevent additional build-up of salts in any medium in the watershed and protect ground water supplies from increasing in salt concentrations.</p> <p>The Calleguas Creek Modeling System is a mass balance based model that was developed for the surface water to provide a linkage between sources and surface water quality. To estimate the salts balance in the watershed, a simple chloride mass balance was developed by the Camrosa Water District (Hajas, 2003a) and modified to address the other salts.</p>

Attachment A to Resolution No. R4-2007-016

TMDL Element	Key Findings and Regulatory Provisions
<p><b>Waste Load Allocations</b></p>	<p><b><u>A. POTWs</u></b></p> <p>The TMDL includes waste load allocations (WLAs) for five POTWs in the Calleguas Creek watershed: Simi Valley Water Quality Control Plant (WQCP), Hill Canyon Wastewater Treatment Plan (WWTP), Moorpark WWTP, Camarillo Water Reclamation Plant (WRP), and Camrosa Water Reclamation Facility (WRF). At the end of the implementation period, only Simi Valley WQCP and the Hill Canyon WWTP are expected to discharge to surface waters. Moorpark WWTP and Camrosa WRF currently discharge directly to ponds under dry weather conditions. As part of the TMDL implementation, the Renewable Water Resources Management Program (RWRMP) will introduce treated wastewater from the Camarillo WRP into the Camrosa recycled water storage and distribution system. Surplus treated wastewater from Camarillo WRP and Camrosa WRF will be discharged at a point downstream of Potrero Road Bridge to Calleguas Creek. Dry weather WLAs are included for the case when Camarillo WRP, Camrosa WRF, and Moorpark WWTP need to discharge to the stream (for example, if there is insufficient recycled water demand during the wet season). Including WLAs for these POTWs ensures that water quality objectives are not exceeded as a result of their discharge.</p> <p>POTW mass-based WLAs are calculated as the POTW effluent flow rate multiplied by the water quality objective and include a mass-based adjustment factor (AF) that is subtracted from the product of the flow-rate and the water quality objective. The adjustment factor is used to link POTW allocations to the required reductions in background loads. The adjustment factors are implemented through mechanisms that export salts out of the subwatershed, such as groundwater pumping, to meet the salt balance requirements. To ensure that the loading capacity is achieved in surface water and the reductions in background loads are achieved, minimum salt exports shown below are required for POTWs and are included in WLAs as a component of the adjustment factors. If the background load reductions are not achieved, POTWs shall be responsible for providing additional load reductions to achieve water quality standards. The AF is set equal to the difference between the minimum salts export requirement to attain a salt balance in the subject reaches and the actual salts export. If the calculated annual dry weather salt exports from the subwatershed to which the POTW discharges are less than the minimum required exports for the previous year and the annual average receiving water concentration at the base of the subwatershed to which the POTW discharges exceeds water quality objectives for the previous year, the POTW allocations will be reduced using the adjustment factor.</p>

Attachment A to Resolution No. R4-2007-016

TMDL Element	Key Findings and Regulatory Provisions																														
	<p>The adjustment factors are also used to address unusual conditions in which the inputs to the POTWs from the water supply may challenge the POTWs ability to meet the assigned WLAs. The adjustment factor allows for the additional POTW loading only when the water quality objectives are met in the receiving waters. POTW allocations can be adjusted upwards when imported water supply chloride concentrations exceed 80 mg/L and discharges from the POTW exceed the WLA. In order to apply the AF to the assigned WLAs, the POTW is required to submit documentation of the water supply chloride concentrations, receiving water chloride concentration, the effluent mass, and evidence of increased salt exports to offset the increased discharges from the POTW to the RWQCB for approval.</p> <p>WLAs shown in table below apply to POTWS during dry weather when the flows in the receiving water are below the 86<sup>th</sup> percentile flow. During wet weather, the loading capacity of the stream is significantly increased by stormwater flows with very low salt concentrations. Any discharges from the POTWs during wet weather would be assimilated by these large storm flows and would not cause exceedances of water quality objectives.</p> <p>Boron is only listed in the Simi and Pleasant Valley (Revolon) subwatersheds and exceedances of boron do not occur in other portions of the watershed. Therefore, boron allocations are only included for the Simi Valley WQCP.</p> <p>Interim limits are included to allow time for dischargers to put in place implementation measures necessary to achieve final waste load allocations. The monthly average interim limits are set equal to the 95<sup>th</sup> percentile of available discharge data.</p> <p><b>1. Minimum Salt Export Requirements for Adjustment Factor <sup>a</sup></b></p> <table border="1" data-bbox="527 1415 1385 1698"> <thead> <tr> <th>POTW</th> <th>Minimum Chloride Export (lb/day)</th> <th>Minimum TDS Export (lb/day)</th> <th>Minimum Sulfate Export (lb/day)</th> <th>Minimum Boron Export (lb/day)</th> </tr> </thead> <tbody> <tr> <td>Simi Valley WQCP</td> <td>460</td> <td>3220</td> <td>9120</td> <td>3.3</td> </tr> <tr> <td>Moorpark WWTP</td> <td>460</td> <td>3220</td> <td>9120</td> <td>3.3</td> </tr> <tr> <td>Hill Canyon WWTP</td> <td>1060</td> <td>7920</td> <td>4610</td> <td>0</td> </tr> <tr> <td>Camrosa WRF</td> <td>1060</td> <td>7920</td> <td>4610</td> <td>0</td> </tr> <tr> <td>Camarillo WRP</td> <td>1060</td> <td>7920</td> <td>4610</td> <td>0</td> </tr> </tbody> </table> <p><sup>a</sup> Minimum export requirements include a 10% Margin of Safety.</p>	POTW	Minimum Chloride Export (lb/day)	Minimum TDS Export (lb/day)	Minimum Sulfate Export (lb/day)	Minimum Boron Export (lb/day)	Simi Valley WQCP	460	3220	9120	3.3	Moorpark WWTP	460	3220	9120	3.3	Hill Canyon WWTP	1060	7920	4610	0	Camrosa WRF	1060	7920	4610	0	Camarillo WRP	1060	7920	4610	0
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	<p>* Camrosa WRF has not discharged to surface water during the period under which interim limits were calculated. When effluent data are available, the Regional Board may adopt interim WLAs for Camrosa WRF.                      N/A: The 95<sup>th</sup> percentile concentration is below the Basin Plan objective so interim limits are not necessary.</p>																																		
	<p align="center"><b>3. Final WLAs for POTWs<sup>a,d</sup></b></p>																																		
	<table border="1"> <thead> <tr> <th>POTW</th> <th>Chloride (lb/day)<sup>c</sup></th> <th>TDS (lb/day)<sup>e</sup></th> <th>Sulfate (lb/day)<sup>e</sup></th> <th>Boron (lb/day)<sup>e</sup></th> </tr> </thead> <tbody> <tr> <td>Simi Valley WQCP</td> <td>150*Q-AF</td> <td>850*Q-AF</td> <td>250*Q-AF</td> <td>1.0*Q-AF</td> </tr> <tr> <td>Hill Canyon WWTP</td> <td>150*Q-AF</td> <td>850*Q-AF</td> <td>250*Q-AF</td> <td>N/A</td> </tr> <tr> <td>Moorpark WWTP<sup>b</sup></td> <td>150*Q-AF</td> <td>850*Q-AF</td> <td>250*Q-AF</td> <td>N/A</td> </tr> <tr> <td>Camarillo WRP<sup>b</sup></td> <td>150*Q-AF</td> <td>850*Q-AF</td> <td>250*Q-AF</td> <td>N/A</td> </tr> <tr> <td>Camrosa WRF<sup>b</sup></td> <td>150*Q-AF</td> <td>850*Q-AF</td> <td>250*Q-AF</td> <td>N/A</td> </tr> </tbody> </table>	POTW	Chloride (lb/day) <sup>c</sup>	TDS (lb/day) <sup>e</sup>	Sulfate (lb/day) <sup>e</sup>	Boron (lb/day) <sup>e</sup>	Simi Valley WQCP	150*Q-AF	850*Q-AF	250*Q-AF	1.0*Q-AF	Hill Canyon WWTP	150*Q-AF	850*Q-AF	250*Q-AF	N/A	Moorpark WWTP <sup>b</sup>	150*Q-AF	850*Q-AF	250*Q-AF	N/A	Camarillo WRP <sup>b</sup>	150*Q-AF	850*Q-AF	250*Q-AF	N/A	Camrosa WRF <sup>b</sup>	150*Q-AF	850*Q-AF	250*Q-AF	N/A				
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	<p>a. The allocations shown only apply during dry weather (as defined in this TMDL). During wet weather discharges from the POTWs do not cause exceedances of water quality objectives.                      b. These POTWs are not expected to discharge after the end of the implementation period.                      c. AF is the adjustment factor and equals the difference between the minimum salts export requirement and the actual salts export.                      d. Q represents the POTW flow at the time the water quality measurement is collected and a conversion factor to lb/day based on the units of measurement for the flow.                      N/A Boron is not listed in the reaches to which the POTW discharges. No WLA is required.</p>																																		
	<p><b><u>B. Urban Runoff</u></b></p> <p>Permitted stormwater dischargers that are responsible parties to this TMDL include the Municipal Stormwater Dischargers (MS4s) of the Cities of Camarillo, Moorpark, Thousand Oaks, County of Ventura, Ventura County Watershed Protection District, and general industrial and construction permittees. Permitted stormwater dischargers are assigned a dry weather wasteload allocation equal to the average dry weather critical condition flow rate multiplied by the numeric target for each constituent. Waste load allocations apply in the receiving water at the base of each subwatershed. Because wet weather flows transport a large mass of salts at low concentrations, these dischargers meet water</p>																																		

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	<p>quality objectives during wet weather. Dry weather allocations apply when instream flow rates are below the 86<sup>th</sup> percentile flow and there has been no measurable precipitation in the previous 24 hours.</p> <p>Interim limits are assigned for dry weather discharges from areas covered by NPDES stormwater permits to allow time to implement appropriate actions. The interim limits are assigned as concentration based receiving water limits set to the 95<sup>th</sup> percentile of the discharger data as a monthly average limit except for chloride. The 95<sup>th</sup> percentile for chloride was 267 mg/L which is higher than the recommended criteria set forth in the Basin Plan for protection of sensitive beneficial uses including aquatic life. Therefore, the interim limit for chloride for Permitted Stormwater Dischargers is set equal to 230 mg/L to ensure protection of sensitive beneficial uses in the Calleguas Creek watershed.</p> <p><b>1. Interim Dry Weather WLAs for Permitted Stormwater Dischargers</b></p> <table border="1" data-bbox="522 889 1016 1070"> <thead> <tr> <th>Constituent</th> <th>Interim Limit (mg/L)</th> </tr> </thead> <tbody> <tr> <td>Boron Total</td> <td>1.3</td> </tr> <tr> <td>Chloride Total</td> <td>230</td> </tr> <tr> <td>Sulfate Total</td> <td>1289</td> </tr> <tr> <td>TDS Total</td> <td>1720</td> </tr> </tbody> </table> <p><b>2. Final Dry Weather WLAs for Permitted Stormwater Dischargers</b></p> <table border="1" data-bbox="522 1240 1365 1605"> <thead> <tr> <th>Subwatershed</th> <th>Critical Condition Flow Rate (mgd)</th> <th>Chloride Allocation (lb/day)</th> <th>TDS Allocation (lb/day)</th> <th>Sulfate Allocation (lb/day)</th> <th>Boron Allocation (lb/day)</th> </tr> </thead> <tbody> <tr> <td>Simi</td> <td>1.39</td> <td>1,738</td> <td>9,849</td> <td>2,897</td> <td>12</td> </tr> <tr> <td>Las Posas</td> <td>0.13</td> <td>157</td> <td>887</td> <td>261</td> <td>N/A</td> </tr> <tr> <td>Conejo</td> <td>1.26</td> <td>1,576</td> <td>8,931</td> <td>2,627</td> <td>N/A</td> </tr> <tr> <td>Camarillo</td> <td>0.06</td> <td>72</td> <td>406</td> <td>119</td> <td>N/A</td> </tr> <tr> <td>Pleasant Valley (Calleguas)</td> <td>0.12</td> <td>150</td> <td>850</td> <td>250</td> <td>N/A</td> </tr> <tr> <td>Pleasant Valley (Revolon)</td> <td>0.25</td> <td>314</td> <td>1,778</td> <td>523</td> <td>2</td> </tr> </tbody> </table>	Constituent	Interim Limit (mg/L)	Boron Total	1.3	Chloride Total	230	Sulfate Total	1289	TDS Total	1720	Subwatershed	Critical Condition Flow Rate (mgd)	Chloride Allocation (lb/day)	TDS Allocation (lb/day)	Sulfate Allocation (lb/day)	Boron Allocation (lb/day)	Simi	1.39	1,738	9,849	2,897	12	Las Posas	0.13	157	887	261	N/A	Conejo	1.26	1,576	8,931	2,627	N/A	Camarillo	0.06	72	406	119	N/A	Pleasant Valley (Calleguas)	0.12	150	850	250	N/A	Pleasant Valley (Revolon)	0.25	314	1,778	523	2
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	<p><b>C. Final WLAs for Other NPDES Dischargers</b>                      Concentration-based WLAs are assigned at the Basin Plan objectives for other NPDES dischargers.</p> <table border="1" data-bbox="524 449 1040 628"> <thead> <tr> <th>Constituent</th> <th>Allocation (mg/L)</th> </tr> </thead> <tbody> <tr> <td>Chloride</td> <td>150</td> </tr> <tr> <td>TDS</td> <td>850</td> </tr> <tr> <td>Sulfate</td> <td>250</td> </tr> <tr> <td>Boron<sup>a</sup></td> <td>1.0</td> </tr> </tbody> </table> <p>Other NPDES dischargers include, but are not limited to, permitted groundwater cleanup projects that could have significant salt concentrations as a result of the stranded salts in the shallow groundwater basins being treated. To facilitate the cleanup of the basins prior to alternative discharge methods (such as the brine line) being available, interim limits for other NPDES dischargers will be developed on a case-by-case basis and calculated as a monthly average using the 95<sup>th</sup> percentile of available discharge data.</p>	Constituent	Allocation (mg/L)	Chloride	150	TDS	850	Sulfate	250	Boron <sup>a</sup>	1.0
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<p><b>Load Allocations</b></p>	<p>Dry weather load allocations are assigned as a group allocation to irrigated agricultural discharges. The load allocation (LA) is equal to the average dry weather critical condition flow rate multiplied by the numeric target for each constituent. Load allocations apply in the receiving water at the base of each subwatershed. Because wet weather flows transport a large mass of salts at a typically low concentration, these dischargers should meet water quality objectives during wet weather. Dry weather allocations apply when instream flow rates are below the 86<sup>th</sup> percentile flow and there has been no measurable precipitation in the previous 24 hours.</p> <p>Interim limits are assigned for dry weather discharges from irrigated agricultural areas to allow time to implement appropriate actions. The interim limits are assigned as concentration based receiving water limits set to the 95<sup>th</sup> percentile of the discharger data as a monthly average limit except for chloride. The 95<sup>th</sup> percentile for chloride was 499 mg/L which is higher than the recommended criteria set forth in the Basin Plan for protection of sensitive beneficial uses including aquatic life. Therefore, the interim limit for chloride for Irrigated Agricultural Dischargers is set equal to 230 mg/L to ensure protection of sensitive beneficial uses in the Calleguas Creek watershed.</p>										

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<p><b>Margin of Safety</b></p>	<p>A margin of safety (MOS) for the TMDL is designed to address uncertainties in the analysis that could result in targets not being achieved in the waterbodies. The primary uncertainties associated with this TMDL include the impact of implementing a salt balance on receiving water quality. The effect of the salt balance is estimated by the mass-balance and subject to the following uncertainties: 1) the flow rates used to determine the loading capacity may change due to TMDL implementation, 2) the use of a daily load for determining allocations and an annual mass balance to attain water quality objectives, and 3) the sources of salts may not be completely known. Both implicit and explicit MOS are included for this TMDL. The implicit MOS stems from the use of conservative assumptions made during development of the TMDL. The mass of salts transported out of the watershed during wet weather is on average over 15% of the annual mass of salts introduced to the watershed for all constituents. The salt export during wet weather ranges from 7% to 41% for TDS, 9% to 48% for chloride, and 13% to 89% for sulfate of the export required to meet a salt balance in the watershed. This mass is not used to determine compliance with the salt balance and represents a significant implicit margin of safety. The model also contains a component that serves to model the impact of “stranded” salts in the watershed. The component assumes low irrigation efficiencies and the ability of all salts applied as irrigation water anywhere in the watershed to be discharged to receiving water in</p>																																													

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	<p>critical years. This likely overestimates the impact of “stranded” salts and results in a higher concentration of salts due to irrigation in the receiving water.</p> <p>An explicit MOS of 10% is applied to the adjustment factors for the POTWs to account for the uncertainties in the TMDL analysis. By applying the margin of safety to the adjustment factor, more salts are required to be exported than are necessary to offset the background loads in the watershed. This additional salt export provides a margin of safety on the salt balance to address uncertainties that the salt balance will result in compliance with water quality objectives. The 10% explicit MOS is determined sufficient to address the uncertainties associated with the estimated impact of the salt balance on receiving water loadings.</p>
<b>Future Growth</b>	<p>Ventura County accounts for slightly more than 2% of the state’s residents with a population of 753,197 (US Census Bureau, 2000). GIS analysis of the 2000 census data yields a population estimate of 334,000 for the CCW, which equals about 44% of the county population. According to the Southern California Association of Governments (SCAG), growth in Ventura County averaged about 51% per decade from 1900-2000; with growth exceeding 70% in the 1920s, 1950s, and 1960s. Significant population growth is expected to occur within and near present city limits until at least 2020. Increased growth requires additional water. Therefore, future growth could result in increased loads of salts being imported into the watershed. However, the TMDL implementation plan is designed to maintain a salts balance in the watershed. If additional salts are imported into the watershed, a larger volume of salts will also be exported out of the watershed to maintain the balance. Consequently, increased imports from future growth are not expected to result in higher concentrations in receiving waters.</p>
<b>Seasonal Variations and Critical Conditions</b>	<p>The critical condition for salts is during dry weather periods. During wet weather, stormwater flows dilute the salt discharges and receiving water concentrations are significantly lower than water quality objectives. Dry weather, defined as days with flows lower than the 86<sup>th</sup> percentile flow and no measurable precipitation, is a critical condition regardless of the dry weather flows in the stream. The driving conditions for exceedances of water quality objectives are the concentrations in the water supply (which is driven by surface water concentrations in Northern California) and the previous year’s annual precipitation and corresponding flows. Elevated salts concentrations during dry weather occur when stranded salts are discharged into the surface water after higher than average rainfall years. The elevated concentrations occur during years when the previous annual flow is</p>

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	<p>greater than the 75<sup>th</sup> percentile of the annual flows for the watershed (critical year). The higher concentrations occur during the dry periods of critical years regardless of whether the annual flow for the critical year is an average flow year, higher than average year, or lower than average year. The key parameter determining a critical year is the total annual flow volume for the previous year. Based on model results, four critical years were defined based on modeled results that resulted in receiving water concentrations greater than the 99<sup>th</sup> percentile concentration during at least 10% of the dry period. The critical years identified from the model occur with conditions similar to what occurred in 1978, 1979, 1983 and 1998.</p>
<p><b>Special Studies and Monitoring Plan</b></p>	<p><b><u>Special Studies</u></b></p> <p>Several special studies are planned to improve understanding of key aspects related to achievement of WLAs and LAs for the Salts TMDL.</p> <p><b><i>1. Special Study #1 (Optional) – Develop Averaging Periods and Compliance Points</i></b></p> <p>The TMDL technical report has provided information that shows instantaneous salts objectives may not be required to protect groundwater recharge and agricultural beneficial uses. It is possible that the beneficial uses will be protected and a salt balance achieved without achieving instantaneous water quality objectives in all reaches of the watershed. This optional special study is included to allow an investigation of averaging periods for the salts objectives in the CCW. Additionally, this study will investigate the locations of beneficial uses and the possibility of identifying compliance points for the salts objectives at the point of beneficial use impacts. The use of compliance points would alleviate the need to develop site-specific objectives for the reaches of the watershed upstream of the POTW discharges (described in Special Study #3) while still ensuring the protection of beneficial uses. Sensitive beneficial uses are not present in the upper reaches and POTW discharges dilute the salts from the upper reaches and may allow compliance with the objectives at the point of groundwater recharge downstream. This is an optional special study to be conducted if desired by the stakeholders or determined necessary or appropriate by the Executive Officer.</p> <p><b><i>2. Special Study #2 (Optional) – Develop Natural Background Exclusion</i></b></p> <p>Discharges of groundwater from upstream of the Simi Valley WQCP (Reaches 7 and 8) and Hill Canyon WWTP (Reaches 12 and 13) and</p>

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	<p>downstream of the Camrosa WRF (Reach 3) contain high salts concentrations. Natural marine sediments may contribute to the high concentrations in those discharges. This special study would evaluate whether or not the groundwater discharges in these areas would qualify for a natural sources exclusion. The special study could follow a 'reference system/anti-degradation approach' and/or a 'natural sources exclusion approach' for any allocations included in this TMDL that are proven unattainable due to the magnitude of natural sources. The purpose of a 'reference system/anti-degradation approach' is to ensure water quality is at least as good as an appropriate reference site and no degradation of existing water quality occurs where existing water quality is better than that of a reference site. The intention of a 'natural sources exclusion approach' is to ensure that all anthropogenic sources of salts are controlled such that they do not cause exceedances of water quality objectives. These approaches are consistent with state and federal anti-degradation policies (State Board Resolution No. 68-16 and 40 C.F.R. 131.12). This is an optional special study to be conducted if desired by the stakeholders or determined necessary for establishing a natural sources exclusion by the Executive Officer.</p> <p><b><i>3. Special Study #3 (Optional) – Develop Site-Specific Objectives</i></b></p> <p>The TMDL implementation plan provides for actions to protect the agricultural and groundwater recharge beneficial uses in the CCW. As shown in the linkage analysis, some downstream reaches may not achieve the water quality objectives through implementation of this TMDL because of the transport of salts out of the watershed through those reaches. Consequently, an optional special study is included to allow the CCW stakeholders to pursue development of site-specific objectives for salts for reaches upstream of the Hill Canyon WWTP and Simi Valley WQCP (Reaches 7, 8, 12, and 13), Calleguas Creek Reach 3, Revolon Slough (Reach 4) and Beardsley Wash (Reach 5). These alternative numeric water quality objectives would be developed based on the beneficial uses to be protected in a reach and the attainability of the current water quality objectives. This is an optional special study to be conducted if desired by the stakeholders or determined necessary or appropriate by the Executive Officer.</p> <p><b><i>4. Special Study #4 (Optional) – Develop Site-Specific Objectives for Drought Conditions</i></b></p> <p>During drought conditions, the load of salts into the watershed increases as a result of increasing concentrations in imported water. Stakeholders in the CCW cannot control the increased mass entering the watershed from the water supply. However, the stakeholders do have the ability to</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p>manage the salts within the watershed to protect beneficial uses and export the additional mass of salts out of the watershed. If necessary, site-specific objectives may be developed to address situations that result in higher imported water salt concentrations to allow management of the salts and protection of beneficial uses. This special study may be combined with Special Study #3 if desired.</p> <p>This is an optional special study to be conducted if desired by the stakeholders or determined necessary or appropriate by the Executive Officer of the Regional Board.</p> <p><b><i>5. Special Study #5 (Optional) – Develop Site-Specific Objectives for Sulfate</i></b></p> <p>Sulfate is a necessary nutrient for plant growth and sulfate containing products are often applied to agriculture as fertilizers and pesticides. Therefore, site-specific objectives may be investigated and developed for sulfate that more accurately protects agricultural supply beneficial uses. Additionally, this study could evaluate whether or not a sulfate balance is necessary to maintain in the watershed. This special study may be combined with Special Study #3 and/or #4 if desired.</p> <p>This is an optional special study to be conducted if desired by the stakeholders or determined necessary or appropriate by the Executive Officer of the Regional Board.</p> <p><b><u>Monitoring Plan</u></b></p> <p>To ensure that the goal of a salts balance in the watershed is being achieved and water quality objectives are being met, a comprehensive method of tracking inputs and outputs to the watershed will be developed. A monitoring plan will be submitted to the RWQCB for Executive Officer approval within six months of the effective date of the CCW Salts TMDL. Monitoring will begin one year after Executive Officer approval of the monitoring plan to allow time for the installation of automated monitoring equipment.</p> <p><b><i>1. Input Tracking</i></b></p> <p>Inputs to the watershed are tracked through four mechanisms: 1) Information on the import of State Water Project water is readily available and provides information on the mass of salts brought into the watershed; 2) Groundwater pumping records provide information on the mass of salts imported into the watershed from deep aquifer pumping; 3) Import records of water supply from the Santa Clara River can be obtained to determine the mass of salts imported through this source; 4) Monitoring data on imported water quality can be compared to</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p>monitoring of effluent quality to estimate the amount of salts added through human use of the water.</p> <p><b>2. <i>Output Tracking and Determining Compliance with Water Quality Objectives</i></b></p> <p>Outputs from the watershed will be tracked through surface water monitoring at key locations in the watershed and monitoring of discharges to the brine line. Monitoring will include both flow and quality. Compliance with water quality objectives will be determined at key locations where beneficial uses occur in the watershed. The stations used for output tracking will also be used to determine compliance with water quality objectives. The monitoring program will determine if the TMDL compliance points are protective of the beneficial uses for the subwatershed. If the monitoring determines that the compliance points are not protective of beneficial uses, an alternative compliance point will be selected. The Executive Officer may revise the TMDL compliance point based on the result of the monitoring. Additionally, if other places in the watershed are identified where sensitive beneficial uses occur, water quality monitoring stations can be added to determine compliance with water quality objectives. For the RWRMP, three new or upgraded automated flow measuring and sample collection stations will be installed at three points on the stream system to continuously record flow and various water quality parameters during dry weather. Preliminary monitoring locations include Arroyo Conejo in Hill Canyon, Conejo Creek at Baron Brothers Nursery and Calleguas Creek at University Drive. For the NRRWMP, one new or upgraded automated flow measuring and sample collection station will be added downstream of Simi Valley at the point at which groundwater recharge begins. A preliminary monitoring location is at Hitch Blvd. where an existing flow gauging station exists. However, the amount of groundwater recharge upstream of this site will need to be evaluated to determine the exact monitoring location. For Revolon Slough, the existing monitoring station at Wood Road. will be used to monitor quality and flow on Revolon Slough to determine the outputs from the Revolon portion of the Pleasant Valley subwatershed.</p> <p>Additional land use monitoring will be conducted concurrently at representative agricultural and urban runoff discharge sites as well as at POTWs in each of the subwatersheds and analyzed for chloride, TDS, sulfate, and boron. The location of the land use stations will be determined before initiation of the Calleguas Creek Watershed TMDL Monitoring Program (CCWTMP). All efforts will be made to include at least two wet weather sampling events during the wet season (October through April) during a targeted storm event.</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p><b>3. Reporting and Modification of the Calleguas Creek Watershed TMDL Monitoring Program</b></p> <p>A monitoring report will be prepared annually within six months after completion of the final event of the sampling year. An adaptive management approach to the CCWTMP will be adopted as it may be necessary to modify aspects of the CCWTMP. Results of sampling carried out through the CCWTMP and other programs within the CCW may be used to modify this plan, as appropriate. These modifications will be summarized in the annual report. Possible modifications could include, but are not limited to the, following:</p> <ul style="list-style-type: none"> <li>▪ The inclusion of additional land use stations to accurately characterize loadings;</li> <li>▪ The removal of land use stations if it is determined they are duplicative (<i>i.e.</i>, a land use site in one subwatershed accurately characterize the land use in other subwatersheds);</li> <li>▪ The inclusion of additional in-stream sampling stations; and</li> <li>▪ The elimination of analysis for constituents no longer identified in land use and/or instream samples.</li> </ul> <p>If a coordinated and comprehensive monitoring plan is developed and meets the goals of this monitoring plan that plan should be considered as a replacement for the CCWTMP.</p> <p><b>4. Other Monitoring</b></p> <p>Other surface water and groundwater monitoring will be implemented as necessary to assess the impacts of the implementation actions and adjust the activities as necessary to protect beneficial uses and achieve the salts balance. Examples of additional monitoring that may be conducted include:</p> <ul style="list-style-type: none"> <li>▪ Monitoring under Phase 2 and 3 of the RWRMP to evaluate the effects of replenishment water releases and groundwater treatment and releases.</li> <li>▪ Monitoring to assess the impacts of management of the Simi Basin groundwater dewatering wells under Phase 1 of the NRRWMP.</li> </ul>
<p><b>Implementation Plan</b></p>	<p>The identified implementation actions provided in this TMDL will result in a salt balance in the stream and are expected to result in compliance with the allocations. The implementation plan is comprised of actions that directly impact discharges to the receiving water and actions that will indirectly impact discharges to receiving water. Responsible agencies and jurisdictions shall consider minimum flow</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p>requirements that may be imposed by federal or state regulatory agencies when implementing actions to comply with this TMDL. Should the proposed implementation actions not result in compliance with objectives and site-specific objective are not adopted, additional implementation actions may be required to achieve the water quality objectives. Any plans or programs for implementation of the TMDL for the Southern Reaches of the CCW upstream of the Conejo Creek Diversion and the Northern Reaches of the CCW, that would result in significant reduction in instream flow, including but not limited to, an application for Water Reclamation Requirements (WRRs) shall include an analysis of potential impacts to instream beneficial uses that could result from the reclamation of wastewater or extracted groundwater. For Phase 1 of the Southern Reaches of the CCW Renewable Water Resource Management Program (RWRMP), Water Rights Decision 1638 from SWRCB satisfies these requirements and establishes the minimum flow requirements for Conejo and Calleguas Creek downstream of the Conejo Creek Diversion Project. Any WRRs shall require that timely written notice be given to the Regional Board, and to any regulatory agency whose instream flow is at issue, if diversion or reclamation of waste water or extraction of groundwater results or threatens to result in (or contributes to) insufficient flows to maintain beneficial uses. The Executive Officer shall issue an order pursuant to Water Code section 13267, which requires responsible agencies and jurisdictions to file a technical report if reclamation of waste water or extraction of groundwater results or threatens to result in (or contributes to) insufficient flows to maintain beneficial uses. The order shall require that the technical report identify the causes of the impairments or threatened impairments, and identifies options to abate the conditions. The Regional Board shall reconsider this TMDL if adequate flows to protect instream beneficial uses are not maintained.</p> <p>The implementation actions described in the TMDL represent a range of activities that could be conducted to achieve a salts balance in the watershed. Future considerations may result in other actions being implemented rather than the options presented. However, any proposed actions will be reviewed using the salt balance model to ensure the action does not adversely impact other implementation actions in the watershed or the salt balance of a downstream subwatershed.</p> <p>Currently, the implementation plan is presented in phases with a tentative schedule for each phase. The implementation of projects may occur earlier than planned or begin during an earlier phase. Additionally, many of the implementation actions require the use of the Regional Salinity Management Conveyance (RSMC or brine line). As such, the implementation schedule for those actions will be linked the</p>

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TMDL Element	Key Findings and Regulatory Provisions																																																	
	<p>construction schedule for the RSMC.</p> <p>The implementation plan for the Salts TMDL includes regional and subwatershed specific implementation actions. There are four key structural elements to the regional implementation: Regional Salinity Management Conveyance (RSMC), Water Conservation, Water Softeners, and Best Management Practices for Irrigated Agriculture. Subwatershed implementation includes Renewable Water Resource Management Program (RWRMP) for the Southern Reaches and Northern Reach Renewable Water Management Plan (NRRWMP). Detailed discussion for each implementation element including description of the action, status and schedule for implementing the action, and a summary of the expected contribution to achievement of the salts balance are provided in the Staff Report and Technical Report for this TMDL. Proposed implementation actions in the watershed, responsible agencies, and the estimated completion date based on the effective date of the TMDL are summarized below.</p> <p><b>Summary of Proposed Implementation Actions</b></p> <table border="1" data-bbox="527 924 1377 1776"> <thead> <tr> <th>Action</th> <th>Responsible Agency/ies</th> <th>Schedule for Completion</th> </tr> </thead> <tbody> <tr> <td>Water Conservation</td> <td>POTWs, Permitted Stormwater Dischargers, and Other NPDES Permittees</td> <td>3 years</td> </tr> <tr> <td>Water Softeners</td> <td>POTWs and Permitted Stormwater Dischargers</td> <td>10 years</td> </tr> <tr> <td>Best Management Practice for Agricultural Dischargers</td> <td>Agricultural Dischargers</td> <td>2 years</td> </tr> <tr> <td>RMSC Phase 1</td> <td>Calleguas Municipal Water District</td> <td>2 year</td> </tr> <tr> <td>RMSC Phase 2</td> <td>Calleguas Municipal Water District</td> <td>5 year</td> </tr> <tr> <td>RMSC Phase 3</td> <td>Calleguas Municipal Water District</td> <td>10 years</td> </tr> <tr> <td>RWRMP Phase 1</td> <td>Camrosa Water District, Camarillo Sanitation District</td> <td>3 years</td> </tr> <tr> <td>RWRMP Phase 2</td> <td>Camrosa Water District, City of Thousand Oaks</td> <td>6 years</td> </tr> <tr> <td>RWRMP Phase 3</td> <td>Camrosa Water District, City of Thousand Oaks</td> <td>10 years</td> </tr> <tr> <td>RWRMP Phase 4</td> <td>To Be Determined</td> <td>15 years</td> </tr> <tr> <td>NRRWMP Phase 1</td> <td>Calleguas Municipal Water District, City of Simi Valley, Ventura County Water Work-District No.1</td> <td>3 years</td> </tr> <tr> <td>NRRWMP Phase 2</td> <td>Calleguas Municipal Water District, Ventura County Water Work-District No.1, City of Camarillo</td> <td>7 years</td> </tr> <tr> <td>NRRWMP Phase 3</td> <td>City of Camarillo, City of Simi Valley</td> <td>10 years</td> </tr> <tr> <td>NRRWMP Phase 4</td> <td>To Be Determined</td> <td>15 years</td> </tr> <tr> <td>Final Completion Date</td> <td></td> <td>15 years</td> </tr> </tbody> </table>		Action	Responsible Agency/ies	Schedule for Completion	Water Conservation	POTWs, Permitted Stormwater Dischargers, and Other NPDES Permittees	3 years	Water Softeners	POTWs and Permitted Stormwater Dischargers	10 years	Best Management Practice for Agricultural Dischargers	Agricultural Dischargers	2 years	RMSC Phase 1	Calleguas Municipal Water District	2 year	RMSC Phase 2	Calleguas Municipal Water District	5 year	RMSC Phase 3	Calleguas Municipal Water District	10 years	RWRMP Phase 1	Camrosa Water District, Camarillo Sanitation District	3 years	RWRMP Phase 2	Camrosa Water District, City of Thousand Oaks	6 years	RWRMP Phase 3	Camrosa Water District, City of Thousand Oaks	10 years	RWRMP Phase 4	To Be Determined	15 years	NRRWMP Phase 1	Calleguas Municipal Water District, City of Simi Valley, Ventura County Water Work-District No.1	3 years	NRRWMP Phase 2	Calleguas Municipal Water District, Ventura County Water Work-District No.1, City of Camarillo	7 years	NRRWMP Phase 3	City of Camarillo, City of Simi Valley	10 years	NRRWMP Phase 4	To Be Determined	15 years	Final Completion Date		15 years
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TMDL Element	Key Findings and Regulatory Provisions
	<p>The sections below provide discussion of the application of the final WLAs for POTWs, specific permitted stormwater discharges, other NPDES dischargers, and agricultural dischargers.</p> <p><b>I. POTWs, permitted stormwater discharges, and other NPDES discharges</b></p> <p>The final WLAs will be included for permitted stormwater discharges, POTWs, and other NPDES discharges in accordance with the compliance schedules provided in Table 7-22.2. The Regional Board may revise these WLAs based on additional information developed through special studies and/or monitoring conducted as part of this TMDL.</p> <p>▪ <b>POTWs</b></p> <p>WLAs established for the POTWs in this TMDL will be implemented through NPDES permit limits. Compliance will be determined through monitoring of final effluent discharge as defined in the NPDES permit.</p> <p>The proposed permit limits will be applied as end-of-pipe mass-based monthly average effluent limits. Daily maximum effluent limit is not required because chloride is not expected to have an immediate or acute effect on the beneficial uses. Compliance with the minimum salt export requirements for POTWs will be based on the salt export from the subwatershed to which they discharge. The mechanisms for meeting the minimum salt export requirements and for monitoring progress towards meeting those requirements will be included in the monitoring program work plan and approved by the Executive Officer.</p> <p>At the end of each year, the amount of salt exported will be compared to the minimum required salt export. POTW allocations will be reduced using the adjustment factor if both of the following conditions occur:</p> <ul style="list-style-type: none"> <li>• The annual dry weather salt exports from the subwatershed to which the POTW discharges are below the minimum required exports for the previous year; and</li> <li>• The water quality objectives were exceeded in the receiving water at the base of the subwatershed</li> </ul> <p>The POTW allocations will be reduced for the following year by</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p>the difference between the minimum required salt export and the actual amount exported. The discharger shall be notified by the Regional Board that the assigned WLAs are reduced and the reduced effluent limits shall be applied for the next year. If the POTW allocations are reduced, the POTW will need to increase the amount of salt export or reduce the mass of salts discharged from the POTW before the end of the following year when the adjustment will be evaluated again.</p> <p>POTWs can only request to adjust the assigned WLAs upwards using the adjustment factor under limited conditions provided below:</p> <ul style="list-style-type: none"> <li>• Water quality objectives are met in the receiving waters;</li> <li>• Imported water supply chloride concentrations exceed 80 mg/L; and</li> <li>• Discharges from the POTW exceed the allocation.</li> </ul> <p>When imported water supply chloride concentrations exceed 80 mg/L, the POTW will monitor the effluent to determine if the wasteload allocation is exceeded. If the wasteload allocation is exceeded and the POTW desires an adjustment to the allocation, the POTW will submit documentation of the water supply chloride concentrations, the receiving water chloride concentration, the effluent mass, and the evidence of increased salt exports to offset the increased discharges from the POTW to the Regional Board for approval. The adjustment factor will apply for three months and the POTW must submit the evidence outlined above every three months to keep the adjustment factor active. As long as the required information is submitted, the adjustment factor will be in effect upon notification in writing from the RWQCB.</p> <p>■ <b>Urban Stormwater Discharger</b></p> <p>A group mass-based dry weather WLA has been developed for all permitted stormwater discharges, including municipal separate storm sewer systems (MS4s), and general industrial and construction stormwater permits. USEPA regulation allows allocations for NPDES-regulated stormwater discharges from multiple point sources to be expressed as a single categorical WLA when the data and information are insufficient to assign each source or outfall individual WLAs (40 CFR 130). The grouped allocation will apply to all NPDES-regulated municipal stormwater discharges in the CCW. MS4 WLAs will be incorporated into the NPDES</p>

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TMDL Element	Key Findings and Regulatory Provisions
	<p>permit as receiving water limits measured in-stream at the base of each subwatershed.</p> <ul style="list-style-type: none"> <li>▪ <b>Other NPDES Dischargers</b></li> </ul> <p>WLAs established for other NPDES permitted dischargers in this TMDL, including minor non-stormwater permittees (other than Camrosa WRP) and general non-stormwater permittees, will be implemented through NPDES permit limits. The proposed permit limits will be applied as end-of-pipe concentration-based effluent limits, and compliance determined through monitoring of final effluent discharge as defined in the NPDES permit.</p> <p><b>II. Agriculture</b></p> <p>Load allocations for salts will be implemented through Conditional Waiver of Discharges from Irrigated Lands (Conditional Waiver Program) adopted by the LARWQCB on November 3, 2005. Compliance with LAs will be measured in-stream at the base of the subwatersheds and will be achieved through the implementation of Best Management Practices (BMPs) consistent with the Conditional Waiver Program. The Conditional Waiver Program requires the development of an agricultural water quality management plan (AWQMP) to address pollutants that are exceeding receiving water quality objectives as a result of agricultural discharges. Therefore, implementation of the load allocations will be through the development of an agricultural management plan for salts. Implementation of the load allocations will also include the coordination of BMPs being implemented under other required programs to ensure salts discharges are considered in the implementation. Additionally, agricultural dischargers will participate in educational seminars on the implementation of BMPs as required under the Conditional Program. Studies are currently being conducted to assess the extent of BMP implementation and provide information on the effectiveness of BMPs for agriculture. This information will be integrated into the AWQMP that will guide the implementation of agricultural BMPs in the Calleguas Creek watershed. After implementation of these actions, compliance with the allocations and TMDL will be evaluated and the allocations reconsidered if necessary based on the special studies and monitoring plan section of the implementation plan.</p> <p>As shown in Table 7-22.2, implementation of LAs will be conducted over a period of time to allow for implementation of the BMPs, as well as coordination with special studies and</p>

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<b>TMDL Element</b>	<b>Key Findings and Regulatory Provisions</b>
	implementation actions resulting from other TMDL Implementation Plans (Nutrient, Historic Pesticides and PCBs, Sediment, Metals, Bacteria, etc.).

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**Table 7-22.2 Calleguas Creek Watershed Salts TMDL: Implementation Schedule**

Item	Implementation Action	Responsible Party	Completion Date
1	Effective date of interim Salts TMDL waste load allocations (WLAs)	POTWs, Permitted Stormwater Dischargers <sup>1</sup> (PSD), and Other NPDES Permittees	Effective date of the amendment
2	Effective date of interim Salts TMDL load allocations (LAs)	Agricultural Dischargers	Effective date of the amendment
3	Responsible jurisdictions and agencies shall submit compliance monitoring plan to the Los Angeles Regional Board for Executive Officer approval.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	6 months after effective date of the TMDL
4	Responsible jurisdictions and agencies shall begin monitoring as outlined in the approved monitoring plan.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	1 year after monitoring plan approval by Executive Officer
5	Responsible jurisdictions and agencies shall submit workplans for the optional special studies.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	Within 10 years of effective date of the TMDL
6	Responsible jurisdictions and agencies shall submit results of the special studies.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	2 years after workplan approval by Executive Officer
7	Re-evaluation of the interim WLAs and interim LAs for boron, chloride, sulfate, and TDS based on new data. Responsible jurisdictions and agencies shall demonstrate that implementation actions have reduced the boron, sulfate, TDS, and chloride imbalance by 20%.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	3 years after effective date of the TMDL
8	Re-evaluation of the interim WLAs and interim LAs for boron, chloride, sulfate, and TDS based on new data. Responsible jurisdictions and agencies shall demonstrate that implementation actions have reduced the boron, sulfate, TDS and chloride imbalance by 40%.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	7 years after effective date of the TMDL
9	Re-evaluation of the interim WLAs and interim LAs for boron, chloride, sulfate, and TDS based on new data. Responsible jurisdictions and agencies shall demonstrate that implementation actions have reduced the boron, sulfate, TDS, and chloride imbalance by 70%.	POTWs, Permitted Stormwater Dischargers (PSD), Other NPDES Permittees, and Agricultural Dischargers	10 years after effective date of the TMDL
10	The Los Angeles Regional Board shall reconsider this TMDL to re-evaluate numeric targets, WLAs, LAs and the implementation schedule based on the results of the special studies and/or compliance monitoring.	The Regional Board	12 years after effective date of the TMDL
11	Responsible jurisdictions and agencies shall demonstrate that the watershed has achieved an annual boron, sulfate, TDS, and chloride balance.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	15 years after effective date of the TMDL
12	The POTWs and non-storm water NPDES permits shall achieve WLAs, which shall be expressed as NPDES mass-based effluent limitation specified in accordance with federal regulations and state policy on water quality control.	POTWs and Other NPDES Permittees	15 years after effective date of the TMDL

<sup>1</sup> Permitted stormwater dischargers that are responsible parties to this TMDL include the Municipal Stormwater Dischargers (MS4s) of the Cities of Camarillo, Moorpark, Thousand Oaks, County of Ventura, Ventura County Watershed Protection District, and general industrial and construction permittees.

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<b>Item</b>	<b>Implementation Action</b>	<b>Responsible Party</b>	<b>Completion Date</b>
13	Irrigated agriculture shall achieve LAs, which will be implemented through the Conditional Waiver for Irrigated Lands as mass-based receiving water limits.	Agricultural Dischargers	15 years after effective date of the TMDL
14	The permitted stormwater dischargers shall achieve WLAs, which shall be expressed as NPDES mass-based limits specified in accordance with federal regulations and state policy on water quality control.	Permitted Stormwater Dischargers	15 years after effective date of the TMDL
15	Water quality objectives will be achieved at the base of the subwatersheds designated in the TMDL.	POTWs, PSD, Other NPDES Permittees, and Agricultural Dischargers	15 years after effective date of the TMDL

# EXHIBIT "25"

4837-0090-6752.2

**STATE OF CALIFORNIA**

PETE WILSON, Governor  
JAMES M. STROCK, Secretary, Environmental Protection Agency



**State Water Resources Control Board**

John P. Caffrey, Chair  
Marc Del Piero, Vice Chair  
James M. Stubchaer, Member  
Mary Jane Forster, Member  
John W. Brown, Member

Walt Pettit, Executive Director

**California Regional Water Quality Control Board  
Central Coast Region**

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Thomas R. LaHue, Ph.D., Vice-Chair	Water Quality Member
Charles B. Allen	Industrial Water Use Member
Janet K. Beautz	County Government Member
C. Charles Evans	Water Supply Member
Harold Fairly	Municipal Government Member
A. Milo Ferini	Irrigated Agriculture Member
Russell M. Jeffries	Water Quality Member
William H. Newman, Ph.D.	Recreation, Fish, or Wildlife Member

**This report was prepared under the direction of:**

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Paul R. Jagger, Assistant Executive Officer  
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**by**

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## CHAPTER 3. WATER QUALITY OBJECTIVES

Section 13241, Division 7 of the California Water Code specifies that each Regional Water Quality Control Board shall establish water quality objectives which, in the Regional Board's judgment, are necessary for the reasonable protection of beneficial uses and for the prevention of nuisance.

Section 303 of the 1972 Amendments to the federal Water Pollution Control Act requires the State to submit to the Administrator of the U.S. Environmental Protection Agency (U.S. EPA) for approval, all new or revised water quality standards which are established for surface and ocean waters. Under federal terminology, water quality standards consist of beneficial uses enumerated in Chapter Two and water quality objectives contained in this chapter.

Water quality objectives contained herein are designed to satisfy all State and federal requirements.

As new information becomes available, the Regional Board will review the appropriateness of objectives contained herein. These objectives are subject to public hearing at least once during each three-year period following adoption of this plan for the purpose of review and modification as appropriate.

### I. CONSIDERATIONS IN SELECTING WATER QUALITY OBJECTIVES

The aforementioned 1972 Amendments to the federal Water Pollution Control Act declare that a national goal is elimination of discharge of pollutants into navigable waters.

A prerequisite to water quality control planning is the establishment of a base or reference point. The base in this instance was various general and specific water quality criteria previously found acceptable for particular beneficial uses or selected sources of waste. Current technical guidelines, available historical data, and enforcement feasibility were given full consideration in formulating water quality objectives.

A distinction is made here between the terms "water quality objectives" and "water quality standards". Water quality objectives have been adopted by the State and, when applicable, extended as federal water quality standards. Water quality standards, previously mentioned in this chapter's introduction, pertain to navigable waters and become legally enforceable criteria when accepted by the U.S. EPA Regional Administrator.

Point and nonpoint water pollution sources described herein have the same meaning as defined in the federal Water Pollution Control Act. Point sources are waste loads from identifiable sources such as municipal discharges, industrial discharges, vessels, controllable storm waters, fish hatchery discharges, confined animal operations, and agricultural drains. Nonpoint sources are waste loads resulting from land use practices where wastes are not collected and disposed of in any readily identifiable manner. Examples include: urban drainage, agricultural runoff, road construction activities, mining, grassland management, logging and other harvest activities, and natural sources such as effects of fire, flood, and landslide. The distinction between point sources and diffuse sources is not always clear but generally applies to the practicality of waste load control.

Water quality objectives for the Central Coastal Basin satisfy State and federal requirements to protect waters for the beneficial uses in Chapter Two and are consistent with all existing statewide plans and policies.

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## II. WATER QUALITY OBJECTIVES

The water quality objectives which follow supersede and replace those contained in the 1967 Water Quality Control Policies; the Interim Water Quality Control Plan for the Central Coastal Basin adopted by the Regional Board in 1971, including all existing revisions; and the Water Quality Control Plan Report for the Central Coastal Basin, adopted by the Regional Board in 1974.

Controllable water quality shall conform to the water quality objectives contained herein. When other conditions cause degradation of water quality beyond the levels or limits established as water quality objectives, controllable conditions shall not cause further degradation of water quality.

Controllable water quality conditions are those actions or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled.

Water quality objectives are considered to be necessary to protect those present and probable future beneficial uses enumerated in Chapter Two of this plan and to protect existing high quality waters of the State. These objectives will be achieved primarily through the establishment of waste discharge requirements and through implementation of this water quality control plan.

In setting waste discharge requirements, the Regional Board will consider the potential impact on beneficial uses within the area of influence of the discharge, the existing quality of receiving waters, and the appropriate water quality objectives. The Regional Board will make a finding of beneficial uses to be protected and establish waste discharge requirements to protect those uses and to meet water quality objectives.

Several water quality objectives listed herein originate from the California Code of Regulations, Title 22. If Title 22 concentrations are amended, Basin Plan objectives are automatically amended to correspond with the new regulations.

## II.A. ANTI-DEGRADATION POLICY

Wherever the existing quality of water is better than the quality of water established herein as objectives, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," including any revisions thereto. A copy of this policy is included in the Appendix.

### II.A.1. OBJECTIVES FOR OCEAN WATERS

The provisions of the State Board's "Water Quality Control Plan for Ocean Waters of California" (Ocean Plan), "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (Thermal Plan), and any revisions thereto shall apply in their entirety to affected waters of the basin. The Ocean and Thermal Plans shall also apply in their entirety to Monterey Bay and Carmel Bay. Copies of these plans are included verbatim in the Appendix.

In addition to provisions of the Ocean Plan and Thermal Plan, the following objectives shall also apply to all ocean waters, including Monterey and Carmel Bays:

#### Dissolved Oxygen

The mean annual dissolved oxygen concentration shall not be less than 7.0 mg/l, nor shall the minimum dissolved oxygen concentration be reduced below 5.0 mg/l at any time.

#### pH

The pH value shall not be depressed below 7.0, nor raised above 8.5.

#### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

## **II.A.2. OBJECTIVES FOR ALL INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES**

### **II.A.2.a. GENERAL OBJECTIVES**

The following objectives apply to all inland surface waters, enclosed bays, and estuaries of the basin:

#### Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is greater.

#### Tastes and Odors

Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

#### Floating Material

Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

#### Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

#### Settleable Material

Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.

#### Oil and Grease

Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

#### Biostimulatory Substances

Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

#### Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

#### Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

Increase in turbidity attributable to controllable water quality factors shall not exceed the following limits:

1. Where natural turbidity is between 0 and 50 Jackson Turbidity Units (JTU), increases shall not exceed 20 percent.
2. Where natural turbidity is between 50 and 100 JTU, increases shall not exceed 10 JTU.
3. Where natural turbidity is greater than 100 JTU, increases shall not exceed 10 percent.

Allowable zones of dilution within which higher concentrations will be tolerated will be defined for each discharge in discharge permits.

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### pH

For waters not mentioned by a specific beneficial use, the pH value shall not be depressed below 7.0 or raised above 8.5.

### Dissolved Oxygen

For waters not mentioned by a specific beneficial use, dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time. Median values should not fall below 85 percent saturation as a result of controllable water quality conditions.

### Temperature

Temperature objectives for Enclosed Bays and Estuaries are as specified in the "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" including any revisions thereto. A copy of this plan is included in the Appendix.

Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.

### Toxicity

All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, toxicity bioassays of appropriate duration, or other appropriate methods as specified by the Regional Board.

Survival of aquatic life in surface waters subjected to a waste discharge or other controllable water quality conditions, shall not be less than that for the same water body in areas unaffected by the waste discharge or, when necessary, for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Wastewater, latest edition. As a minimum, compliance with this objective shall be evaluated with a 96-hour bioassay.

In addition, effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data

become available, and source control of toxic substances is encouraged.

The discharge of wastes shall not cause concentrations of unionized ammonia (NH<sub>3</sub>) to exceed 0.025 mg/l (as N) in receiving waters.

### Pesticides

No individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life.

For waters where existing concentrations are presently nondetectable or where beneficial uses would be impaired by concentrations in excess of nondetectable levels, total identifiable chlorinated hydrocarbon pesticides shall not be present at concentrations detectable within the accuracy of analytical methods prescribed in Standard Methods for the Examination of Water and Wastewater, latest edition, or other equivalent methods approved by the Executive Officer.

### Chemical Constituents

Where wastewater effluents are returned to land for irrigation uses, regulatory controls shall be consistent with Title 22 of the California Code of Regulations and other relevant local controls.

### Other Organics

Waters shall not contain organic substances in concentrations greater than the following:

Methylene Blue	
Activated Substances	0.2 mg/l
Phenols	0.1 mg/l
PCB's	0.3 µg/l
Phthalate Esters	0.002 µg/l

### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

## **MUNICIPAL AND DOMESTIC SUPPLY (MUN)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Organic Chemicals

All inland surface waters, enclosed bays, and estuaries shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.

### Chemical Constituents

Waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Article 4, Chapter 15, Section 64435, Tables 2 and 3 as listed in Table 3-2.

### Phenol

Waters shall not contain phenol concentrations in excess of 1.0 µg/l.

### Radioactivity

Waters shall not contain concentrations of radionuclides in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 5, Sections 64441 and 64443, Table 4.

## **AGRICULTURAL SUPPLY (AGR)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Dissolved Oxygen

Dissolved oxygen concentration shall not be reduced below 2.0 mg/l at any time.

### Chemical Constituents

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Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.

In addition, waters used for irrigation and livestock watering shall not exceed concentrations for those chemicals listed in Table 3-4. Salt concentrations for irrigation waters shall be controlled through implementation of the anti-degradation policy to the effect that mineral constituents of currently or potentially usable waters shall not be increased. It is emphasized that no controllable water quality factor shall degrade the quality of any ground water resource or adversely affect long-term soil productivity.

Where wastewater effluents are returned to land for irrigation uses, regulatory controls shall be consistent with Title 22 of the California Code of Regulations and with relevant controls for local irrigation sources.

## **WATER CONTACT RECREATION (REC-1)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Bacteria

Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 200/100 ml, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml.

## **NON-CONTACT WATER RECREATION (REC-2)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

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Table 3-1. Organic Concentrations Not to be Exceeded in Domestic or Municipal Supply

Constituent	Maximum Contaminant Level (MCL), mg/l*
(a) Chlorinated Hydrocarbons	
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
(b) Chlorophenoxy	
2,4-D	0.1
2,4,5-TP Silvex	0.01
(c) Synthetics	
Atrazine	0.003
Bentazon	0.018
Benzene	0.001
Carbon Tetrachloride	0.0005
Carbofuran	0.018
Chlordane	0.0001
1,2-Dibromo-3-chloropropane	0.0002
1,4-Dichlorobenzene	0.005
1,1-Dichloroethane	0.005
1,2-Dichloroethane	0.0005
cis-1,2-Dichloroethylene	0.006
trans-1,2-Dichloroethylene	0.01
1,1-Dichloroethylene	0.006
1,2-Dichloropropane	0.005
1,3-Dichloropropene	0.0005
Di(2-ethylhexyl) phthalate	0.004
Ethylbenzene	0.680
Ethylene Dibromide	0.00002
Glyphosate	0.7
Heptachlor	0.00001
Heptachlor epoxide	0.00001
Molinate	0.02
Monochlorobenzene	0.030
Simazine	0.010
1,1,2,2-Tetrachloroethane	0.001
Tetrachloroethylene	0.005
Thiobencarb	0.07
1,1,1-Trichloroethane	0.200
1,1,2-Trichloroethane	0.032
Trichloroethylene	0.005
Trichlorofluoromethane	0.15
1,1,2-Trichloro-1,2,2-Trifluoroethane	1.2
Vinyl Chloride	0.0005
*Xylenes	1.750

\* MCL is for either a single isomer or the sum of the isomers.

Table 3-2 Inorganic and Fluoride Concentrations Not to be Exceeded in Domestic or Municipal Supply

Constituent	Limiting Concentration .mg/l			Maximum Contaminant Level
	Lower	Optimum	Upper	
Temperature °F*	Fluoride			
53.7° and below	0.9	1.2	1.7	2.4
53.8° to 58.3°	0.8	1.1	1.5	2.2
58.4° to 63.8°	0.8	1.0	1.3	2.0
63.9° to 70.6°	0.7	0.9	1.2	1.8
70.7° to 79.2°	0.7	0.8	1.0	1.6
79.3° to 90.5°	0.6	0.7	0.8	1.4
Inorganic Chemicals				Maximum Contaminant Level
Aluminum				1
Arsenic				0.05
Barium				1
Cadmium				0.010
Chromium				0.05
Lead				0.05
Mercury				0.002
Nitrate (as NO <sub>3</sub> )				45
Selenium				0.01
Silver				0.05

\*Annual Average of Maximum Daily Air Temperature, °F based on temperature data obtained for a minimum of five years.

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Table 3-3. Guidelines for Interpretation of Quality of Water for Irrigation<sup>a</sup>

Problem and Related Constituent	Water Quality Guidelines		
	No Problem	Increasing Problems	Severe
<b>Salinity<sup>b</sup></b>			
EC of irrigation water, mmho/cm	<0.75	0.75 - 3.0	>3.0
<b>Permeability</b>			
EC of irrigation water, mmho/cm	>0.5	<0.5	<0.2
SAR, adjusted <sup>c</sup>	<6.0	6.0 - 9.0	>9.0
<b>Specific ion toxicity from root absorption<sup>d</sup></b>			
Sodium (evaluate by adjusted SAR)			
Chloride			
me/l	<4	4.0 - 10	>10
mg/l	<142	142 - 355	>355
Boron, mg/l	<0.5	0.5 - 2.0	2.0 - 10.0
<b>Specific ion toxicity from foliar absorption<sup>e</sup>(sprinklers)</b>			
Sodium			
me/l	<3.0	>3.0	—
mg/l	<69	>69	—
Chloride			
me/l	<3.0	>3.0	—
mg/l	<106	>106	—
<b>Miscellaneous<sup>f</sup></b>			
NH4 - N, mg/l for sensitive crops	<5	5 - 30	>30
NO3 - N, mg/l for sensitive crops	<5	5 - 30	>30
HCO3 (only with overhead sprinklers)			
me/l	<1.5	1.5 - 8.5	>8.5
mg/l	<90	90 - 520	>520
pH	Normal range	6.5 - 8.4	—

a Interpretations are based on possible effects of constituents on crops and/or soils. Guidelines are flexible and should be modified when warranted by local experience or special conditions of crop, soil, and method of irrigation.

b Assumes water for crop plus needed water for leaching requirement (LR) will be applied. Crops vary in tolerance to salinity. Refer to tables for crop tolerance and LR. The mmho/cm x 640 = approximate total dissolved solids (TDS) in mg/l or ppm; mmho x 1,000 = micromhos.

c Adjusted SAR (sodium adsorption ratio) is calculated from a modified equation developed by U.S. Salinity Laboratory to include added effects of precipitation and dissolution of calcium in soils and related to CO<sub>3</sub> + HCO<sub>3</sub> concentrations.

To evaluate sodium (permeability) hazard:  $Adjusted\ SAR = Na/[1/2(Ca + Mg)]^{1/2}[1 + (8.4 - pH)]$ .  
 Refer to Appendix for calculation assistance.

SAR can be reduced if necessary by adding gypsum. Amount of gypsum required (GR) to reduce a hazardous SAR to any desired SAR (SAR desired) can be calculated as follows:

$$GR = \left[ \frac{2(Na)^2}{SAR^2\ desired} (Ca + Mg) \right] 234$$

Note: Na and Ca + Mg should be in me/l. GR will be in lbs. of 100 percent gypsum per acre foot of applied water.

d Most tree crops and woody ornamentals are sensitive to sodium and chloride (use values shown). Most annual crops are not sensitive (use salinity tolerance tables). For boron sensitivity, refer to boron tolerance tables.

e Leaf areas wet by sprinklers (rotating heads) may show a leaf burn due to sodium or chloride absorption under low humidity/high evaporation conditions. (Evaporation increases ion concentration in water films on leaves between rotations of sprinkler heads.)

f Excess N may affect production or quality of certain crops; e.g., sugar beets, citrus, avocados, apricots, etc. (1 mg/l NO<sub>3</sub> - N = 2.72 lbs. N/acre foot of applied water.) HCO<sub>3</sub> with overhead sprinkler irrigation may cause a white carbonate deposit to form on fruit and leaves.

Table 3-4. Water Quality Objectives for Agricultural Water Use

ELEMENT	Maximum Concentration (mg/l) <sup>a</sup>	
	Irrigation supply <sup>b</sup>	Livestock watering
Aluminum	5.0	5.0
Arsenic	0.1	0.2
Beryllium	0.1	--
Boron	0.75	5.0
Cadmium	0.01	0.05
Chromium	0.10	1.0
Cobalt	0.05	1.0
Copper	0.2	0.5
Fluoride	1.0	2.0
Iron	5.0	--
Lead	5.0	0.1 <sup>c</sup>
Lithium	2.5 <sup>d</sup>	--
Manganese	0.2	--
Mercury	--	0.01
Molybdenum	0.01	0.5
Nickel	0.2	--
Nitrate + Nitrite	--	100
Nitrite	--	10
Selenium	0.02	0.05
Vanadium	0.1	0.10
Zinc	2.0	25

- a. Values based primarily on "Water Quality Criteria 1972" National Academy of Sciences-National Academy of Engineers, Environmental Study Board, *ad hoc* Committee on Water Quality Criteria furnished as recommended guidelines by University of California Agriculture Extension Service, January 7, 1974; maximum values are to be considered as 90 percentile values not to be exceeded.
- b. Values provided will normally not adversely affect plants or soils; no data available for mercury, silver, tin, titanium, and tungsten.
- c. Lead is accumulative and problems may begin at threshold value (0.05 mg/l).
- d. Recommended maximum concentration for irrigation citrus is 0.075 mg/l.

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#### Bacteria

Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 2000/100 ml, nor shall more than ten percent of samples collected during any 30-day period exceed 4000/100 ml.

### **COLD FRESHWATER HABITAT (COLD)**

#### pH

The pH value shall not be depressed below 7.0 or raised above 8.5. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.

#### Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

#### Temperature

At no time or place shall the temperature be increased by more than 5°F above natural receiving water temperature.

#### Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5.

### **WARM FRESHWATER HABITAT (WARM)**

#### pH

The pH value shall not be depressed below 7.0 or raised above 8.5.

Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.

#### Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time.

#### Temperature

At no time or place shall the temperature of any water be increased by more than 5°F above natural receiving temperature.

#### Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5.

### **FISH SPAWNING (SPWN)**

#### Cadmium

Cadmium shall not exceed .003 mg/l in hard water or .0004 mg/l in soft water at any time. (Hard water is defined as water exceeding 100 mg/l CaCO<sub>3</sub>.)

#### Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

### **MARINE HABITAT (MAR)**

#### pH

The pH value shall not be depressed below 7.0 or raised above 8.5.

Changes in normal ambient pH levels shall not exceed 0.2 units.

#### Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

#### Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of limits listed in Table 3-6.

Table 3-5 Toxic Metal Concentrations not to be Exceeded in Aquatic Life Habitats, mg/l<sup>a,b</sup>

Freshwater (COLD, WARM)		
METAL	HARD (> 100 mg/l CaCO <sub>3</sub> )	SOFT (< 100 mg/l CaCO <sub>3</sub> )
Cadmium <sup>c</sup>	.03	.004
Chromium	.05	.05
Copper	.03	.01
Lead	.03	.03
Mercury <sup>d</sup>	.0002	.0002
Nickel <sup>e</sup>	.4	.1
Zinc	.2	.004

- a. Based on limiting values recommended in the National Academy of Sciences-National Academy of Engineers "Water Quality Criteria 1972." Values are 90 percentile values except as noted in qualifying note "d."
- b. Revision of Table 3-5 is currently in progress by the Regional Board.
- c. Lower cadmium values not to be exceeded for crustaceans and waters designated SPWN are 0.003 mg/l in hard water and 0.0004 mg/l in soft water.
- d. Total mercury values should not exceed 0.05 µg/l as an average value; maximum acceptable concentration of total mercury in any aquatic organism is a total B.O.D. burden of 0.5 µg/l wet weight.
- e. Value cited as objective pertains to nickel salts (not pure metallic nickel).

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Table 3-6. Toxic Metal Concentrations Not to be Exceeded in Marine Habitats, mg/l<sup>a</sup>

METAL	MARINE (MAR)
Cadmium	.0002
Chromium	.05
Copper	.01
Lead	.01
Mercury <sup>c</sup>	.0001
Nickel <sup>d</sup>	.002
Zinc	.02

- a. Based on limiting values recommended in the National Academy of Sciences-National Academy of Engineers "Water Quality Criteria 1972." Values are 90 percentile values except as noted in qualifying note "c."
- b. Revision of Table 3-6 is currently in progress by the Regional Board.
- c. Total mercury values should not exceed 0.05 µg/l as an average value; maximum acceptable concentration of total mercury in any aquatic organism is a total B.O.D. burden of 0.05 µg/l net weight.
- d. Value cited as objective pertains to nickel salts (not pure metallic nickel).

### SHELLFISH HARVESTING (SHELL)

#### Chromium

The maximum permissible value for waters designated SHELL shall be 0.01 mg/l.

#### Bacteria

At all areas where shellfish may be harvested for human consumption, the median total coliform concentration throughout the water column for any 30-day period shall not exceed 70/100 ml, nor shall more than ten percent of the samples collected during any 30-day period exceed 230/100 ml for a five-tube decimal dilution test or 330/100 ml when a three-tube decimal dilution test is used.

### II.A.3. WATER QUALITY OBJECTIVES FOR SPECIFIC INLAND SURFACE WATERS, ENCLOSED BAYS AND ESTUARIES

Certain water quality objectives have been established for selected surface waters; these objectives are intended to serve as a water quality baseline for evaluating water quality management in the basin. Median values, shown in Table 3-7 for surface waters, are based on available data.

It must be recognized that the median values indicated in Table 3-7 are values representing gross areas of a water body. Specific water quality objectives for a particular area may not be directly related to the objectives indicated. Therefore, application of these objectives must be based upon consideration of the surface and ground water quality naturally present; i.e., waste discharge requirements must adhere to the previously stated objectives and issuance of requirements must be tempered by consideration of beneficial uses within the immediate influence of the discharge, the existing quality of receiving waters, and water quality objectives. Consideration of beneficial uses includes: (1) a specific enumeration of all beneficial uses potentially to be affected by the waste discharge, (2) a determination of the relative importance of competing beneficial uses, and (3) impact of the discharge on existing beneficial uses. The Regional Board will make a judgment as to the priority of dominant use and minimize the impact on competing uses while not allowing the discharge to violate receiving water quality objectives.

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral and nutrient constituents where sufficient information is presently not available for the establishment of such objectives.

Table 3-7. Surface Water Quality Objectives, mg/l<sup>a</sup>

Sub-Basin/Sub-Area	TDS	Cl	SO <sub>4</sub>	B	Na	
<b>Santa Ynez</b>						
Cachuma Reservoir	600	20	220	0.4	50	
Solvang	700	50	250	0.4	60	
Lompoc	1000	100	350	0.4	100	
<b>Santa Maria</b>						
Cuyama River (Near Garey)	900	50	400	0.3	70	
Sisquoc River (Near Garey)	600	20	250	0.2	50	
<b>Estero Bay</b>						
Santa Rosa Creek		500	50	80	0.2	50
Chorro Creek	500	50	50	0.2	50	
San Luis Obispo Creek	650	100	100	0.2	50	
Arroyo Grande Creek	800	50	200	0.2	50	
<b>Salinas River</b>						
Salinas River						
Above Bradley	250	20	100	0.2	20	
Above Spreckles	600	80	125	0.2	70	
Gabilan Tributary	300	50	50	0.2	50	
Diablo Tributary	1200	80	700	0.5	150	
Nacimiento River		200	20	50	0.2	20
San Antonio River	250	20	80	0.2	20	
<b>Carmel River</b>	200	20	50	0.2	20	
<b>Monterey Coastal</b>						
Big Sur River	200	20	20	0.2	20	
<b>Pajaro River</b>						
at Chittenden	1000	250	250	1.0	200	
San Benito River	1400	200	350	1.0	250	
Llagas Creek	200	10	20	0.2	20	
<b>Big Basin</b>						
Boulder Creek	150	10	10	0.2	20	
Zayante Creek	500	50	100	0.2	40	
San Lorenzo River						
Above Bear Creek	400	60	80	0.2	50	
At Tait Street Check Dam		250	30	60	0.2	25

a Objectives shown are annual mean values. Objectives are based on preservation of existing quality or water quality enhancement believed attainable following control of point sources

A specific monthly mean objective for Nitrate (as  $\text{NO}_3$ ) of 0.25 mg/l shall apply to both the upper and lower San Lorenzo River to protect beneficial uses from adverse biostimulatory effects. Specific biostimulant objectives for other surface waters will be added to this section in tabular form once they are determined from further studies.

## **II.A.4. OBJECTIVES FOR GROUND WATER**

### **II.A.4.a. GENERAL OBJECTIVES**

The following objectives apply to all ground waters of the basin.

#### Tastes and Odors

Ground waters shall not contain taste or odor producing substances in concentrations that adversely affect beneficial uses.

#### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

### **MUNICIPAL AND DOMESTIC SUPPLY (MUN)**

#### Bacteria

The median concentration of coliform organisms over any seven-day period shall be less than 2.2/100 ml.

#### Organic Chemicals

Ground waters shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.

#### Chemical Constituents

Ground waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 4, Section 64435, Tables 2 and 3.

#### Radioactivity

Ground waters shall not contain concentrations of radionuclides in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 5, Section 64443, Table 4.

### **AGRICULTURAL SUPPLY (AGR)**

Ground waters shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.

In addition, water used for irrigation and livestock watering shall not exceed the concentrations for those chemicals listed in Table 3-4. No controllable water quality factor shall degrade the quality of any ground water resource or adversely affect long-term soil productivity. The salinity control aspects of ground water management will account for effects from all sources.

## **II.A.5. OBJECTIVES FOR SPECIFIC GROUND WATERS**

Certain water quality objectives have been established for selected ground waters; these objectives are intended to serve as a water quality baseline for evaluating water quality management in the basin. The median values for ground waters are shown in Table 3-8.

Table 3-8. Median Ground Water Objectives, mg/l<sup>a</sup>

Sub-basin/Sub-Area	TDS	Cl	SO <sub>4</sub>	B	Na	N <sub>b</sub>
<b>South Coast</b>						
Goleta	1000	150	250	0.2	150	5
Santa Barbara	700	50	150	0.2	100	5
Carpinteria	700	100	150	0.2	100	7
<b>Santa Ynez</b>						
Santa Ynez	600	50	10	0.5	20	1
Santa Rita	1500	150	700	0.5	100	1
Lompoc Plain <sup>f</sup>	1250	250	500	0.5	250	2
Lompoc Upland <sup>f</sup>	600	150	100	0.5	100	2
Lompoc Terrace <sup>f</sup>	750	210	100	0.3	130	1
<b>San Antonio Creek</b>						
San Antonio Creek	600	150	150	0.2	100	5
<b>Santa Maria<sup>c</sup></b>						
Upper Guadalupe <sup>f</sup>	1000 <sup>d</sup>	165	500 <sup>d</sup>	0.5	230	1.4 <sup>e</sup>
Lower Guadalupe <sup>f</sup>	1000 <sup>d</sup>	85	500 <sup>d</sup>	0.2	90	2.0 <sup>e</sup>
Lower Nipomo Mesa <sup>f</sup>	710	95	250	0.15	90	5.7 <sup>e</sup>
Orcutt <sup>f</sup>	740	65	300	0.1	65	2.3 <sup>e</sup>
Santa Maria <sup>f</sup>	1000 <sup>d</sup>	90	510	0.2	105	8.0 <sup>e</sup>
Cuyama Valley	1500	80	--	0.4	--	5
<b>Soda Lake</b>						
Soda Lake	e	e	e	e	e	e
<b>Estero Bay</b>						
Santa Rosa	700	100	80	0.2	50	5
Chorro	1000	250	100	0.2	50	5
San Luis Obispo	900	200	100	0.2	50	5
Arroyo Grande	800	100	200	0.2	50	10
<b>Salinas River</b>						
Upper Valley <sup>f</sup>	600	150	150	0.5	70	5
Upper Forebay <sup>f</sup>	800	100	250	0.5	100	5
Lower Forebay <sup>f</sup>	1500	250	850	0.5	150	8
180 foot Aquifer <sup>f</sup>	1500	250	600	0.5	250	1
400 foot Aquifer <sup>f</sup>	400	50	100	0.2	50	1
<b>Paso Robles<sup>g</sup></b>						
Central Basin <sup>f</sup>	400	60	45	0.3	80	3.4
San Miguel <sup>f</sup>	750	100	175	0.5	105	4.5
Paso Robles <sup>f</sup>	1050	270	200	2.0	225	2.3
Templeton <sup>f</sup>	730	100	120	0.3	75	2.7
Atascadero <sup>f</sup>	550	70	85	0.3	65	2.3
Estrella <sup>f</sup>	925	130	240	0.75	170	3.2
Shandon	1390	430	1025 <sup>h</sup>	2.8	730	2.3
<b>Pajaro River</b>						
Hollister	1200	150	250	1.0	200	5
Tres Pinos	1000	150	250	1.0	150	5
Llagas	300	20	50	0.2	20	5
<b>Big Basin</b>						
Near Felton	100	20	10	0.2	10	1
Near Boulder Creek	250	30	50	0.2	20	5

- a Objectives shown are median values based on data averages; objectives are based on preservation of existing quality or water quality enhancement believed attainable following control of point sources.
- b Measured as Nitrogen
- c Basis for objectives is in the "Water Quality Objectives for the Santa Maria Ground Water Basin Revised Staff Report, May 1985" and February 1986, Staff Report
- d These are maximum objectives in accordance with Title 22 of the Code of Regulations.
- e Ground water basin currently exceeds usable mineral quality.
- f Ground water basin boundary map available in appendix.
- g Basis for objectives is in the report "A Study of the Paso Robles Ground Water Basin to Establish Best Management Practices and Establish Salt Objectives", Coastal Resources Institute, June 1993.
- h Standard exceeds California Secondary Drinking Water Standards contained in Title 22 of the Code of Regulations. Water quality standard is based upon existing water quality. If water quality degradation occurs, the Regional Board may consider salt limits on appropriate discharges.

The restrictions specified for Table 3-7 are applicable to the values indicated in Table 3-8; i.e., the values are at best representative of gross areas only. Ground waters in the Upper Valley of the Salinas River Sub-basin have average Total Dissolved Solids (TDS) concentrations that range from 300 mg/l to over 3000 mg/l. Therefore, application of these objectives must be consistent with the objectives previously stated in this chapter and synchronously reflect the actual ground water quality naturally present. The Regional Board must afford full consideration to: (1) present and probable future beneficial uses affected by the waste discharge; (2) competing beneficial uses; (3) degree of impact on existing beneficial uses; (4) receiving water quality; and (5) water quality objectives, before adjudging priority of dominant use and promulgating waste discharge requirements.

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral constituents where sufficient information is presently not available for the establishment of such objectives.

# WATER QUALITY CONTROL PLAN

## SANTA ANA RIVER BASIN (8)

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## CHAPTER 4

### WATER QUALITY OBJECTIVES

#### INTRODUCTION

The Porter-Cologne Act defines water quality objectives as "... the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area" (§13050 (h)). Further, the Act directs (§13241) that:

"Each regional board shall establish such water quality objectives in water quality control plans as in its judgement will ensure the reasonable protection of beneficial uses as the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water."

Two important additional factors which were also considered in setting the water quality objectives in this Plan are (1) historic and present water quality, and (2) the antidegradation policies cited in Chapter 2.

The water quality objectives in this plan supersede and replace those adopted in the 1983 Basin Plan. Perhaps the most significant difference between this and the prior Plan is the inclusion of new objectives for un-ionized ammonia and site-specific objectives for the middle Santa Ana River system for copper, cadmium, and lead.

Some of these water quality objectives refer to "controllable sources" or "controllable water quality factors." Controllable sources include both point and nonpoint source discharges, such as conventional discharges from pipes, as well as discharges from land areas or other diffuse sources. Controllable water quality factors are those characteristics of the discharge and/or the receiving water which can be controlled by

treatment or management methods. Examples of other activities which may not involve waste discharges, but which also constitute controllable water quality factors, include the percolation of storm water, transport/delivery of water via natural stream channels, and stream diversions.

The water quality objectives in this Plan are specified according to waterbody type: ocean waters; enclosed bays and estuaries; inland surface waters; and groundwaters.

The narrative water quality objectives below are arranged alphabetically. They vary in applicability and scope, reflecting the variety of beneficial uses of water that have been identified (Chapter 3). Where numerical objectives are specified, they generally represent the levels that will protect beneficial uses. However, in establishing waste discharge requirements for specific discharges, the Regional Board may find that more stringent levels are necessary to protect beneficial uses. In other cases, an objective may prohibit the discharge of specific substances, may tolerate natural or "background" levels of certain substances or characteristics but no increases over those values, or may express a limit in terms of not impacting other beneficial uses. An adverse effect or impact on a beneficial use occurs where there is an actual or threatened loss or impairment of that beneficial use.

#### **OCEAN WATERS (Amended by Resolution No. 97-20, April 18, 1997)**

Water quality objectives specified in the "Water Quality Control Plan for Ocean Waters of California" (Ocean Plan) and the "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (Thermal Plan) are incorporated into this Basin Plan by reference. The provisions of the Ocean Plan and Thermal Plan apply to the ocean waters within this Region. **(End of Resolution No. 97-20)**

#### **ENCLOSED BAYS AND ESTUARIES**

"Enclosed bays" means indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. "Estuaries" means waters, including coastal lagoons, located at the mouths of streams which serve as areas of mixing for fresh and ocean waters. Enclosed bays and estuaries do not include ocean waters or inland surface waters (see definition in the Inland Surface Waters section).

The objectives which are included below apply to all enclosed bays and estuaries within the region. In addition to these parameter-specific objectives, the following narrative objective shall apply:

*Enclosed bay and estuarine communities and populations, including vertebrate, invertebrate, and plant species, shall not be degraded as a result of the discharge of waste. Degradation is damage to an aquatic community or population with the result that a balanced community no longer exists. A balanced community is one that is (1) diverse, (2) has the ability to sustain itself through cyclic seasonal changes, (3) includes necessary food chain species, and (4) is not dominated by pollution-tolerant*

*species, unless that domination is caused by physical habitat limitations. A balanced community also (5) may include historically introduced non-native species, but (6) does not include species present because best available technology has not been implemented, or (7) because site-specific objectives have been adopted, or (8) because of thermal discharges.*

### **Algae**

Excessive growth of algae and/or other aquatic plants can degrade water quality. Algal blooms sometimes occur naturally, but they are often the result of excess nutrients (*i.e.*, nitrogen, phosphorus) from waste discharges or nonpoint sources. These blooms can lead to problems with tastes, odors, color, and increased turbidity and can depress the dissolved oxygen content of the water, leading to fish kills. Floating algal scum and algal mats are also an aesthetically unpleasant nuisance.

*Waste discharges shall not contribute to excessive algal growth in receiving waters.*

### **Bacteria, Coliform**

Fecal bacteria are part of the intestinal flora of warm-blooded animals. Their presence in bay and estuarine waters is an indicator of pollution. Total coliform is measured in terms of the number of coliform organisms per unit volume. Total coliform numbers can include non-fecal bacteria, so additional testing is often done to confirm the presence and numbers of fecal coliform bacterial. Water quality objectives for numbers of total and fecal coliform vary with the uses of the water, as shown below.

### **Bays and Estuaries**

**REC-1** *Fecal coliform: log mean less than 200 organisms/100 mL based on five or more samples/30 day period, and not more than 10% of the samples exceed 400 organisms/100 mL for any 30-day period.*

**SHEL** *Fecal coliform: median concentration not more than 14 MPN (most probable number )/100 ml and not more than 10% of samples exceed 43 mpn / 100 mL*

### **Chlorine, Residual**

Wastewater disinfection with chlorine usually produces a chlorine residual. Chlorine and its reaction products are toxic to aquatic life.

*To protect aquatic life, the chlorine residual in wastewater discharged to enclosed bays and estuaries shall not exceed 0.1 mg/L.*

### **Color**

Color in water may arise naturally, such as from minerals, plant matter or algae, or may be caused by industrial pollutants. Color is primarily an aesthetic consideration.

*Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses. The natural color of fish, shellfish or other bay and estuarine water resources used for human consumption shall not be impaired.*

#### **Floatables**

Floatables are an aesthetic nuisance as well as a substrate for algae and insect vectors.

*Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.*

#### **Oil and Grease**

Oil and grease can be present in water as a result of the discharge of treated wastes and the accidental or intentional dumping of wastes into sinks and storm drains. Oils and related materials have a high surface tension and are not soluble in water, therefore forming a film on the water's surface. This film can result in nuisance conditions because of odors and visual impacts. Oil and grease can coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation.

*Waste discharges shall not result in deposition of oil, grease, wax or other materials in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.*

#### **Oxygen, Dissolved**

Adequate dissolved oxygen (D.O.) is vital for aquatic life. Depression of D.O. levels can lead to fish kills and odors resulting from anaerobic decomposition. Dissolved oxygen content in water is a function of water temperature and salinity.

*The dissolved oxygen content of enclosed bays and estuaries shall not be depressed to levels that adversely affect beneficial uses as a result of controllable water quality factors.*

#### **pH**

pH is a measure of the hydrogen ion concentration of water. pH values generally range from 0 (most acidic) to 14 (most alkaline). Many pollutants can alter the pH, raising or lowering it excessively. These extremes in pH can have adverse effects on aquatic biota and can corrode pipes and concrete. Even small changes in pH can harm aquatic biota.

*The pH of bay or estuary waters shall not be raised above 8.6 or depressed below 7.0 as a result of controllable water quality factors; ambient pH levels shall not be changed more than 0.2 units.*

### **Radioactivity**

*Radioactive materials shall not be present in the bay or estuarine waters of the region in concentrations which are deleterious to human, plant or animal life.*

### **Solids, Suspended and Settleable**

Settleable solids are deleterious to benthic organisms and may cause anaerobic conditions to form. Suspended solids can clog fish gills and interfere with respiration in aquatic fauna. They also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

*Enclosed bays and estuaries shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors.*

### **Sulfides**

Sulfides are generated by many industries and from the anaerobic decomposition of organic matter. In water, sulfides can react to form hydrogen sulfide (H<sub>2</sub>S), commonly known for its "rotten egg" odor. Sulfides in ionic form are also toxic to fish.

*The dissolved sulfide content of enclosed bays and estuaries shall not be increased as a result of controllable water quality factors.*

### **Surfactants (surface-active agents)**

This group of materials includes detergents, wetting agents, and emulsifiers.

*Waste discharges shall not contain concentrations of surfactants which result in foam in the course of flow or the use of the receiving water, or which adversely affect aquatic life.*

### **Taste and Odor**

Undesirable tastes and odors in water may be a nuisance and may indicate the presence of a pollutant(s).

*The enclosed bays and estuaries of the region shall not contain, as a result of controllable water quality factors, taste- or odor-producing substances at concentrations which cause a nuisance or adversely affect beneficial uses. The natural taste and odor of fish, shellfish or other enclosed bay and estuarine water resources used for human consumption shall not be impaired.*

### **Temperature**

Waste discharges can cause temperature changes in the receiving waters which adversely affect the aquatic biota. Discharges most likely to cause these temperature effects are cooling tower and heat exchanger blowdown.

*All bay and estuary waters shall meet the objective specified in the Thermal Plan.*

### **Toxic Substances**

*Toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to level which are harmful to human health.*

*The concentrations of toxic substances in the water column, sediments or biota shall not adversely affect beneficial uses.*

### **Turbidity**

Turbidity is a measure of light scattered due to particulates in water.

*Increases in turbidity which result from controllable water quality factors shall comply with the following:*

<u>Natural Turbidity</u>	<u>Maximum Increase</u>
0-50 NTU	20%
50-100 NTU	10 NTU
Greater than 100 NTU	10%

*All enclosed bay and estuaries of the region shall be free of changes in turbidity which adversely affect beneficial uses.*

## **INLAND SURFACE WATERS**

Inland surface waters include streams, rivers, lakes, and wetlands in the Region. Ocean waters and enclosed bays and estuaries are not considered inland surface waters.

The narrative objectives which are included below apply to all inland surface waters within the region, including lakes, streams, and wetlands. In addition, specific numerical objectives are listed in Table 4-1. Where more than one objective is applicable, the stricter shall apply. In addition to these objectives, the following shall apply:

*Inland surface water communities and populations, including vertebrate, invertebrate, and plant species, shall not be degraded as a result of the discharge of waste. Degradation is damage to an aquatic community or population with the result that balanced community no longer exists. A balanced community is one that is (1) diverse, (2) has the ability to sustain itself through cyclic seasonal changes, (3) includes necessary food chain species, and (4) is not dominated by pollution-tolerant species, unless that domination is caused by physical habitat limitations. A balanced community also (5) may include historically introduced non-native species, but (6) does not include species present because best available technology has not been*

*implemented, or (7) because site-specific objectives have been adopted, or (8) because of thermal discharges.*

### **Algae**

Excessive growth of algae and/or other aquatic plants can degrade water quality. Algal blooms sometimes occur naturally, but they are often the result of excess nutrients (*i.e.*, nitrogen, phosphorous) from waste discharges or nonpoint sources. These blooms can lead to problems with tastes, odors, color, and increased turbidity and can depress the dissolved oxygen content of the water, leading to fish kills. Floating algal scum and algal mats are also an aesthetically unpleasant nuisance.

*Waste discharges shall not contribute to excessive algal growth in inland surface receiving waters.*

### **Ammonia, Un-ionized**

Un-ionized ammonia (NH<sub>3</sub>, or UIA) is toxic to fish and other aquatic organisms. In water, UIA exists in equilibrium with ammonium (NH<sub>4</sub><sup>+</sup>) and hydroxide (OH) ions. The proportions of each change as the temperature, pH, and salinity of the water change.

The 1983 Basin Plan specified an UIA objective of 0.8 mg/L for waterbodies designated **WARM**. The SWRCB directed the Regional Board to review the 0.8 mg/L objective because of concerns that it is not stringent enough to protect aquatic wildlife. The USEPA concurred that this review was necessary.

The Regional Board contracted with California State University, Fullerton to conduct a study of un-ionized ammonia in the Santa Ana River and to develop recommendations regarding the UIA objective. This study, which was conducted in 1985-87, was complemented by additional Regional Board staff analysis. The additional staff analysis focused on adjusting EPA's national criteria for **WARM** waters (published in 1984 and amended in 1992), using the recalculation procedure. With this procedure, cold and warmwater species not found in the Santa Ana Region's **WARM** designated waters were deleted from the database used to derive the national criteria, and new criteria were calculated.

Based on these analyses, this Plan specifies UIA objectives for **WARM** and **COLD** designated waterbodies in the Region. **Note:** site-specific objectives have been developed for the Santa Ana River and certain tributaries (see next page).

#### **Acute (1-hour) UIA-N Objectives**

For waterbodies designed **COLD**:

Objective = 0.822 [0.52/FT/FPH/2], where

$$FT = 10^{(0.03(20-T))}$$

$$FT = 1$$

$$0 \leq T \leq 20^{\circ}\text{C}$$

$$20 \leq T \leq 30^{\circ}\text{C}$$

$$FPH = \frac{1+10^{(7.4-pH)}}{1.25} \quad 6.5 \leq pH \leq 8$$

$$FPH = 1 \quad 8 \leq pH \leq 9$$

For waterbodies designated **WARM**:

Objective =  $0.822[0.87/FT/FPH/2]$ , where

$$FT = 10^{(0.03(20-T))} \quad 0 \leq T \leq 25^\circ C$$

$$FT = 0.7079 \quad 25 \leq T \leq 30^\circ C$$

$$FPH = \frac{1+10^{(7.4-pH)}}{1.25} \quad 6.5 \leq pH \leq 8$$

$$FPH = 1 \quad 8 \leq pH \leq 9$$

**Chronic (4-day) UIA-N Objectives**

For waterbodies designated **COLD**:

Objective =  $0.822[0.52/FT/FPH/RATIO]$ , where

$$FT = 10^{(0.03(20-T))} \quad 0 \leq T \leq 15^\circ C$$

$$FT = 1.4125 \quad 15 \leq T \leq 30^\circ C$$

$$FPH = \frac{1+10^{(7.4-pH)}}{1.25} \quad 6.5 \leq pH \leq 8$$

$$FPH = 1 \quad 8 \leq pH \leq 9$$

$$RATIO = \frac{24[10^{(7.7-pH)}]}{1+10^{(7.4-pH)}} \quad 6.5 \leq pH \leq 7.7$$

$$RATIO = 13.5 \quad 7.7 \leq pH \leq 9$$

For waterbodies designated **WARM**:

Objective =  $0.822[0.87/FT/FPH/RATIO]$ , where

$$FT = 10^{(0.03(20-T))} \quad 0 \leq T \leq 20^\circ C$$

$$FT = 1 \quad 20 \leq T \leq 30^\circ C$$

$$FPH = \frac{1+10^{(7.4-pH)}}{1.25} \quad 6.5 \leq pH \leq 8$$

$$FPH = 1 \quad 8 \leq pH \leq 9$$

$$RATIO = \frac{24[10^{(7.7-pH)}]}{1+10^{(7.4-pH)}} \quad 6.5 \leq pH \leq 7.7$$

$$RATIO = 13.5 \quad 7.7 \leq pH \leq 9$$

*Calculated numerical UIA-N objectives as well as corresponding total ammonia nitrogen concentration for various pH and temperature conditions are shown in Tables 4-2 and 4-3. Table 4-4 lists the above equations in a form that can be entered into a computer or calculator program.*

#### **Site-specific Un-ionized Ammonia Objective for the Santa Ana River System**

In addition to the un-ionized ammonia (UIA) objectives specified above, this Plan includes a chronic (4-day) site-specific UIA objective for the middle Santa Ana River, Chino Creek, Mill Creek (Prado Area), Temescal Creek, and San Timoteo Creek. This site-specific objective is based on carefully controlled chronic toxicity tests on Santa Ana River water conducted as part of the Santa Ana River Use-Attainability Analysis Study. The Santa Ana River water was spiked with UIA concentrations ranging from 0.0 (control) to 1.0 mg/L. The No Observed Effect Level (NOEL) was found to be at a UIA concentration of 0.24 mg/L (or 0.19 mg/L as UIA-nitrogen). Using a 50% safety factor, the UIA objective developed is 0.12 mg/L (or 0.098 mg/L UIA-nitrogen).

*To prevent chronic toxicity to aquatic life in the Santa Ana River, Reaches 2, 3, and 4, Chino Creek, Mill Creek (Prado Area), Temescal Creek and San Timoteo Creek, discharges to these waterbodies shall not cause the concentration of un-ionized ammonia (as nitrogen) to exceed 0.098 mg/L (NH<sub>3</sub>-N) as a 4-day average.*

#### **Bacteria, Coliform**

Fecal bacteria are part of the intestinal flora of warm-blooded animals. Their presence in surface waters is an indicator of pollution. Total coliform is measured in terms of the number of coliform organisms per unit volume. Total coliform numbers can include non-fecal bacteria, so additional testing is often done to confirm the presence and numbers of fecal coliform bacteria. Water quality objectives for numbers of total and fecal coliform vary with the uses of the water, as shown below.

#### *Lakes and Streams*

**MUN** *Total coliform: less than 100 organisms/100 mL*

**REC-1** *Fecal coliform: log mean less than 200 organisms/100 mL based on five or more samples/30 day period, and not more than 10% of the samples exceed 400 organisms/100 mL for any 30-day period*

**REC-2** *Fecal coliform: average less than 2000 organisms/100 mL and not more than 10% of samples exceed 4000 organisms/100 mL for any 30-day period*

### **Boron**

Boron is not considered a problem in drinking water supplies until concentrations of 20-30 mg/L are reached. In irrigation, boron is an essential element. However, boron concentrations in excess of 0.75 mg/L may be deleterious to certain crops, particularly citrus. The maximum safe concentration of even the most tolerant plants is about 4.0mg/L of boron.

*Boron concentrations shall not exceed 0.75 mg/L in inland surface waters of the region as a result of controllable water quality factors.*

### **Chemical Oxygen Demand (COD)**

COD is a measure of the total amount of oxidizable material present in a sample, including stable organic materials which are not measured by the BOD test.

*Waste discharges shall not result in increases in COD levels in inland surface waters which exceed the values shown in Table 4-1 or which adversely affect beneficial uses.*

### **Chloride**

Excess chloride concentrations lead primarily to economic damage rather than public health hazards. Chlorides are considered to be among the most troublesome anions in water used for industrial or irrigation purposes since they significantly affect the corrosion rate of steel and aluminum and can be toxic to plants. A safe value for irrigation is considered to be less than 175 mg/L of chloride. Excess chlorides affect the taste of potable water, so drinking water standards are generally based on potability rather than on health. The secondary drinking water standard for chloride is 500 mg/L.

*The chloride objectives listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors.*

### **Chlorine, Residual**

Wastewater disinfection with chlorine usually produces a chlorine residual. Chlorine and its reaction products are toxic to aquatic life.

*To protect aquatic life, the chlorine residual in wastewater discharged to inland surface waters shall not exceed 0.1 mg/L.*

### **Color**

Color in water may arise naturally, such as from minerals, plant matter, or algae, or may be caused by industrial pollutants. Color is primarily an aesthetic consideration, although it can discolor clothes and food. The secondary drinking water standard for color is 15 color units.

*Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses. The natural color of fish, shellfish or other inland surface water resources used for human consumption shall not be impaired.*

**Dissolved Solids, Total (Total Filtrable Residue)**

The department of Health Services recommends that the concentration of total dissolved solids (TDS) in drinking water be limited to 1000 mg/L (secondary drinking water standard) due to taste considerations. For most irrigation uses, water should have a TDS concentration under 700mg/L. Quality-related consumer cost analyses have indicated that a benefit to consumers exist if water is supplied at or below 500mg/L TDS.

*The dissolved mineral content of the waters of the region, as measured by the total dissolved solids test ("Standard Methods for the Examination of Water and Wastewater, 16<sup>th</sup> Ed.," 1985: 209B (180°C), p. 95), shall not exceed the specific objectives listed in Table 4-1 as a result of controllable water quality factors.*

**Filtrable Residue, Total**

See Dissolved Solids, Total

**Floatables**

Floatables are an aesthetic nuisance as well as a substrate for algae and insect vectors.

*Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.*

**Fluoride**

Fluoride in water supply used for industrial or irrigation purposes has certain detrimental effects. Fluoride in optimum concentrations in water supply (concentrations dependent upon the mean annual air temperature) is considered beneficial for preventing dental caries, but concentrations above approximately 1 mg/L, or its equivalent at a given temperature, are considered likely to increase the risk of occurrence of dental fluorosis.

*Fluoride concentrations shall not exceed values specified in the table below in inland surface waters designated **MUN** as a result of controllable water quality factors.*

**Annual Average of Maximum Optimum Fluoride**

<u>Daily Air Temperature (°C)</u>	<u>Concentration (mg/L)</u>
12.0 and below	1.2
12.1 to 14.6	1.1
14.7 to 17.6	1.0
17.7 to 21.4	0.9
21.5 to 26.2	0.8
26.3 to 32.5	0.7

### **Hardness (as CaCO<sub>3</sub>)**

The major detrimental effect of hardness is economic. Any concentration (reported as mg/L CaCO<sub>3</sub>) greater than 100mg/L results in the increased use of soap, scale buildup in utensils, in domestic uses, and in plumbing. Hardness in industrial cooling waters is generally objectionable above 50mg/L.

*The objectives listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors. If no hardness objective is listed in Table 4-1, the hardness of receiving waters used for municipal supply (MUN) shall not be increased as a result of waste discharges to levels that adversely affect beneficial uses.*

### **Inorganic Nitrogen, Total**

see Nitrogen, Total Inorganic

### **Metals**

Metals can be toxic to human and animal life.

In 1990, the Environmental Protection Agency (EPA) placed the Santa Ana River, reaches 2, 3, and 4, and Chino Creek on the §304(1) list of "Waters Not Meeting Applicable Water Quality Standards" based on its review of data on certain metals in POTW discharges to the River.

The Santa Ana River dischargers and the Regional Board disagreed with and objected to EPA's §304(1) designation. To demonstrate whether or not the §304(1) designation is correct and what effects, if any, heavy metal levels may have on aquatic life in the Region, the Santa Ana River Dischargers Association and the Santa Ana Watershed Project Authority agreed to conduct a Use-Attainability Analysis (UAA).

The purpose of a Use-Attainability Analysis is to evaluate the "physical, biological, chemical, and hydrological conditions of a river to determine what specific beneficial uses the waterbody can support." If local conditions preclude full attainment of an aquatic life beneficial use for reasons unrelated to water quality, federal and state authorities may allow variances from the generic water quality criteria.

The UAA began in February 1991 and concluded in March 1992. It provided detailed information on chemical, biological, and hydrologic conditions in the middle Santa Ana River aquatic system. Conclusions and recommendations were presented to the Board in June 1992. The information presented is reflected in the Santa Ana River discussion in Chapter 1 and in the new **LWRM** Beneficial Use designation (Chapter 3). Data provided by the UAA was also used to support the adoption of site-specific objectives for three metals, cadmium (Cd), copper (Cu), and lead (Pb) for the Santa Ana River (Reaches 2, 3, and 4) and the perennial portions of some tributaries (including Chino Creek, Cucamonga/Mill Creek, Temescal Creek, and creeks in the Riverside Narrows area).

In adopting these SSOs the Regional Board found (RWQCB Resolution No. 94-1) that:

- a. The Site-Specific Water Quality Objectives (SSOs) will protect the beneficial uses of the Santa Ana River.
- b. The SSOs are conservative.
- c. The SSOs, which represent higher quality than presently exists, will not result in degradation of water quality.
- d. Existing levels of cadmium, copper, and lead in the Santa Ana River do not contribute to toxicity in the Santa Ana River.

The toxicity of these metals varies with water hardness. No fixed hardness value is assumed; objectives are calculated using the hardness of the collected sample.

The following equations represent the SSOs which apply to these waterbodies. These SSOs are expressed as the dissolved form of the metals.

SSO for cadmium:

$$\text{Cd SSO} = 0.85 [e^{(0.7852 * \ln(\text{TH}) - 3.490)}]$$

SSO for Copper

$$\text{Cu SSO} = 0.85 [e^{(0.8545 * \ln(\text{TH}) - 1.465)}]$$

SSO for lead

$$\text{Pb SSO} = 0.25 [e^{(1.237 * \ln(\text{TH}) - 3.958)}]$$

where TH is the total hardness (as CaCO<sub>3</sub>) in mg/L.

The SSOs for cadmium and copper are simply the hardness-dependent formulas for calculating the objective (national criteria), corrected by the dissolved-to-total (metal) ratio. The SSO for lead is the recalculated\* hardness-dependant formula, corrected by the dissolved-to-total ratio.

\*Recalculation for lead was carried out by EPA-Region IX, using the lowest genus mean acute value (GMAV) as the final acute value (FAV) and an acute-to chronic ratio (ACR) of 51.29, resulting in a final chronic value (FCV) of 2.78 and the SSO formula already shown.

The Table below shows the site-specific objectives for cadmium, copper, and lead that would apply to a water sample with 200 mg/L total hardness (as CaCO<sub>3</sub>).

Metal	Calculated WQO	Recalculated Value	EPA	
			Correction Factor	SSO
Cd	2.0	NA	0.85	1.7
Cu	21.4	NA	0.85	18.2
Pb	7.7	16.2	0.25	4.1

Toxicity testing performed as part of the Santa Ana River Use-Attainability Analysis (UAA) has demonstrated that the levels of dissolved metal shown below are safe and non-toxic in Santa Ana River water.

Cadmium	4 µg/L
Copper	37 µg/L
Lead	28 µg/L

There is also evidence that levels as much as 100% higher than those shown above do not result in chronic toxicity.

#### **Methylene Blue-Activated Substances (MBAS)**

The MBAS test is sensitive to the presence of detergents (see surfactants). Positive results may indicate the presence of wastewater. The secondary drinking water standard for MBAS is 0.05 mg/L.

*MBAS concentrations shall not exceed 0.05mg/L in inland surface waters designated **MUN** as a result of controllable water quality factors.*

#### **Nitrate**

High nitrate concentrations in domestic water supplies can be toxic to human life. Infants are particularly susceptible and may develop methemoglobinemia (blue baby syndrome). The primary drinking water standard for nitrate (as NO<sub>3</sub>) is 45 mg/L or 10 mg/L (as N) in inland surface waters designated MUN as a result of controllable water quality factors.

*Nitrate-nitrogen concentrations shall not exceed 45 mg/L (as NO<sub>3</sub>) or 10 mg/L (as N) in inland surface waters designated **MUN** as a result of controllable water quality factors.*

#### **Nitrogen, Total Inorganic**

*The objectives listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors.*

#### **Oil and Grease**

Oil and grease can be present in water as a result of the discharge of treated wastes and the accidental or intentional dumping of wastes into sinks and storm drains. Oils and related materials have a high surface tension and are not soluble in water, therefore forming a film on the water's surface. This film can result in nuisance conditions because of odors and visual impacts. Oil and grease can coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation.

*Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.*

**Oxygen, Dissolved**

Adequate dissolved oxygen (D.O.) is vital for aquatic life. Depression of D.O. levels can lead to fish kills and odors resulting from anaerobic decomposition. Dissolved oxygen content in water is a function of water temperature and salinity.

*The dissolved oxygen content of surface waters shall not be depressed below 5mg/L for waters designated **WARM**, or 6mg/L for waters designated **COLD**, as a result of controllable water quality factors. In addition, waste discharges shall not cause the median dissolved oxygen concentration to fall below 85% of saturation or the 95<sup>th</sup> percentile concentration or fall below 75% of saturation within a 30-day period.*

**pH**

pH is a measure of the hydrogen ion concentration of water. pH values generally range from 0 (most acidic) to 14 (most alkaline). Many pollutants can alter the pH, raising or lowering it excessively. These extremes in pH can have adverse effects on aquatic biota and can corrode pipes and concrete. Even small changes in pH can harm aquatic biota.

*The pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors.*

**Radioactivity**

*Radioactivity materials shall not be present in the waters of the region in concentrations which are deleterious to human, plant or animal life. Waters designated **MUN** shall meet the limits specified in the California Code of Regulations, Title 22, and listed here:*

<i>Combined Radium-226 and Radium-228</i>	<i>5</i>	<i>pCi/L</i>
<i>Gross Alpha particle activity</i>	<i>15</i>	<i>pCi/L</i>
<i>Tritium</i>	<i>20,000</i>	<i>pCi/L</i>
<i>Strontium-90</i>	<i>8</i>	<i>pCi/L</i>
<i>Gross Beta particle activity</i>	<i>50</i>	<i>pCi/L</i>
<i>Uranium</i>	<i>20</i>	<i>pCi/L</i>

### **Sodium**

The presence of sodium in drinking water may be harmful to persons suffering from cardiac, renal, and circulatory diseases. It can contribute to taste effects, with the taste threshold depending on the specific sodium salt. Excess concentrations of sodium in irrigation water reduce soil permeability to water and air. The deterioration of soil quality because of the presence of sodium in irrigation water is cumulative and is accelerated by poor drainage.

*The sodium objectives listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors.*

### **Solids, Suspended and Settleable**

Settleable solids are deleterious to benthic organisms and may cause anaerobic conditions to form. Suspended solids can clog fish gill and interfere with respiration in aquatic fauna. They also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

*Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors.*

### **Sulfate**

Excessive sulfate, particularly magnesium sulfate ( $MgSO_4$ ) in potable waters can lead to laxative effects, but this effect is temporary. There is some taste effect from magnesium sulfate in the range of 400-600 mg/L as  $MgSO_4$ . The secondary drinking water standard for sulfate is 500 mg/L. Sulfate concentrations in waters native to this region are normally low, less than 40 mg/L, but imported Colorado River water contains approximately 300 mg/L of sulfate.

*The objectives listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors.*

### **Sulfides**

Sulfides are generated by many industries and from the anaerobic decomposition of organic matter. In water, sulfides can react to form hydrogen sulfide ( $H_2S$ ), commonly known for its "rotten egg" odor. Sulfides in ionic form are also toxic to fish.

*The dissolved sulfide content of inland surface waters shall not be increased as a result of controllable water quality factors.*

### **Surfactants (surface-active agents)**

This group of materials includes detergents, wetting agents, and emulsifiers. See also Methylene Blue-Activated Substances (MBAS).

*Waste discharges shall not contain concentrations of surfactants which result in foam in the course of flow or use of the receiving water, or which adversely affect aquatic life.*

### **Taste and Odor**

Undesirable tastes and odors in water may be a nuisance and may indicate the presence of a pollutant(s). The secondary drinking water standard for odor (threshold) is about 3 odor units.

*The inland surface waters of the region shall not contain, as a result of controllable water quality factors, taste- or odor-producing substances at concentrations which cause a nuisance or adversely affect beneficial uses. The natural taste and odor of fish, shellfish or other regional inland surface water resources used for human consumption shall not be impaired.*

### **Temperature**

Waste discharges can cause temperature changes in the receiving waters which adversely affect the aquatic biota. Discharges most likely to cause these temperature effects are cooling tower and heat exchanger blowdown.

*The natural receiving water temperature of inland surface waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses. The temperature of waters designated **COLD** shall not be increased by more than 5°F as a result of controllable water quality factors. The temperature of waters designated **WARM** shall not be raised above 90°F June through October or above 78°F during the rest of the year as a result of controllable water quality factors. Lake temperatures shall not be raised more than 4°F above established normal values as a result of controllable water quality factors.*

### **Total Dissolved Solids**

See Dissolved Solids, Total

### **Total Filtrable Residue**

See Dissolved Solids, Total

### **Total Inorganic Nitrogen**

See Nitrogen, Total Inorganic

### **Toxic Substances**

*Toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.*

*The concentrations of contaminants in waters which are existing or potential sources of drinking water shall not occur at levels that are harmful to human health.*

*The concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses.*

### **Turbidity**

Turbidity is a measure of light scattered due to particulates in water. The secondary drinking water standard for turbidity is 5 NTU (nephelometric turbidity units).

*Increases in turbidity which result from controllable water quality factors shall comply with the following:*

<u>Natural Turbidity</u>	<u>Maximum Increase</u>
0-5 NTU	20%
50-100 NTU	10 NTU
Greater than 100 NTU	10%

*All inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses.*

## **GROUNDWATERS**

The narrative objectives that are included below apply to all groundwaters, as noted. In addition, specific numerical objectives are listed in Table 4-1. With the exception of the "maximum benefit" objective identified in this Table (see further discussion below and in Chapter 5), where more than one objective is applicable, the stricter shall apply.

### **Arsenic**

*Arsenic concentrations shall not exceed 0.05 mg/L in groundwater designated **MUN** as a result of controllable water quality factors.*

### **Bacteria, Coliform**

Fecal bacteria are part of the intestinal flora of warm-blooded animals. The presence in groundwater is an indicator of pollution. Total coliform is measured in terms of the number of coliform organisms per unit volume. Total coliform numbers can include non-fecal bacteria, so additional testing is often done to confirm the presence and numbers of fecal coliform bacteria. Water quality objectives for numbers of total fecal coliform vary with the uses of the water, as shown below.

*Total coliform numbers shall not exceed 2.2 organism/100 mL median over any seven-day period in groundwaters designated **MUN** as a result of controllable water quality factors.*

### **Barium**

*Barium concentrations shall not exceed 1.0mg/L in groundwaters designated **MUN** as a result of controllable water quality factors.*

### **Boron**

Boron is not considered a problem in drinking water supplies until concentrations of 20-30 mg/L are reached. In irrigation, boron is an essential element. However, boron concentrations in excess of 0.75 mg/L may be deleterious to certain crops, particularly citrus. The maximum safe concentration of even the most tolerant plants is about 4.0 mg/L of boron.

*Boron concentrations shall not exceed 0.75 mg/L in groundwaters of the region as a result of controllable water quality factors.*

### **Chloride**

Excess chloride concentrations lead primarily to economic damage rather than public health hazards. Chlorides are considered to be among the most troublesome anion in water used for industrial or irrigation purposes since they significantly affect the corrosion rate of steel and aluminum and can be toxic to plants. A safe value for irrigation is considered to be less than 175 mg/L of chloride. Excess chlorides affect the taste of potable water, so drinking water standards are generally based on potability rather than on health. The secondary maximum contaminant level range - upper for chloride is 500 mg/L (CCR, Division 4, Chapter 15, Article 16, § 64449).

*Chloride concentrations shall not exceed 500 mg/L in groundwaters of the region designated **MUN** as a result of controllable water quality factors.*

### **Color**

Color in water may arise naturally, such as from minerals, plant matter or algae, or may be caused by industrial pollutants. Color is primarily an aesthetic consideration, although it can discolor clothes and food. The secondary drinking water standard for color is 15 color units.

*Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses.*

### **Cyanide**

*Cyanide concentrations shall not exceed 0.2mg/L in groundwaters designated **MUN** as a result of controllable water quality factors.*

### **Dissolved Solids, Total (Total Filtrable Residue)**

The Department of Health Services recommends that the concentration of total dissolved solids (TDS) in drinking water be limited to 500 mg/L (secondary maximum contaminant level) (CCR, Division 4, Chapter 15, Article 16, § 64449), due to taste considerations. For most irrigation uses, water should have a TDS concentration under 700 mg/L. Quality-related consumer cost analyses have indicated that a benefit to consumers exists if water is supplied at or below 500 mg/L TDS<sup>2</sup>.

*The dissolved mineral content of the waters of the region, as measured by the total dissolved solids test ("Standard Methods for the Examination of Water and Wastewater, 20<sup>th</sup> Ed.," 1998: 2540C (180°C), p.2-56), shall not exceed the specific objectives listed in Table 4-1 as a result of controllable water quality factors. (See also discussion of management zone TDS and nitrate nitrogen water quality objectives).*

**Filtrable Residue, Total**  
See Dissolved Solids, Total

**Fluoride**

Fluoride in water supply used for industrial or irrigation purposes has certain detrimental effects. Fluoride in optimum concentrations in water supply (concentration dependent upon the mean annual air temperature) is considered beneficial for preventing dental caries, but concentrations above approximately 1 mg/L, or its equivalent at a given temperature, are considered likely to increase the risk of occurrence of dental fluorosis.

*Fluoride concentrations shall not exceed 1.0 mg/L in groundwaters designated **MUN** as a result of controllable water quality factors.*

**Hardness (as CaCO<sub>3</sub>)**

The major detrimental effect of hardness is economic. Any concentration (reported as mg/L CaCO<sub>3</sub>) greater than 100mg/L results in the increased use of soap, scale buildup in utensils in domestic uses, and in plumbing. Hardness in industrial cooling waters is generally objectionable above 50 mg/L.

*The hardness of receiving waters used for municipal supply (**MUN**) shall not be increased as a result of waste discharges to levels that adversely affect beneficial uses.*

**Metals**

Metals can be toxic to human and animal life.

*Metals concentrations shall not exceed the values listed below in groundwaters designated **MUN** as a result of controllable water quality factors.*

<sup>2</sup> These TDS values are noted for information purposes only. For some management zones, the historic ambient quality, on which the TDS objectives are largely based (see also discussion of maximum benefit objectives for specific management zones), exceeds these recommended levels.

<u>Metal</u>	<u>Concentration (mg/L)</u>
Cadmium	0.01
Chromium	0.05
Cobalt	0.2
Copper	1.0
Iron	0.3
Lead	0.05
Manganese	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05

### **Methylene Blue-Activated Substances (MBAS)**

The MBAS test is sensitive to the presence of detergents (see surfactants in inland surface waters discussion). Positive results may indicate the presence of wastewater. The secondary drinking water standard for MBAS is 0.05 mg/L.

*MBAS concentrations shall not exceed 0.05 mg/L in groundwaters designated **MUN** as a result of controllable water quality factors.*

### **Nitrate**

High nitrate concentrations in domestic water supplies can be toxic to human life. Infants are particularly susceptible and may develop methemoglobinemia (blue baby syndrome). The primary drinking water standard for nitrate (as NO<sub>3</sub>) is 45 mg/L or 10 mg/L (as N).

*Nitrate-nitrogen concentrations listed in Table 4-1 shall not be exceeded as a result of controllable water quality factors. (See also discussion of management zone TDS and nitrate nitrogen water quality objectives below).*

### **Oil and Grease**

Oil and grease can be present in water as a result of the discharge of treated wastes and the accidental or intentional dumping of wastes into sinks and storm drains. Oils and related materials have a high surface tension and are not soluble in water, therefore forming a film on the water's surface. This film can result in nuisance conditions because of odors and visual impacts.

*Waste discharges shall not result in deposition of oil, grease, wax or other materials in concentrations which cause a nuisance or adversely affect beneficial uses.*

### **pH**

pH is a measure of the hydrogen ion concentration of water. pH values generally range from 0 (most acidic) to 14 (most alkaline). Many pollutants can alter the pH,

raising or lowering it excessively. These extremes in pH can corrode pipes and concrete.

*The pH of groundwater shall not be raised above 9 or depressed below 6 as a result of controllable water quality factors.*

**Radioactivity**

*Radioactive materials shall not be present in the waters of the region in concentrations which are deleterious to human, plant or animal life. Groundwaters designated **MUN** shall meet the limits specified in the California Code of Regulations, Title 22, and listed here:*

<i>Combined Radium-226 and Radium-228</i>	<i>5</i>	<i>pCi/L</i>
<i>Gross Alpha particle activity</i>	<i>15</i>	<i>pCi/L</i>
<i>Tritium</i>	<i>20,000</i>	<i>pCi/L</i>
<i>Strontium-90</i>	<i>8</i>	<i>pCi/L</i>
<i>Gross Beta particle activity</i>	<i>50</i>	<i>pCi/L</i>
<i>Uranium</i>	<i>20</i>	<i>pCi/L</i>

**Sodium**

The presence of sodium in drinking water may be harmful to persons suffering from cardiac, renal and circulatory diseases. It can contribute to taste effects, with the taste threshold depending on the specific sodium salt (US Geological Survey, Resources Agency of California – State Water Resources Control Board). Excess concentrations of sodium in irrigation water reduce soil permeability to water and air. The deterioration of soil quality because of the presence of sodium in irrigation water is cumulative and is accelerated by poor drainage (California State Water Resources Control Board).

*The California Department of Health Services and the U.S. Environmental Protection Agency have not provided a limit on the concentration of sodium in drinking water. Sodium concentrations shall not exceed 180 mg/L in groundwaters designated **MUN** as a result of controllable water quality factors.*

*Groundwaters designated **AGR** shall not exceed a sodium absorption ration (SAR<sup>3</sup>) of 9 as a result of controllable water quality factors.*

<sup>3</sup> Sodium absorption ratio (SAR)= 
$$\frac{Na}{\left[ \frac{1}{2}(Ca + Mg) \right]^{1/2}}$$

*where Sodium (Na), Calcium (Ca) and Magnesium (Mg) are concentrations in milliequivalents per liter*

### **Sulfate**

Excessive sulfate, particularly magnesium sulfate ( $MgSO_4$ ) in potable waters can lead to laxative effects, but this effect is temporary. There is some taste effect from magnesium sulfate in the range of 400-600mg/L as  $MgSO_4$ . The secondary drinking water standard for sulfate is 500mg/L (CCR, Division 4, Chapter 15, Article 16, §64449). Sulfate concentrations in waters native to this region are normally low, less than 40mg/L, but imported Colorado River water contains approximately 300mg/L of sulfate.

*Sulfate concentrations shall not exceed 500 mg/L in groundwaters of the region designated MUN as a result of controllable water quality factors.*

### **Taste and Odor**

Undesirable tastes and odors in water may be a nuisance and may indicate the presence of a pollutant(s). The secondary drinking water standard for odor (threshold) is 3 odor units.

*The groundwaters of the region shall not contain, as a result of controllable water quality factors, taste- or odor-producing substances at concentrations which cause a nuisance or adversely affect beneficial uses.*

### **Total Dissolved Solids**

See Dissolved Solids, Total

### **Total Filtrable Residue**

See Dissolved Solids, Total

### **Total Inorganic Nitrogen**

See Nitrogen, Total Inorganic

### **Toxic Substances**

*All waters of the region shall be maintained free of substances in concentrations which are toxic, or that produce detrimental physiological responses in human, plant, animal or aquatic life.*

### **Management Zone TDS and Nitrate-nitrogen Water Quality Objectives (Amended by Resolution No. R8-2004-0001, January 22, 2004)**

The TDS and nitrate-nitrogen objectives specified in the 1975 and 1984 Basin Plans, and initially in this 1995 Basin Plan, were based on an evaluation of groundwater samples from the five year period 1968 through 1972. This period represented ambient quality at the time of preparation of the 1975 Basin Plan. As part of the 2004 update of the TDS/Nitrogen management plan in the Basin Plan, historical ambient quality was reviewed using additional data and rigorous statistical procedures. This update also included characterization of current water quality. A comprehensive description of the methodology employed is published in the "Final

Technical Memorandum for Phase 2A of the Nitrogen-TDS Study” (Wildermuth Environmental Inc., July 2000). This effort, coupled with “maximum benefit” demonstrations by certain agencies in the watershed (see further discussion below and in Chapter 5), culminated in the adoption of the TDS and nitrate-nitrogen objectives specified in Table 4-1.

For the most part, the TDS and nitrate-nitrogen water quality objectives for each management zone are based on historical concentrations of TDS and nitrate-nitrogen from 1954 through 1973 and are referred to herein as the “antidegradation” objectives. This period brackets 1968, when the State Board adopted the state’s antidegradation policy in Resolution No. 68-16, “Policy with Respect to Maintaining High Quality Waters”. This Resolution establishes a benchmark for assessing and considering authorization of degradation of water quality. The 20-year period was selected in order to ensure that at least 3 data points in each management zone would be available to calculate historical ambient quality. In general, the following steps were taken to calculate the TDS and nitrate objectives:

- a. Annual average TDS and nitrate-nitrogen data from 1954 – 1973 for each well in a management zone were compiled;
- b. For each well, the data were statistically analyzed. The mean plus “t” (Student’s t) times the standard error of the mean was calculated;
- c. A rectangular grid across all management zones was overlaid. Groundwater storage within each grid was computed; and,
- d. The volume-weighted TDS and nitrate-nitrogen concentration for each management zone was computed. These concentrations are the calculated historical ambient quality for each zone.<sup>4</sup>

These volume-weighted TDS and nitrate-nitrogen concentrations for each management zone were typically identified as the appropriate objectives. However, it is important to note that if the calculated nitrate-nitrogen concentration exceeded 10 mg/L, the nitrate-nitrogen objective was set to 10 mg/L to be consistent with the primary drinking water standard, or to current ambient quality if less than 10 mg/L.

Finally, in some cases, certain agencies proposed alternative, less stringent TDS and nitrate-nitrogen objectives for specific management zones, based on additional consideration of antidegradation requirements and the factors specified in Water Code Section 13241 (see below and Chapter 5). Table 4-1 includes both the historical ambient quality TDS and nitrate-nitrogen objectives (the “antidegradation” objectives) and the objectives based on this additional consideration (the “maximum benefit”

<sup>4</sup> In limited cases, data for ammonia-nitrogen and nitrite-nitrogen as well as nitrate-nitrogen were available and included in the analysis. The ammonia-nitrogen and nitrite-nitrogen values were insignificant. The objectives are thus expressed as nitrate-nitrogen, even where ammonia-nitrogen and nitrite-nitrogen data were included in the analysis.

objectives) for specific management zones. Chapter 5 specifies detailed requirements noticed Public Hearing, the Regional Board finds that "maximum benefit" is not being demonstrated, then the "antidegradation" objectives apply for regulatory purposes.

## **THE SANTA ANA RIVER**

Setting objectives for the flowing portions of the Santa Ana River is a significant feature of this Basin Plan. The River provides water for recreation and for aquatic and wildlife habitat. River flows are a significant source of groundwater recharges in lower basin, which provides domestic supplies for more than two million people. These flows account for about 70% of the total recharge.

The dividing line between reaches 2 and 3 of the River, and between the upper and lower Santa Ana Basins, is Prado Dam, a flood control facility built and operated by the U.S. Army Corps of Engineers. The dam includes a subsurface groundwater barrier, and as a result all ground and surface waters from the upper basin are forced to pass through the dam (or over the spillway). For this reason, it is an ideal place to measure flows and monitor water quality.

The Prado Settlement, a stipulated court judgement (Orange County Water District vs. City of Chino, *et al*), which requires that a certain minimum amount of water be released each year from the upper basin, is overseen by the Santa Ana River Watermaster. The U.S. Geologic Survey (USGS) operates a permanent continuous monitoring station immediately below Prado Dam, and the data collected there are utilized by the Watermaster. Orange County Water District (OCWD) samples the river monthly at the USGS gage and determines the water quality. Compliance with the objective for reaches 2 and 3 is monitored by the Regional Board, using the data and information available from the USGS gage and these sources, plus the data from its own specific sampling programs. (see Chapter 6).

The quality of the Santa Ana River is a function of the quantity and quality of the various components of the flows. The two major components of total flow are storm flow and base flow. Storm flow is the water which results directly from rainfall (surface runoff) in the upper basin; it also includes the stormwater runoff from the San Jacinto Basin which may reach the River via Temescal Creek. Most storms occur during the winter rainy season (December through April). Base flow is composed of wastewater discharges, rising groundwater, and nonpoint source discharges. Wastewater discharges are the treated sewage effluents discharged by municipalities to the river and its tributaries. Rising groundwater occurs at a number of locations along the River, including the San Jacinto Fault, Riverside Narrows, and in or near the Prado flood Control Basin. Nonpoint source discharges include uncontrolled runoff from agricultural and urban areas which is not related to storm flows.

Nontributary flow is a third element of total flow. It is generally imported water released in the upper basin, for recharge in the lower basin (Santa Ana Forebay).

The Santa Ana River Watermaster calculates the amount and quality of total flow for each water year (October 1 to September 30). The Watermaster's Annual Report is used to determine compliance with the stipulated judgement referred to earlier, which set quality and quantity limits on the river. The Watermaster's report presents summary data compiled from the continuous monitoring of flow in cfs (cubic feet per second) and salinity as EC (electrical conductivity) at the USGS Prado Gaging Station. The Watermaster's annual determination of total flow quality will be used to determine compliance with the total flow objective in this Plan. In years of normal rainfall, most of the total flow of the river is percolated in the Santa Ana Forebay, and directly affects the quality of the groundwater. For that reason, compliance with the total dissolved solids (TDS) water quality objective for Reach 2 will be based on the five-year moving average of the annual TDS content of total flow. Use of this moving average allows the effects of wet and dry years to be smoothed out over the five-year period.

As was noted earlier, the three components of base flow in the river are wastewater, rising water, and nonpoint source discharges. These three components are present in varying amounts throughout the year, and the contributions and quality of each can be affected by the regulatory activities of the Regional Board. The quantity of storm flow is obviously highly variable; programs to control its quality are in their nascent stages. For these reasons, water quality objectives for controllable constituents are set based on the base flow of the river, rather than on total flow.

The regulatory activities of the Regional Board include setting waste discharge requirements on point source discharges. Waste discharges requirements are developed on the basis of the limited assimilative capacity of the river (see TDS and Nitrogen Wasteload Allocation, Chapter 5). Nonpoint source discharges, generally urban runoff (nuisance water) and agricultural tailwater, will be regulated by requiring compliance with Best Management Practices (BMPs), where appropriate. The rising water component of base flow will be affected by the extraction of brackish groundwater in several subbasins (a Basin Plan implementation action), by regulation of wastewater discharges, and other activities.

In order to determine whether the water quality and quantity objectives for base flow in Reach 3 are being met, the Regional Board will collect a series of grab and composite samples when the influence of storm flows and nontributary flows is at a minimum. This typically occurs during August and September. At this time of year, there is usually no water impounded behind Prado Dam. The volumes of storm flows, rising water and nonpoint source discharges tend to be low. The major component of base flow at this time is municipal wastewater. The results of this sampling will be compared with the continuous monitoring data collected by USGS and data from other sources. These data will be used to evaluate the efficacy of the Regional Board's regulatory approach, including the TDS and nitrogen wasteload allocations (see Chapter 5). Additional sampling in Reach 3 by the Board and other agencies will help evaluate the fate and effects of the various constituents of base flow, including the validity of the 50% nitrogen loss coefficient (discussed in Chapter 5).

Future river flows and quality (TDS and TIN) were projected by computer models. The results indicate that the objectives for TDS and total nitrogen will be met. The objectives for individual mineral constituents are expected to be met if the TDS objective is met.

### **Prado Basin Surface Water Management Zone**

As discussed in Chapter 3 – Beneficial Uses, the Prado Basin Management Zone (PBMZ) is generally defined as a surface water feature within the Prado Basin. It is defined by the 566-foot elevation above mean sea level along the Santa Ana River and the four tributaries to the Santa Ana River in the Prado Basin (Chino Creek, Temescal Creek, Mill Creek and Cucamonga Creek). Nitrogen, TDS and other water quality objectives that have been established for these surface waters that flow within the proposed PBMZ are shown in Table 4-1. For the purpose of regulating discharges that would affect the PBMZ and downstream waters, these surface water objectives apply. This application of the existing surface water objectives assures continued water quality and beneficial use protection for waters within and downstream of the PBMZ.

### **“MAXIMUM BENEFIT” WATER QUALITY OBJECTIVES**

As part of the 2004 update of the TDS/Nitrogen Management plan in the Basin Plan, several agencies proposed that alternative, less stringent TDS and/or nitrate-nitrogen water quality objectives be adopted for specific groundwater management zones and surface waters. These proposals were based on additional consideration of the factors specified in Water Code Section 13241 and the requirements of the State’s antidegradation policy (State Board Resolution No. 68-16). Since the less stringent objectives would allow a lowering of water quality, the agencies were required to demonstrate that their proposed objectives would protect beneficial uses, and that water quality consistent with maximum benefit to the people of the state would be maintained (thus, the use of the term “maximum benefit” water quality objectives).

Appropriate beneficial use protection/maximum benefit demonstrations were made by the Chino Basin Watermaster/Inland Empire Utilities Agency, the Yucaipa Valley Water District and the City of Beaumont/San Timoteo Watershed Management Authority to justify alternative “maximum benefit” objectives for the Chino North, Cucamonga, Yucaipa, Beaumont and San Timoteo groundwater management zones. These “maximum benefit” proposals, which are described in detail in Chapter 5 – Implementation, entail commitments by the agencies to implement specific projects and programs. While these agencies’ efforts to develop these proposals indicate their strong interest to proceed with these commitments, unforeseen circumstances may impede or preclude it. To address this possibility, this Plan includes both the “antidegradation” and “maximum benefit” objectives for the subject waters (See Table 4-1). Chapter 5 specifies the requirements for

implementation of these objectives. Provided that these agencies' commitments are met, then the agencies have demonstrated maximum benefit, and the "maximum benefit" objectives included in Table 4-1 for these waters apply for regulatory purposes. However, if the Regional Board finds that these commitments are not being met and that "maximum benefit" is thus not demonstrated, then the "antidegradation" objectives for these waters will apply. Chapter 5 also describes the mitigation requirements that will apply should discharges based on "maximum benefit" objectives occur unsupported by the demonstration of "maximum benefit".

**COMPLIANCE WITH OBJECTIVES (Amended by Resolution No. 00-27, May 19, 2000)**

"The Regional Board recognizes that immediate compliance with new, revised or newly interpreted water quality objectives adopted by the Regional Board or the State Water Resources Control Board, or with new, revised or newly interpreted water quality criteria promulgated by the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Board determines that it is infeasible for a discharger to comply immediately with effluent limitations specified to implement such objectives or criteria, compliance shall be achieved in the shortest practicable period of time, not to exceed ten years after the adoption or interpretation of applicable objectives or criteria. This provision authorizes schedules of compliance for objectives and criteria that are adopted or revised or newly interpreted after the effective date of this amendment July 15, 2002.

REFERENCES

The "Federal Clean Water Act," 33 USC 466 *et seq.*

California Water Code, Section 13000 "Water Quality," *et seq.*

California State Water Resources Control Board, "Water Quality Criteria, Second Edition," 1963.

US EPA, "Ambient Water Quality Criteria for Ammonia," 1984.

US EPA Memorandum, "Revised Tables for Determining Average Freshwater Ammonia Concentrations," 1992.

California State University, Fullerton, "Investigation of Un-ionized Ammonia in the Santa Ana River, Final Project Report," February 1988.

California Regional Water Quality Control Board, "Public Workshop – Review of the Un-ionized Ammonia Objective – Summary of Findings & Recommendations," Staff Report, December 1988.

Santa Ana Watershed Project Authority, "Final Report, Santa Ana River Use-Attainability Analysis," June 1992.

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California Regional Water Quality Control Board, Resolution No. 93-64, "Resolution Amending the Water Quality Control Plan to Set Site-Specific Water Quality Objectives for Cadmium, Copper, and Lead in the Middle Santa Ana River," October 1993.

ENSR Consulting and Engineering, "Short-Term Chronic Toxicity of Un-ionized Ammonia to Fathead Minnows (*Pimephales promelas*) in a Site Water," September 1993.

California Code of Regulations (CCR), Division 4, Chapter 15, Article 16, § 64449

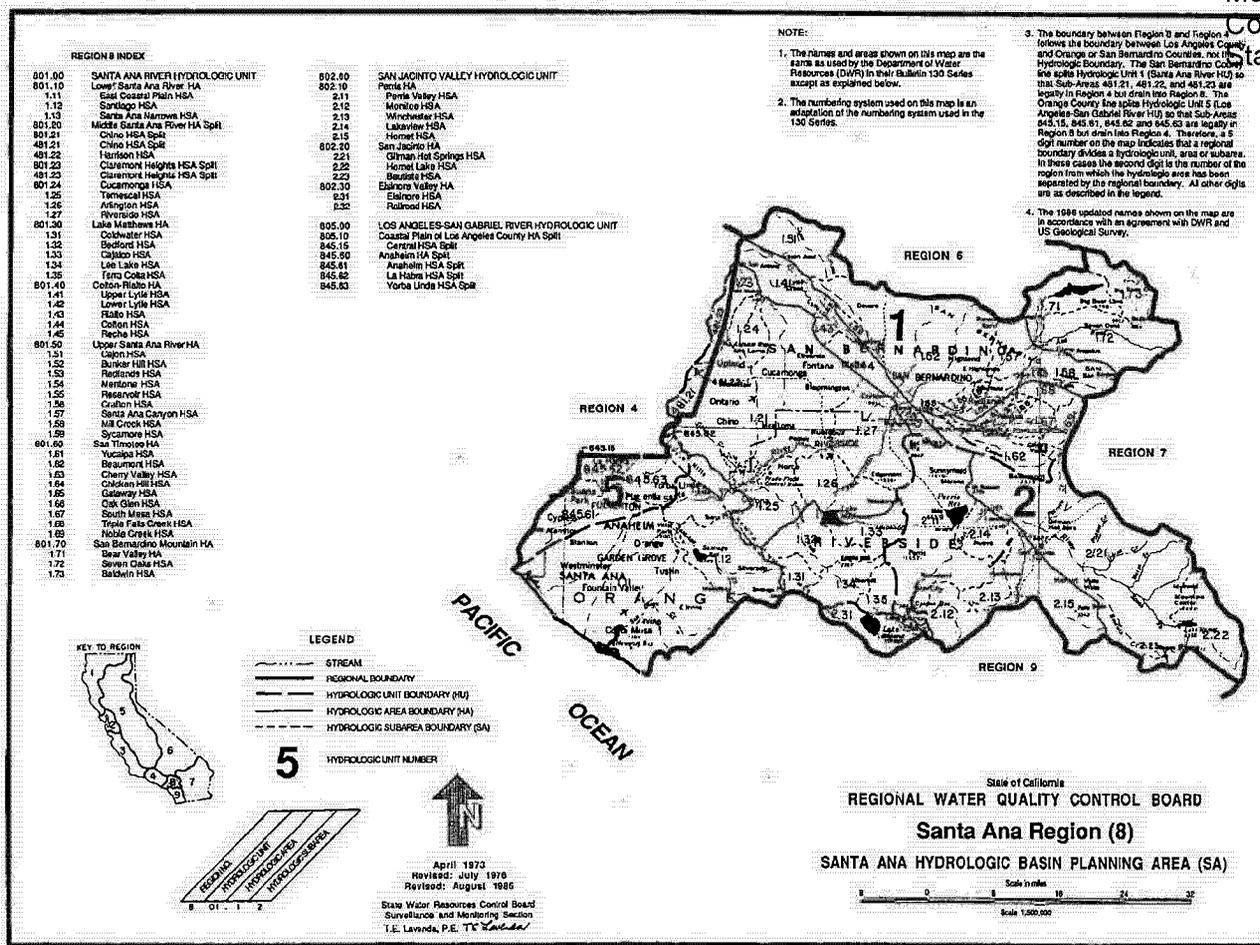
Wildermuth Environmental, Inc., TIN/TDS – Phase 2A of the Santa Ana Watershed, Development of Groundwater Management Zones, Estimation of Historic and Current TDS and Nitrogen Concentrations in Groundwater, Final Technical Memorandum," July 2000.

40 Code of Federal Regulations (CFR), Chapter 1, § 143,3

The Resources Agency of California, State Water Resources Control Board, Publication No. 3-1, "Water Quality Criteria", pages 258-26, 1963

US Geological Survey, "Basic Ground-Water Hydrology", Water Supply Paper 2220, pages 64-65, 1984

California State Water Resources Control Board, "Irrigation with Reclaimed Municipal Wastewater, A Guidance Manual", Report No. 84-1, wr, July 1984.



**Table 4-1 WATER QUALITY OBJECTIVES**

OCEAN WATERS	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	
<b>NEARSHORE ZONE*</b>								
San Gabriel River to Poppy Street in Corona del Mar+	---	---	---	---	---	---	---	801.11
Poppy Street to Southeast Regional Boundary+	---	---	---	---	---	---	---	801.11
<b>OFFSHORE ZONE</b>								
Waters Between Nearshore Zone And Limit of State Waters+	---	---	---	---	---	---	---	

\* Defined by Ocean Plan Chapter II A.1.: "Within a zone bounded by shoreline and a distance of 1000 feet from shoreline or the 30-foot depth Contour, whichever is further from shoreline..."

+ Numeric objectives have not been established; narrative objectives apply.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

BAYS, ESTUARIES, AND TIDAL PRISMS	WATER QUALITY OBJECTIVES (mg/l)								Hydrologic Unit
	Total Dissolved Solid	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand		
Anaheim Bay – Outer Bay+	---	---	---	---	---	---	---	---	801.11
Anaheim Bay – Seal Beach National Wildlife Refuge+	---	---	---	---	---	---	---	---	801.11
Sunset Bay – Huntington Harbour+	---	---	---	---	---	---	---	---	801.11
Bolsa Bay+	---	---	---	---	---	---	---	---	801.11
Bolsa Chica Ecological Reserve+	---	---	---	---	---	---	---	---	801.11
Lower Newport Bay+	---	---	---	---	---	---	---	---	801.11
Upper Newport Bay+	---	---	---	---	---	---	---	---	801.11
Santa Ana River Salt Marsh+	---	---	---	---	---	---	---	---	801.11
Tidal Prism of Santa Ana River (to within 1000' of Victoria Street) and Newport Slough+	---	---	---	---	---	---	---	---	801.11
Tidal Prism of San Gabriel River – River Mouth to Marina Drive+	---	---	---	---	---	---	---	---	845.61
Tidal Prisms of Flood Control Channels Discharging to Coastal or Bay Waters+	---	---	---	---	---	---	---	---	801.11

+ Numeric objectives have not been established; narrative objectives apply.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	
<b>LOWER SANTA ANA RIVER BASIN</b>								
Santa Ana River								
Reach 1 – Tidal Prism to 17 <sup>th</sup> Street in Santa Ana+								801.11
Reach 2 - 17 <sup>th</sup> Street in Santa Ana to Prado Dam	650 <sup>1</sup>	---	---	---	---	---	---	801.11
Aliso Creek+	---	---	---	---	---	---	---	845.63
Carbon Canyon Creek+	---	---	---	---	---	---	---	845.63
Santiago Creek Drainage								
Santiago Creek								
Reach 1 – below Irvine Lake	600	---	---	---	---	---	---	801.12
Reach 2 - Irvine Lake (see Lakes, Pg. 4-36)		---	---	---	---	---	---	
Reach 3 – Irvine Lake to Modjeska Canyon	350	260	20	12	2	80	---	801.12
Reach 4 – in Modjeska Canyon	350	260	20	12	2	80	---	801.12
Silverado Creek	650	450	30	20	1	275	---	801.12
Black Star Creek+	---	---	---	---	---	---	---	801.12
Ladd Creek+	---	---	---	---	---	---	---	801.12

<sup>1</sup> Five-year moving average  
+ Numeric objectives have not been established; narrative objectives apply.

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	
San Diego Creek Drainage								
San Diego Creek								
Reach 1 – below Jeffrey Road	1500	---	---	---	13	---	90	801.11
Reach 2 – above Jeffrey Road to Headwaters	720	---	---	---	5	---	---	801.11
Other Tributaries: Bonita Creek, Serrano Creek, Peters Canyon Wash, Hicks Canyon Wash, Bee Canyon Wash, Borrego Canyon Wash, Agua Chiron Wash, Laguna Canyon Wash, Rattlesnake Canyon Wash, Sand Canyon Wash and other Tributaries to these Creeks+	---	---	---	---	---	---	---	
San Gabriel River Drainage								
Coyote Creek (within Santa Ana Regional Boundary)*	---	---	---	---	---	---	---	

+ Numeric objectives have not been established; narrative objectives apply.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	
<b>UPPER SANTA ANA RIVER BASIN</b>								
Santa Ana River								
Reach 3 – Prado Dam to Mission Blvd. in Riverside – Base Flow <sup>2</sup>	700	350	110	140	10 <sup>3</sup>	150	30	801.21 801.27, 801.25
Reach 4 – Mission Blvd. in Riverside to San Jacinto Fault in San Bernardino	550	---	---	---	10	---	30	801.27 801.44
Reach 5 – San Jacinto Fault in San Bernardino to Seven Oaks Dam	300	190	30	20	5	60	25	801.52 801.57
Reach 6 – Seven Oaks Dam to Headwaters (see also Individual Tributary Streams)	200	100	30	10	1	20	5	801.72
San Bernardino Mountain Streams								
Mill Creek Drainage:								
Mill Creek								
Reach 1 – Confluence with Santa Ana River to Bridge Crossing Route 38 at Upper Powerhouse	200	100	30	10	1	20	5	801.58
Reach 2 – Bridge Crossing Route 38 at Upper Powerhouse to Headwaters	110	100	25	5	1	15	5	801.58

<sup>2</sup> Additional Objectives: Boron: 0.75 mg/l

<sup>3</sup> Total nitrogen, filtered sample

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary	Primary	Secondary	
Mountain Home Creek	200	100	30	10	1	20	5	801.58		801.58		
Mountain Home Creek, East Fork	200	---	---	---	---	---	---	801.70		801.70		
Monkey Face Creek	200	100	30	10	1	20	5	801.70		801.70		
Alger Creek	200	---	---	---	---	---	---	801.70		801.70		
Falls Creek	200	100	30	10	1	20	5	801.70		801.70		
Vivian Creek	200	---	---	---	---	---	---	801.70		801.70		
High Creek	200	---	---	---	---	---	---	801.70		801.70		
Other Tributaries: Lost, Oak Cove, Green, Skinner, Momyer, Glen Martin, Camp, Hatchery, Rattlesnake, Slide, Snow, Bridal Veil, and Oak Creeks, and other Tributaries to these Creeks	200	---	---	---	---	---	---	801.70		801.70		
Bear Creek Drainage:												
Bear Creek	175	115	10	10	1	4	5	801.71		801.71		
Siberia Creek	200	---	---	---	---	---	---	801.71		801.71		
Slide Creek	175	---	---	---	---	---	---	801.71		801.71		
All other Tributaries to these Creeks+	---	---	---	---	---	---	---	801.71		801.71		
Big Bear Lake (see Lakes, pg. 4-36)												

+ Numeric objectives have not been established; narrative objectives apply.

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
Big Bear Lake Tributaries:												
North Creek	175	---	---	---	---	---	---	801.71				801.71
Metcalf Creek	175	---	---	---	---	---	---	801.71				801.71
Grout Creek	150	---	---	---	---	---	---	801.71				801.71
Rathbone (Rathbun) Creek	300	---	---	---	---	---	---	801.71				801.71
Meadow Creek+	---	---	---	---	---	---	---	801.71				801.71
Summit Creek+	---	---	---	---	---	---	---	801.71				801.71
Other Tributaries to Big Bear Lake: Knickerbocker, Johnson, Minnelusa, Polique, and Red Ant Creeks, and other Tributaries to these Creeks	175	---	---	---	---	---	---	801.71				801.71
Baldwin Lake (see Lakes, pg. 4-36)												
Baldwin Lake Drainage:												
Shay Creek+	---	---	---	---	---	---	---	801.73				801.73
Other Tributaries to Baldwin Lake: Sawmill, Green, and Caribou Canyons and other Tributaries to these Creeks+	---	---	---	---	---	---	---	801.73				801.73

+ Numeric objectives have not been established; narrative objectives apply.

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit		
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary				
Other Streams Draining to Santa Ana River (Mountain Reaches <sup>1</sup> )													
Cajon Creek	200	100	30	10	1	20	5	801.51					
City Creek	200	115	30	10	1	20	5	801.57					
Devil Canyon Creek	275	125	35	20	1	2	5	801.57					
East Twin and Strawberry Creeks	475	---	---	---	---	---	---	801.57					
Waterman Canyon Creek	250	---	---	---	---	---	---	801.57					
Fish Creek	200	100	30	10	1	20	5	801.57					
Forsee Creek	200	100	30	10	1	20	5	801.72					
Plunge Creek	200	100	30	10	1	20	5	801.72					
Barton Creek	200	100	30	10	1	20	5	801.72					
Bailey Canyon Creek	200	---	---	---	---	---	---	801.72					
Kimbark Canyon, East Fork Kimbark Canyon, Ames Canyon And West Fork Cable Canyon Creeks	325	---	---	---	---	---	---	801.52					
Valley Reaches <sup>†</sup> of Above Streams	(Water Quality Objectives Correspond to Underlying GW Basin Objectives)										801.52		

<sup>†</sup>The division between Mountain and Valley reaches occurs at the base of the foothills of the San Bernardino or San Gabriel Mountains.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
Other Tributaries (Mountain Reaches <sup>†</sup> ): Alder, Badger Canyon, Bledsoe Gulch, Borea Canyon, Breakneck, Cable Canyon, Cienega Seca, Cold, Converse, Coon, Crystal, Deer, Elder, Fredalba, Frog, Government, Hamilton, Heart Bar, Hemlock, Keller, Kilpecker, Little M <sup>1</sup> , Little Sand Canyon, Lost, Meyer Canyon, Mile, Monroe Canyon, Oak, Rattlesnake, Round Cienega, Sand, Schneider, Staircase, Warm Springs Canyon And Wild Horse Creeks, and other tributaries to those Creeks	200	100	30	10	1	20	5	801.72	801.71, 801.57			
San Gabriel Mountain Streams (Mountain Reaches <sup>†</sup> )												
San Antonio Creek	225	150	20	6	4	25	5	801.23				
Lyle Creek (South, Middle, and North Forks) and Coldwater Canyon Creek	200	100	15	4	4	25	5	801.41	801.42, 801.52, 801.59			
Day Creek	200	100	15	4	4	25	5	801.21				
East Etiwanda Creek	200	100	15	4	4	25	5	801.21				
Valley Reaches <sup>†</sup> of Above Streams	(Water Quality Objectives Correspond to Underlying GW Basin Objectives)										801.21	

<sup>†</sup> The division between Mountain and Valley reaches occurs at the base of the foothills of the San Bernardino or San Gabriel Mountains.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary
Cucamonga Creek									
Reach 1 – Confluence with Mill Creek to 23 <sup>rd</sup> St. in Upland+	---	---	---	---	---	---	---	801.21	
Reach 2 ( Mountain Reach <sup>+</sup> ) – 23 <sup>rd</sup> St. in Upland to headwaters	200	100	15	4	4	25	5	801.24	
Mill Creek+	---	---	---	---	---	---	---	801.25	
Other Tributaries (Mountain Reaches <sup>+</sup> ): Cajon Canyon, San Sevaine, Deer, Duncan Canyon, Henderson Canyon, Bull, Fan, Demens, Thorpe, Angalls, Telegraph Canyon, Stoddard Canyon, Icehouse Canyon, Cascade Canyon, Cedar, Falling Rock, Kerkhoff and Cherry Creeks, and other Tributaries to these Creeks	200	---	---	---	---	---	---	801.21	801.23
San Timoteo Area Streams									
San Timoteo Creek **									
Reach 1A – Santa Ana River Confluence to Barton Road	---	---	---	---	---	---	---	801.52	801.53
Reach 1B – Barton Road to Gage at San Timoteo Canyon Rd. u/s of Yucaipa Valley WD discharge	---	---	---	---	---	---	---	801.52	801.53
Reach 2 – Gage at San Timoteo Canyon Road to Confluence with Yucaipa Creek	---	---	---	---	---	---	---	801.52	801.62

+ Numeric objectives have not been established; narrative objectives apply  
 † The Division between Mountain and Valley reaches occurs at the base of the foothills of the San Bernardino or San Gabriel Mountains  
 \*\* Surface water objectives not established; underlying Management Zone objectives apply. Biological quality protected by narrative objectives

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
Reach 3** - Confluence with Yucaipa Creek to confluence with Little San Gorgonio and Noble Creeks (Headwaters of San Timoteo Creek)	---	---	---	---	---	---	---	801.62				
Oak Glen, Potato Canyon and Birch Creeks	230	125	50	40	3	45	5	801.67				
Little San Gorgonio Creek	230	125	50	40	3	45	5	801.69	801.62, 801.63			
Yucaipa Creek	290	175	60	60	6	45	15	801.67	801.61, 801.62 801.64			
Other Tributaries to these Creeks - Valley Reaches †	---	---	---	---	---	---	---	801.62	801.52, 801.53			
Other Tributaries to these Creeks - Mountain Reaches †	290	---	---	---	---	---	---	801.69	801.67			
Anza Park Drain+	---	---	---	---	---	---	---	801.27				
Sunnyslope Channel+	---	---	---	---	---	---	---	801.27				
Tequesquite Arroyo (Sycamore Creek)†	---	---	---	---	---	---	---	801.27				

+ Numeric objectives have not been established; narrative objectives apply  
 \*\* Surface water objectives not established; underlying Management Zone objectives apply. Biological quality protected by narrative objectives  
 † The Division between Mountain and Valley reaches occurs at the base of the foothills of the San Bernardino or San Gabriel Mountains

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WATER QUALITY OBJECTIVES

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
Prado Area Streams												
Chino Creek												
Reach 1A – Santa Ana River confluence to downstream of confluence with Mill Creek (Prado Area) – Base Flow*	700	350	110	140	10**	150	30	801.21				
Reach 1B – Confluence of Mill Creek (Prado Area) to beginning of concrete-lined channel south of Los Serranos Road	550	240	75	75	8	60	15	801.21				
Reach 2 – Beginning of concrete lined channel south of Los Serranos Road to confluence with San Antonio Creek	---	---	---	---	---	---	---	801.21				
Temescal Creek												
Reach 1 – Lincoln Avenue to Riverside Canal+	---	---	---	---	---	---	---	801.27				
Reach 2 – Riverside Canal to Lee Lake+	---	---	---	---	---	---	---	801.27				
Reach 3 – Lee Lake, (see Lakes, Pg. 4-36)												

\* Additional objective: Boron 0.75 mg/l

\*\* Total nitrogen, filtered sample

+ Numeric objectives have not been established; narrative objectives apply

WATER QUALITY OBJECTIVES

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)								Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary	
Reach 4 - Lee Lake to Mid-section line of Section 17 (downstream end of freeway cut)+	---	---	---	---	---	---	---	801.34		
Reach 5 - Mid-section line of Section 17 (downstream end of freeway cut) to Elsinore Groundwater Subbasin Boundary+	---	---	---	---	---	---	---	801.35		
Reach 6 - Elsinore Groundwater Subbasin Boundary to Lake Elsinore Outlet+	---	---	---	---	---	---	---	801.27		
Coldwater Canyon Creek	250	---	---	---	---	---	---	801.32		
Bedford Canyon Creek+	---	---	---	---	---	---	---	801.32		
Dawson Canyon Creek+	---	---	---	---	---	---	---	801.32		
Other Tributaries to these Creeks	250	---	---	---	---	---	---	801.32		

+ Numeric objectives have not been established; narrative objectives apply

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WATER QUALITY OBJECTIVES

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
<b>San Jacinto River Basin</b>												
San Jacinto River												
Reach 1 – Lake Elsinore to Canyon Lake	450	260	50	65	3	60	15	802.32	802.31			
Reach 2 – Canyon Lake (see Lakes, Pg. 4-37)												
Reach 3 – Canyon Lake to Nuevo Road	820	400	---	250	6	---	15	802.11				
Reach 4 – Nuevo Road to North-South Mid-Section Line, T4S/R1W-38*	500	220	75	125	5	65	---	802.14	802.21			
Reach 5 – North-South Mid-Section Line, T4S/R1 W-SB, to Confluence With Poppet Creek	300	140	30	25	3	40	12	802.21				
Reach 6 – Poppet Creek to Cranston Bridge	250	130	25	20	1	30	12	802.21				
Reach 7 – Cranston Bridge to Lake Hemet	150	100	10	15	1	20	5	802.21				
Bautista Creek – Headwaters to Debris Dam	250	130	25	20	1	30	5	802.21	802.23			
Strawberry Creek and San Jacinto River, North Fork	150	100	10	15	1	20	5	802.21				

\* Note the quality objective for Reach 4 is not intended to preclude transport of water supplies or delivery to Canyon Lake

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WATER QUALITY OBJECTIVES

Table 4-1 WATER QUALITY OBJECTIVES - Continued

INLAND SURFACE STREAMS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary	Primary	Secondary	
Fuller Mill Creek	150	100	10	15	1	20	5	802.22		802.22		
Stone Creek	150	100	10	15	1	20	5	802.21		802.21		
Salt Creek+	---	---	---	---	---	---	---	802.12		802.12		
Other Tributaries: Logan, Black Mountain, Juaro Canyon, Indian, Hurkey, Poppet and Protrero Creeks, and other Tributaries to these Creeks	150	70	10	12	1	15	5	802.12		802.12	802.22	

+ Numeric objectives have not been established; narrative objectives apply.

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

LAKES AND RESERVOIRS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
<b>UPPER SANTA ANA RIVER BASIN</b>												
Baldwin Lake**	---	---	---	---	---	---	---	801.73	---			
Big Bear Lake**	175	125	20	10	0.15	10	---	801.71	---			
Erwin Lake+	---	---	---	---	---	---	---	801.73	---			
Evans Lake	490	---	---	---	---	---	---	801.27	---			
Jenks Lake	200	100	30	10	1	20	---	801.72	---			
Lee Lake+	---	---	---	---	---	---	---	801.34	---			
Mathews, Lake	700	325	100	90	---	290	---	801.33	---			
Mockingbird Reservoir	650	---	---	---	---	---	---	801.26	---			
Norconian, Lake	1050	---	---	---	---	---	---	801.25	---			
<b>LOWER SANTA ANA RIVER BASIN</b>												
Anaheim Lake	600	---	---	---	---	---	---	801.11	---			
Irvine Lake (Santiago Reservoir)	730	360	110	130	6	310	---	801.12	---			
Laguna, Lambert, Peters Canyon, Rattlesnake, Sand Canyon, and Siphon Reservoirs	720	---	---	---	---	---	---	801.11	---			

\* Fills occasionally with storm flows; may evaporate completely

\*\* Additional Objective: 0.15 mg/l Phosphorus

+ Numeric objectives have not been established; narrative objectives apply.

Table 4-1 WATER QUALITY OBJECTIVES - Continued

LAKES AND RESERVOIRS	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary			
<b>SAN JACINTO RIVER BASIN</b>												
Canyon Lake (Railroad Canyon Reservoir)***	700	325	100	90	8	290	---	802.11	802.12			
Elsinore, Lake****	2000	---	---	---	1.5	---	---	802.31				
Fulmor, Lake	150	70	10	12	1	15	---	802.21				
Hemet, Lake	135	---	25	20	1	10	---	802.22				
Perris, Lake	220	110	50	55	1	45	---	802.11				

\*\*\* Note: The quality objectives for Canyon Lake is not intended to preclude transport of water supplies or delivery to the Lake.  
 \*\*\*\* Lake volume and quality highly variable

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WATER QUALITY OBJECTIVES

Table 4-1 WATER QUALITY OBJECTIVES - Continued

WETLANDS (INLAND)	WATER QUALITY OBJECTIVES (mg/l)										Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Total Inorganic Nitrogen	Sulfate	Chemical Oxygen Demand	Primary	Secondary	Primary	Secondary	
San Jacinto Freshwater Marsh** ##	2000	---	---	---	13	---	90	801.11		801.11		
Shay Meadows+	---	---	---	---		---	---	801.73		801.73		
Stanfield Marsh+**	---	---	---	---	---	---	---	801.71		801.71		
Prado Basin Management Zone @	---	---	---	---	---	---	---	801.21		801.21		
San Jacinto Wildlife Preserve+**	---	---	---	---	---	---	---	802.11		802.11	802.14	
Glen Helen+	---	---	---	---	---	---	---	801.59		801.59		

## Additional objective for San Joaquin Freshwater Marsh: COD 90 mg/l

\*\* This is a created wetlands as defined in the wetlands discussion (see Chapter 3)

+ Numeric objectives have not been established; narrative objectives apply

@ includes the Prado Flood Control Basin, a created wetland as defined in the wetlands discussion (see Chapter 3). Chino Creek, Reach 1A, Chino Creek, 1B, Mill Creek (Prado Area) and Santa Ana River, Reach 3 TDS and TIN numeric objectives apply (see discussion).

WATER QUALITY OBJECTIVES

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

GROUNDWATER MANAGEMENT ZONES	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Nitrate as Nitrogen	Sulfate	Primary	Secondary	
<b>UPPER SANTA ANA RIVER BASIN</b>									
Big Bear Valley	300	225	20	10	5.0	20	801.73		
Beaumont "maximum benefit" ++	330	---	---	---	5.0	---	801.62	801.63, 801.69	
Beaumont "antidegradation" ++	230	---	---	---	1.5	---	801.62	801.63, 801.69	
Bunker Hill - A	310	---	---	---	2.7	---	801.51	801.52	
Bunker Hill - B	330	---	---	---	7.3	---	801.52	801.53, 801.54, 801.57, 801.58	
Colton	410	---	---	---	2.7	---	801.44	801.45	
Chino - North "maximum benefit" ++	420	---	---	---	5.0	---	801.21	481.21, 481.23, 481.22, 801.21, 801.23, 801.24	
Chino 1 - "antidegradation" ++	280	---	---	---	5.0	---	802.21	481.21	
Chino 2 - "antidegradation" ++	250	---	---	---	2.9	---	801.21		
Chino 3 - "antidegradation" ++	260	---	---	---	3.5	---	801.21		
Chino - East @	730	---	---	---	10.0	---	801.21	801.27	
Chino - South @	680	---	---	---	4.2	---	801.21	801.26	
Cucamonga "maximum benefit" ++	380	---	---	---	5.0	---	801.24	801.21	

++ "Maximum benefit" objectives apply unless Regional Board determines that lowering of water quality is not of maximum benefit to the people of the state; in that case, "antidegradation" objectives apply (for Chino North, antidegradation objectives for Chino 1, 2, 3 would apply if maximum benefit is not demonstrated). (see discussion in Chapter 5).  
 @ Chino East and South are the designations in the Chino Basin Watermaster "maximum benefit" proposal (see Chapter 5) for the management Zones identified by Wildermuth Environmental, Inc., (July 2000) as Chino 4 and Chino 5, respectively.

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

GROUNDWATER MANAGEMENT ZONES	WATER QUALITY OBJECTIVES (mg/l)						Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Nitrate as Nitrogen	Sulfate	Primary	Secondary
<b>UPPER SANTA ANA RIVER BASIN</b>								
Cucamonga "antidegradation"++	210	---	---	---	2.4	---	801.24	801.21
Lytle	260	---	---	---	1.5	---	801.42	801.42
Rialto	230	---	---	---	2.0	---	801.41	801.42
San Timoteo "maximum benefit"++	400	---	---	---	5.0	---	801.62	
San Timoteo "antidegradation"++	300	---	---	---	2.7	---	801.62	
Yucaipa "maximum benefit"++	370	---	---	---	5.0	---	801.61	801.55, 801.54, 801.56, 801.63, 801.65, 801.66 801.67
Yucaipa "antidegradation"++	320	---	---	---	4.2	---	801.61	801.55, 801.54, 801.56, 801.63, 801.65, 801.66 801.67
<b>MIDDLE SANTA ANA RIVER BASIN</b>								
Arlington	980	---	---	---	10	---	801.26	
Bedford**	---	---	---	---	---	---	801.32	
Coldwater	380	---	---	---	1.5	---	801.31	
Elsinore	480	---	---	---	1.0	---	802.31	
Lee Lake**	---	---	---	---	---	---	801.34	

++ "Maximum benefit" objectives apply unless Regional Board determines that lowering of water quality is not of maximum benefit to the people of the state; in that case, "antidegradation" objectives apply (for Chino North, antidegradation objectives for Chino 1, 2, 3 would apply if maximum benefit is not demonstrated). (see discussion in Chapter 5).

\*\* Numeric objectives not established; narrative objectives apply

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Table 4-1 WATER QUALITY OBJECTIVES - Continued

GROUNDWATER MANAGEMENT ZONES	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Nitrate as Nitrogen	Sulfate	Primary	Secondary	
Riverside - A	560	---	---	---	6.2	---	801.27		
Riverside - B	290	---	---	---	7.6	---	801.27		
Riverside - C	680	---	---	---	8.3	---	801.27		
Riverside - D	810	---	---	---	10.0	---	801.27		
Riverside - E	720	---	---	---	10.0	---	801.27		
Riverside - F	660	---	---	---	9.5	---	801.27		
Temescal	770	---	---	---	10.0	---	801.25		
<b>SAN JACINTO RIVER BASIN</b>									
Gardner Valley	300	100	65	30	2.0	40	802.22	802.21	
Idyllwild Area**	---	---	---	---	---	---	802.22	802.21	
Canyon	230	---	---	---	2.5	---	802.21		
Hemet - South	730	---	---	---	4.1	---	802.15	802.21	
Lakeview - Hemet North	520	---	---	---	1.8	---	802.14	802.15	

\*\* Numeric objectives not established; narrative objectives apply

**Table 4-1 WATER QUALITY OBJECTIVES - Continued**

GROUNDWATER MANAGEMENT ZONES	WATER QUALITY OBJECTIVES (mg/l)							Hydrologic Unit	
	Total Dissolved Solids	Hardness	Sodium	Chloride	Nitrate as Nitrogen	Sulfate	Primary	Secondary	
Menifee	1020	---	---	---	2.8	---	802.13		
Perris North	570	---	---	---	5.2	---	802.11		
Perris South	1260	---	---	---	2.5	---	802.11	802.12, 802.13	
San Jacinto - Lower	520	---	---	---	1.0	---	802.21		
San Jacinto - Upper	320	---	---	---	1.4	---	802.21	802.23	
<b>LOWER SANTA ANA RIVER BASIN</b>									
La Habra**	---	---	---	---	---	---	845.62		
Santiago**	---	---	---	---	---	---	801.12		
Orange	580	---	---	---	3.4	---	801.11	801.13, 845.61, 801.14	
Irvine	910	---	---	---	5.9	---	801.11		

\*\* Numeric objectives not established; narrative objectives apply

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WATER QUALITY OBJECTIVES

**Table 4-2**

**4-Day Average Concentration for Ammonia  
 Salmonids or Other Sensitive Coldwater Species Present  
 (COLD)**

Un-ionized Ammonia (mg/liter N)		Temperature, C						
		0	5	10	15	20	25	30
pH	6.50	0.0004	0.0005	0.0007	0.0010	0.0010	0.0010	0.0010
	6.75	0.0006	0.0009	0.0013	0.0018	0.0018	0.0018	0.0018
	7.00	0.0011	0.0016	0.0022	0.0031	0.0031	0.0031	0.0031
	7.25	0.0020	0.0028	0.0040	0.0056	0.0056	0.0056	0.0056
	7.50	0.0035	0.0050	0.0070	0.0099	0.0099	0.0099	0.0099
	7.75	0.0069	0.0097	0.0137	0.0194	0.0194	0.0194	0.0194
	8.00	0.0080	0.0112	0.0159	0.0224	0.0224	0.0224	0.0224
	8.25	0.0080	0.0112	0.0159	0.0224	0.0224	0.0224	0.0224
	8.50	0.0080	0.0112	0.0159	0.0224	0.0224	0.0224	0.0224
	8.75	0.0080	0.0112	0.0159	0.0224	0.0224	0.0224	0.0224
9.00	0.0080	0.0112	0.0159	0.0224	0.0224	0.0224	0.0224	

Total Ammonia (mg/liter N)		Temperature, C						
		0	5	10	15	20	25	30
pH	6.50	1.36	1.27	1.20	1.15	0.796	0.556	0.393
	6.75	1.36	1.27	1.20	1.15	0.796	0.556	0.393
	7.00	1.36	1.27	1.20	1.16	0.798	0.558	0.395
	7.25	1.36	1.27	1.20	1.16	0.800	0.560	0.397
	7.50	1.36	1.27	1.21	1.16	0.804	0.565	0.402
	7.75	1.49	1.40	1.33	1.28	0.890	0.627	0.448
	8.00	0.974	0.913	0.871	0.844	0.589	0.418	0.302
	8.25	0.551	0.519	0.497	0.484	0.341	0.245	0.179
	8.50	0.313	0.297	0.286	0.282	0.202	0.147	0.111
	8.75	0.180	0.172	0.168	0.169	0.123	0.093	0.072
9.00	0.105	0.101	0.101	0.105	0.079	0.062	0.050	

**Table 4-3**

**4-Day Average Concentration for Ammonia  
 Salmonids or Other Sensitive Coldwater Species Absent <sup>1</sup>  
 (WARM)**

Un-ionized Ammonia (mg/liter N)		Temperature, C						
		0	5	10	15	20	25	30
pH	6.50	0.0006	0.0008	0.0012	0.0017	0.0024	0.0024	0.0024
	6.75	0.0010	0.0015	0.0021	0.0030	0.0042	0.0042	0.0042
	7.00	0.0019	0.0026	0.0037	0.0053	0.0074	0.0074	0.0074
	7.25	0.0033	0.0047	0.0066	0.0094	0.0132	0.0132	0.0132
	7.50	0.0059	0.0083	0.0118	0.0166	0.0235	0.0235	0.0235
	7.75	0.0115	0.0162	0.0229	0.0324	0.0458	0.0458	0.0458
	8.00	0.0133	0.0188	0.0265	0.0375	0.0530	0.0530	0.0530
	8.25	0.0133	0.0188	0.0265	0.0375	0.0530	0.0530	0.0530
	8.50	0.0133	0.0188	0.0265	0.0375	0.0530	0.0530	0.0530
	8.75	0.0133	0.0188	0.0265	0.0375	0.0530	0.0530	0.0530
9.00	0.0133	0.0188	0.0265	0.0375	0.0530	0.0530	0.0530	

Total Ammonia (mg/liter N)		Temperature, C						
		0	5	10	15	20	25	30
pH	6.50	2.27	2.12	2.01	1.93	1.88	1.31	0.928
	6.75	2.27	2.12	2.01	1.93	1.88	1.31	0.930
	7.00	2.27	2.12	2.01	1.93	1.89	1.32	0.933
	7.25	2.27	2.12	2.01	1.94	1.89	1.32	0.939
	7.50	2.27	2.13	2.02	1.95	1.90	1.33	0.949
	7.75	2.49	2.34	2.22	2.14	2.10	1.48	1.06
	8.00	1.63	1.53	1.46	1.41	1.39	0.987	0.173
	8.25	0.922	0.868	0.831	0.811	0.806	0.578	0.424
	8.50	0.524	0.496	0.479	0.472	0.476	0.348	0.262
	8.75	0.301	0.287	0.281	0.282	0.291	0.219	0.170
9.00	0.175	0.170	0.170	0.175	0.187	0.146	0.119	

<sup>1</sup> The values may be conservative, however. If a more refined criterion is desired, EPA recommends a site-specific Criteria modification.

Table 4-4

**Equations Used to Calculate UIA-N and Total Ammonia -N  
 Water Quality Objectives for COLD and WARM Waterbodies**

COLD-Chronic UIA-N	0 ≤ T ≤ 15	15 ≤ T ≤ 30
6.5 ≤ pH ≤ 7.7	$\frac{0.0223}{10^{(8.3-0.03T-pH)}}$	$\frac{0.0158}{10^{(7.7-pH)}}$
7.7 ≤ pH ≤ 8	$\frac{0.0396}{10^{(0.6-0.03T)}} + 10^{(8.0-0.03T-pH)}$	$\frac{0.0280}{1+10^{(7.4-pH)}}$
8 ≤ pH ≤ 9	$\frac{0.0317}{10^{(0.6-0.03T)}}$	0.0224

WARM-Chronic UIA-N	0 ≤ T ≤ 15	15 ≤ T ≤ 30
6.5 ≤ pH ≤ 7.7	$\frac{0.0372}{10^{(8.3-0.03T-pH)}}$	$\frac{0.0372}{10^{(7.7-pH)}}$
7.7 ≤ pH ≤ 8	$\frac{0.0662}{10^{(0.6-0.03T)}} + 10^{(8.0-0.03T-pH)}$	$\frac{0.0662}{1+10^{(7.4-pH)}}$
8 ≤ pH ≤ 9	$\frac{0.0530}{10^{(0.6-0.03T)}}$	0.0530

Total Ammonia-N Objectives

$$NH_3-N = UIA-N \cdot [1 + 10^{(0.09018 + \frac{2729.92}{T+273.15} - pH)}]$$

Note: For all equations, T is the temperature in °C

## CHAPTER 3. WATER QUALITY OBJECTIVES

Section 13241, Division 7 of the California Water Code specifies that each Regional Water Quality Control Board shall establish water quality objectives which, in the Regional Board's judgment, are necessary for the reasonable protection of beneficial uses and for the prevention of nuisance.

Section 303 of the 1972 Amendments to the federal Water Pollution Control Act requires the State to submit to the Administrator of the U.S. Environmental Protection Agency (U.S. EPA) for approval, all new or revised water quality standards which are established for surface and ocean waters. Under federal terminology, water quality standards consist of beneficial uses enumerated in Chapter Two and water quality objectives contained in this chapter.

Water quality objectives contained herein are designed to satisfy all State and federal requirements.

As new information becomes available, the Regional Board will review the appropriateness of objectives contained herein. These objectives are subject to public hearing at least once during each three-year period following adoption of this plan for the purpose of review and modification as appropriate.

### I. CONSIDERATIONS IN SELECTING WATER QUALITY OBJECTIVES

The aforementioned 1972 Amendments to the federal Water Pollution Control Act declare that a national goal is elimination of discharge of pollutants into navigable waters.

A prerequisite to water quality control planning is the establishment of a base or reference point. The base in this instance was various general and specific water quality criteria previously found acceptable for particular beneficial uses or selected sources of waste. Current technical guidelines, available historical data, and enforcement feasibility were given full consideration in formulating water quality objectives.

A distinction is made here between the terms "water quality objectives" and "water quality standards". Water quality objectives have been adopted by the State and, when applicable, extended as federal water quality standards. Water quality standards, previously mentioned in this chapter's introduction, pertain to navigable waters and become legally enforceable criteria when accepted by the U.S. EPA Regional Administrator.

Point and nonpoint water pollution sources described herein have the same meaning as defined in the federal Water Pollution Control Act. Point sources are waste loads from identifiable sources such as municipal discharges, industrial discharges, vessels, controllable storm waters, fish hatchery discharges, confined animal operations, and agricultural drains. Nonpoint sources are waste loads resulting from land use practices where wastes are not collected and disposed of in any readily identifiable manner. Examples include: urban drainage, agricultural runoff, road construction activities, mining, grassland management, logging and other harvest activities, and natural sources such as effects of fire, flood, and landslide. The distinction between point sources and diffuse sources is not always clear but generally applies to the practicality of waste load control.

Water quality objectives for the Central Coastal Basin satisfy State and federal requirements to protect waters for the beneficial uses in Chapter Two and are consistent with all existing statewide plans and policies.

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## II. WATER QUALITY OBJECTIVES

The water quality objectives which follow supersede and replace those contained in the 1967 Water Quality Control Policies; the Interim Water Quality Control Plan for the Central Coastal Basin adopted by the Regional Board in 1971, including all existing revisions; and the Water Quality Control Plan Report for the Central Coastal Basin, adopted by the Regional Board in 1974.

Controllable water quality shall conform to the water quality objectives contained herein. When other conditions cause degradation of water quality beyond the levels or limits established as water quality objectives, controllable conditions shall not cause further degradation of water quality.

Controllable water quality conditions are those actions or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled.

Water quality objectives are considered to be necessary to protect those present and probable future beneficial uses enumerated in Chapter Two of this plan and to protect existing high quality waters of the State. These objectives will be achieved primarily through the establishment of waste discharge requirements and through implementation of this water quality control plan.

In setting waste discharge requirements, the Regional Board will consider the potential impact on beneficial uses within the area of influence of the discharge, the existing quality of receiving waters, and the appropriate water quality objectives. The Regional Board will make a finding of beneficial uses to be protected and establish waste discharge requirements to protect those uses and to meet water quality objectives.

Several water quality objectives listed herein originate from the California Code of Regulations, Title 22. If Title 22 concentrations are amended, Basin Plan objectives are automatically amended to correspond with the new regulations.

## II.A. ANTI-DEGRADATION POLICY

Wherever the existing quality of water is better than the quality of water established herein as objectives, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," including any revisions thereto. A copy of this policy is included in the Appendix.

### II.A.1. OBJECTIVES FOR OCEAN WATERS

The provisions of the State Board's "Water Quality Control Plan for Ocean Waters of California" (Ocean Plan), "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (Thermal Plan), and any revisions thereto shall apply in their entirety to affected waters of the basin. The Ocean and Thermal Plans shall also apply in their entirety to Monterey Bay and Carmel Bay. Copies of these plans are included verbatim in the Appendix.

In addition to provisions of the Ocean Plan and Thermal Plan, the following objectives shall also apply to all ocean waters, including Monterey and Carmel Bays:

#### Dissolved Oxygen

The mean annual dissolved oxygen concentration shall not be less than 7.0 mg/l, nor shall the minimum dissolved oxygen concentration be reduced below 5.0 mg/l at any time.

#### pH

The pH value shall not be depressed below 7.0, nor raised above 8.5.

#### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

## **II.A.2. OBJECTIVES FOR ALL INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES**

### **II.A.2.a. GENERAL OBJECTIVES**

The following objectives apply to all inland surface waters, enclosed bays, and estuaries of the basin:

#### Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is greater.

#### Tastes and Odors

Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

#### Floating Material

Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

#### Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

#### Settleable Material

Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.

#### Oil and Grease

Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

#### Biostimulatory Substances

Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

#### Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

#### Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

Increase in turbidity attributable to controllable water quality factors shall not exceed the following limits:

1. Where natural turbidity is between 0 and 50 Jackson Turbidity Units (JTU), increases shall not exceed 20 percent.
2. Where natural turbidity is between 50 and 100 JTU, increases shall not exceed 10 JTU.
3. Where natural turbidity is greater than 100 JTU, increases shall not exceed 10 percent.

Allowable zones of dilution within which higher concentrations will be tolerated will be defined for each discharge in discharge permits.

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### pH

For waters not mentioned by a specific beneficial use, the pH value shall not be depressed below 7.0 or raised above 8.5.

### Dissolved Oxygen

For waters not mentioned by a specific beneficial use, dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time. Median values should not fall below 85 percent saturation as a result of controllable water quality conditions.

### Temperature

Temperature objectives for Enclosed Bays and Estuaries are as specified in the "Water Quality Control Plan for Control of Temperature in the Coastal and Instate Waters and Enclosed Bays and Estuaries of California" including any revisions thereto. A copy of this plan is included in the Appendix.

Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.

### Toxicity

All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, toxicity bioassays of appropriate duration, or other appropriate methods as specified by the Regional Board.

Survival of aquatic life in surface waters subjected to a waste discharge or other controllable water quality conditions, shall not be less than that for the same water body in areas unaffected by the waste discharge or, when necessary, for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Wastewater, latest edition. As a minimum, compliance with this objective shall be evaluated with a 96-hour bioassay.

In addition, effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data

become available, and source control of toxic substances is encouraged.

The discharge of wastes shall not cause concentrations of unionized ammonia (NH<sub>3</sub>) to exceed 0.025 mg/l (as N) in receiving waters.

### Pesticides

No individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life.

For waters where existing concentrations are presently nondetectable or where beneficial uses would be impaired by concentrations in excess of nondetectable levels, total identifiable chlorinated hydrocarbon pesticides shall not be present at concentrations detectable within the accuracy of analytical methods prescribed in Standard Methods for the Examination of Water and Wastewater, latest edition, or other equivalent methods approved by the Executive Officer.

### Chemical Constituents

Where wastewater effluents are returned to land for irrigation uses, regulatory controls shall be consistent with Title 22 of the California Code of Regulations and other relevant local controls.

### Other Organics

Waters shall not contain organic substances in concentrations greater than the following:

Methylene Blue	
Activated Substances	0.2 mg/l
Phenols	0.1 mg/l
PCB's	0.3 µg/l
Phthalate Esters	0.002 µg/l

### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

## **MUNICIPAL AND DOMESTIC SUPPLY (MUN)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Organic Chemicals

All inland surface waters, enclosed bays, and estuaries shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.

### Chemical Constituents

Waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Article 4, Chapter 15, Section 64435, Tables 2 and 3 as listed in Table 3-2.

### Phenol

Waters shall not contain phenol concentrations in excess of 1.0 µg/l.

### Radioactivity

Waters shall not contain concentrations of radionuclides in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 5, Sections 64441 and 64443, Table 4.

## **AGRICULTURAL SUPPLY (AGR)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Dissolved Oxygen

Dissolved oxygen concentration shall not be reduced below 2.0 mg/l at any time.

### Chemical Constituents

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Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.

In addition, waters used for irrigation and livestock watering shall not exceed concentrations for those chemicals listed in Table 3-4. Salt concentrations for irrigation waters shall be controlled through implementation of the anti-degradation policy to the effect that mineral constituents of currently or potentially usable waters shall not be increased. It is emphasized that no controllable water quality factor shall degrade the quality of any ground water resource or adversely affect long-term soil productivity.

Where wastewater effluents are returned to land for irrigation uses, regulatory controls shall be consistent with Title 22 of the California Code of Regulations and with relevant controls for local irrigation sources.

## **WATER CONTACT RECREATION (REC-1)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

### Bacteria

Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 200/100 ml, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml.

## **NON-CONTACT WATER RECREATION (REC-2)**

### pH

The pH value shall neither be depressed below 6.5 nor raised above 8.3.

Table 3-1. Organic Concentrations Not to be Exceeded in Domestic or Municipal Supply

Constituent	Maximum Contaminant Level (MCL), mg/l*
(a) Chlorinated Hydrocarbons	
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
(b) Chlorophenoxys	
2,4-D	0.1
2,4,5-TP Silvex	0.01
(c) Synthetics	
Atrazine	0.003
Bentazon	0.018
Benzene	0.001
Carbon Tetrachloride	0.0005
Carbofuran	0.018
Chlordane	0.0001
1,2-Dibromo-3-chloropropane	0.0002
1,4-Dichlorobenzene	0.005
1,1-Dichloroethane	0.005
1,2-Dichloroethane	0.0005
cis-1,2-Dichloroethylene	0.006
trans-1,2-Dichloroethylene	0.01
1,1-Dichloroethylene	0.006
1,2-Dichloropropane	0.005
1,3-Dichloropropene	0.0005
Di(2-ethylhexyl) phthalate	0.004
Ethylbenzene	0.680
Ethylene Dibromide	0.00002
Glyphosate	0.7
Heptachlor	0.00001
Heptachlor epoxide	0.00001
Molinate	0.02
Monochlorobenzene	0.030
Simazine	0.010
1,1,2,2-Tetrachloroethane	0.001
Tetrachloroethylene	0.005
Thiobencarb	0.07
1,1,1-Trichloroethane	0.200
1,1,2-Trichloroethane	0.032
Trichloroethylene	0.005
Trichlorofluoromethane	0.15
1,1,2-Trichloro-1,2,2-Trifluoroethane	1.2
Vinyl Chloride	0.0005
*Xylenes	1.750

\* MCL is for either a single isomer or the sum of the isomers.

Table 3-2 Inorganic and Fluoride Concentrations Not to be Exceeded in Domestic or Municipal Supply

Constituent	Limiting Concentration .mg/l			Maximum Contaminant Level
	Lower	Optimum	Upper	
Temperature °F*	Fluoride			
53.7° and below	0.9	1.2	1.7	2.4
53.8° to 58.3°	0.8	1.1	1.5	2.2
58.4° to 63.8°	0.8	1.0	1.3	2.0
63.9° to 70.6°	0.7	0.9	1.2	1.8
70.7° to 79.2°	0.7	0.8	1.0	1.6
79.3° to 90.5°	0.6	0.7	0.8	1.4
Inorganic Chemicals				Maximum Contaminant Level
Aluminum				1
Arsenic				0.05
Barium				1
Cadmium				0.010
Chromium				0.05
Lead				0.05
Mercury				0.002
Nitrate (as NO <sub>3</sub> )				45
Selenium				0.01
Silver				0.05

\*Annual Average of Maximum Daily Air Temperature, °F based on temperature data obtained for a minimum of five years.

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Table 3-3. Guidelines for Interpretation of Quality of Water for Irrigation<sup>a</sup>

Problem and Related Constituent	Water Quality Guidelines		
	No Problem	Increasing Problems	Severe
<b>Salinity<sup>b</sup></b>			
EC of irrigation water, mmho/cm	<0.75	0.75 - 3.0	>3.0
<b>Permeability</b>			
EC of irrigation water, mmho/cm	>0.5	<0.5	<0.2
SAR, adjusted <sup>c</sup>	<6.0	6.0 - 9.0	>9.0
<b>Specific ion toxicity from root absorption<sup>d</sup></b>			
<b>Sodium (evaluate by adjusted SAR)</b>			
Chloride			
me/l	<4	4.0 - 10	>10
mg/l	<142	142 - 355	>355
Boron, mg/l	<0.5	0.5 - 2.0	2.0 - 10.0
<b>Specific ion toxicity from foliar absorption<sup>e</sup>(sprinklers)</b>			
<b>Sodium</b>			
me/l	<3.0	>3.0	--
mg/l	<69	>69	--
<b>Chloride</b>			
me/l	<3.0	>3.0	--
mg/l	<106	>106	--
<b>Miscellaneous<sup>f</sup></b>			
NH4 - N, mg/l for sensitive crops	<5	5 - 30	>30
NO3 - N, mg/l for sensitive crops	<5	5 - 30	>30
<b>HCO3 (only with overhead sprinklers)</b>			
me/l	<1.5	1.5 - 8.5	>8.5
mg/l	<90	90 - 520	>520
pH	Normal range	6.5 - 8.4	--

a Interpretations are based on possible effects of constituents on crops and/or soils. Guidelines are flexible and should be modified when warranted by local experience or special conditions of crop, soil, and method of irrigation.

b Assumes water for crop plus needed water for leaching requirement (LR) will be applied. Crops vary in tolerance to salinity. Refer to tables for crop tolerance and LR. The mmho/cm x 640 = approximate total dissolved solids (TDS) in mg/l or ppm; mmho x 1,000 = micromhos.

c Adjusted SAR (sodium adsorption ratio) is calculated from a modified equation developed by U.S. Salinity Laboratory to include added effects of precipitation and dissolution of calcium in soils and related to CO<sub>3</sub> + HCO<sub>3</sub> concentrations.

To evaluate sodium (permeability) hazard:  $Adjusted\ SAR = Na/[1/2(Ca + Mg)]^{1/2}[1 + (8.4 - pH)^2]$   
 Refer to Appendix for calculation assistance.

SAR can be reduced if necessary by adding gypsum. Amount of gypsum required (GR) to reduce a hazardous SAR to any desired SAR (SAR desired) can be calculated as follows:

$$GR = \left[ \frac{2(Na)^2}{SAR^2\ desired} (Ca + Mg) \right] 234$$

Note: Na and Ca + Mg should be in me/l. GR will be in lbs. of 100 percent gypsum per acre foot of applied water.

d Most tree crops and woody ornamentals are sensitive to sodium and chloride (use values shown). Most annual crops are not sensitive (use salinity tolerance tables). For boron sensitivity, refer to boron tolerance tables.

e Leaf areas wet by sprinklers (rotating heads) may show a leaf burn due to sodium or chloride absorption under low humidity/high evaporation conditions. (Evaporation increases ion concentration in water films on leaves between rotations of sprinkler heads.)

f Excess N may affect production or quality of certain crops; e.g., sugar beets, citrus, avocados, apricots, etc. (1 mg/l NO<sub>3</sub> - N = 2.72 lbs. N/acre foot of applied water.) HCO<sub>3</sub> with overhead sprinkler irrigation may cause a white carbonate deposit to form on fruit and leaves.

Table 3-4. Water Quality Objectives for Agricultural Water Use

ELEMENT	Maximum Concentration (mg/l) <sup>a</sup>	
	Irrigation supply <sup>b</sup>	Livestock watering
Aluminum	5.0	5.0
Arsenic	0.1	0.2
Beryllium	0.1	--
Boron	0.75	5.0
Cadmium	0.01	0.05
Chromium	0.10	1.0
Cobalt	0.05	1.0
Copper	0.2	0.5
Fluoride	1.0	2.0
Iron	5.0	--
Lead	5.0	0.1 <sup>c</sup>
Lithium	2.5 <sup>d</sup>	--
Manganese	0.2	--
Mercury	--	0.01
Molybdenum	0.01	0.5
Nickel	0.2	--
Nitrate + Nitrite	--	100
Nitrite	--	10
Selenium	0.02	0.05
Vanadium	0.1	0.10
Zinc	2.0	25

- a. Values based primarily on "Water Quality Criteria 1972" National Academy of Sciences-National Academy of Engineers, Environmental Study Board, *ad hoc* Committee on Water Quality Criteria furnished as recommended guidelines by University of California Agriculture Extension Service, January 7, 1974; maximum values are to be considered as 90 percentile values not to be exceeded.
- b. Values provided will normally not adversely affect plants or soils; no data available for mercury, silver, tin, titanium, and tungsten.
- c. Lead is accumulative and problems may begin at threshold value (0.05 mg/l).
- d. Recommended maximum concentration for irrigation citrus is 0.075 mg/l.

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Bacteria

Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 2000/100 ml, nor shall more than ten percent of samples collected during any 30-day period exceed 4000/100 ml.

**COLD FRESHWATER HABITAT (COLD)**

pH

The pH value shall not be depressed below 7.0 or raised above 8.5. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.

Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

Temperature

At no time or place shall the temperature be increased by more than 5°F above natural receiving water temperature.

Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5.

**WARM FRESHWATER HABITAT (WARM)**

pH

The pH value shall not be depressed below 7.0 or raised above 8.5.

Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.

Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time.

Temperature

At no time or place shall the temperature of any water be increased by more than 5°F above natural receiving temperature.

Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5.

**FISH SPAWNING (SPWN)**

Cadmium

Cadmium shall not exceed .003 mg/l in hard water or .0004 mg/l in soft water at any time. (Hard water is defined as water exceeding 100 mg/l CaCO<sub>3</sub>.)

Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

**MARINE HABITAT (MAR)**

pH

The pH value shall not be depressed below 7.0 or raised above 8.5.

Changes in normal ambient pH levels shall not exceed 0.2 units.

Dissolved Oxygen

The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.

Chemical Constituents

Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of limits listed in Table 3-6.

Table 3-5 Toxic Metal Concentrations not to be Exceeded in Aquatic Life Habitats, mg/l<sup>a,b</sup>

Freshwater (COLD, WARM)		
METAL	HARD (> 100 mg/l CaCO <sub>3</sub> )	SOFT (< 100 mg/l CaCO <sub>3</sub> )
Cadmium <sup>c</sup>	.03	.004
Chromium	.05	.05
Copper	.03	.01
Lead	.03	.03
Mercury <sup>d</sup>	.0002	.0002
Nickel <sup>e</sup>	.4	.1
Zinc	.2	.004

- a. Based on limiting values recommended in the National Academy of Sciences-National Academy of Engineers "Water Quality Criteria 1972." Values are 90 percentile values except as noted in qualifying note "d."
- b. Revision of Table 3-5 is currently in progress by the Regional Board.
- c. Lower cadmium values not to be exceeded for crustaceans and waters designated SPWN are 0.003 mg/l in hard water and 0.0004 mg/l in soft water.
- d. Total mercury values should not exceed 0.05 µg/l as an average value; maximum acceptable concentration of total mercury in any aquatic organism is a total B.O.D. burden of 0.5 µg/l wet weight.
- e. Value cited as objective pertains to nickel salts (not pure metallic nickel).

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Table 3-6. Toxic Metal Concentrations Not to be Exceeded in Marine Habitats, mg/l<sup>a</sup>

METAL	MARINE (MAR)
Cadmium	.0002
Chromium	.05
Copper	.01
Lead	.01
Mercury <sup>c</sup>	.0001
Nickel <sup>d</sup>	.002
Zinc	.02

- Based on limiting values recommended in the National Academy of Sciences-National Academy of Engineers "Water Quality Criteria 1972." Values are 90 percentile values except as noted in qualifying note "c."
- Revision of Table 3-6 is currently in progress by the Regional Board.
- Total mercury values should not exceed 0.05 µg/l as an average value; maximum acceptable concentration of total mercury in any aquatic organism is a total B.O.D. burden of 0.05 µg/l net weight.
- Value cited as objective pertains to nickel salts (not pure metallic nickel).

### SHELLFISH HARVESTING (SHELL)

#### Chromium

The maximum permissible value for waters designated SHELL shall be 0.01 mg/l.

#### Bacteria

At all areas where shellfish may be harvested for human consumption, the median total coliform concentration throughout the water column for any 30-day period shall not exceed 70/100 ml, nor shall more than ten percent of the samples collected during any 30-day period exceed 230/100 ml for a five-tube decimal dilution test or 330/100 ml when a three-tube decimal dilution test is used.

## II.A.3. WATER QUALITY OBJECTIVES FOR SPECIFIC INLAND SURFACE WATERS, ENCLOSED BAYS AND ESTUARIES

Certain water quality objectives have been established for selected surface waters; these objectives are intended to serve as a water quality baseline for evaluating water quality management in the basin. Median values, shown in Table 3-7 for surface waters, are based on available data.

It must be recognized that the median values indicated in Table 3-7 are values representing gross areas of a water body. Specific water quality objectives for a particular area may not be directly related to the objectives indicated. Therefore, application of these objectives must be based upon consideration of the surface and ground water quality naturally present; i.e., waste discharge requirements must adhere to the previously stated objectives and issuance of requirements must be tempered by consideration of the beneficial uses within the immediate influence of the discharge, the existing quality of receiving waters, and water quality objectives. Consideration of beneficial uses includes: (1) a specific enumeration of all beneficial uses potentially to be affected by the waste discharge, (2) a determination of the relative importance of competing beneficial uses, and (3) impact of the discharge on existing beneficial uses. The Regional Board will make a judgment as to the priority of dominant use and minimize the impact on competing uses while not allowing the discharge to violate receiving water quality objectives.

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral and nutrient constituents where sufficient information is presently not available for the establishment of such objectives.

Table 3-7. Surface Water Quality Objectives, mg/l<sup>a</sup>

Sub-Basin/Sub-Area	TDS	Cl	SO <sub>4</sub>	B	Na	
<b>Santa Ynez</b>						
Cachuma Reservoir	600	20	220	0.4	50	
Solvang	700	50	250	0.4	60	
Lompoc	1000	100	350	0.4	100	
<b>Santa Maria</b>						
Cuyama River (Near Garey)	900	50	400	0.3	70	
Sisquoc River (Near Garey)	600	20	250	0.2	50	
<b>Estero Bay</b>						
Santa Rosa Creek		500	50	80	0.2	50
Chorro Creek	500	50	50	0.2	50	
San Luis Obispo Creek	650	100	100	0.2	50	
Arroyo Grande Creek	800	50	200	0.2	50	
<b>Salinas River</b>						
Salinas River						
Above Bradley	250	20	100	0.2	20	
Above Spreckles	600	80	125	0.2	70	
Gabilan Tributary	300	50	50	0.2	50	
Diablo Tributary	1200	80	700	0.5	150	
Nacimiento River		200	20	50	0.2	20
San Antonio River	250	20	80	0.2	20	
<b>Carmel River</b>	200	20	50	0.2	20	
<b>Monterey Coastal</b>						
Big Sur River	200	20	20	0.2	20	
<b>Pajaro River</b>						
at Chittenden	1000	250	250	1.0	200	
San Benito River	1400	200	350	1.0	250	
Llagas Creek	200	10	20	0.2	20	
<b>Big Basin</b>						
Boulder Creek	150	10	10	0.2	20	
Zayante Creek	500	50	100	0.2	40	
San Lorenzo River						
Above Bear Creek	400	60	80	0.2	50	
At Tait Street Check Dam		250	30	60	0.2	25

a. Objectives shown are annual mean values. Objectives are based on preservation of existing quality or water quality enhancement believed attainable following control of point sources

A specific monthly mean objective for Nitrate (as NO<sub>3</sub>) of 0.25 mg/l shall apply to both the upper and lower San Lorenzo River to protect beneficial uses from adverse biostimulatory effects. Specific biostimulant objectives for other surface waters will be added to this section in tabular form once they are determined from further studies.

## **II.A.4. OBJECTIVES FOR GROUND WATER**

### **II.A.4.a. GENERAL OBJECTIVES**

The following objectives apply to all ground waters of the basin.

#### Tastes and Odors

Ground waters shall not contain taste or odor producing substances in concentrations that adversely affect beneficial uses.

#### Radioactivity

Radionuclides shall not be present in concentrations that are deleterious to human, plant, animal, or aquatic life; or result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

### **MUNICIPAL AND DOMESTIC SUPPLY (MUN)**

#### Bacteria

The median concentration of coliform organisms over any seven-day period shall be less than 2.2/100 ml.

#### Organic Chemicals

Ground waters shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.

#### Chemical Constituents

Ground waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 4, Section 64435, Tables 2 and 3.

#### Radioactivity

Ground waters shall not contain concentrations of radionuclides in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Article 5, Section 64443, Table 4.

### **AGRICULTURAL SUPPLY (AGR)**

Ground waters shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.

In addition, water used for irrigation and livestock watering shall not exceed the concentrations for those chemicals listed in Table 3-4. No controllable water quality factor shall degrade the quality of any ground water resource or adversely affect long-term soil productivity. The salinity control aspects of ground water management will account for effects from all sources.

## **II.A.5. OBJECTIVES FOR SPECIFIC GROUND WATERS**

Certain water quality objectives have been established for selected ground waters; these objectives are intended to serve as a water quality baseline for evaluating water quality management in the basin. The median values for ground waters are shown in Table 3-8.

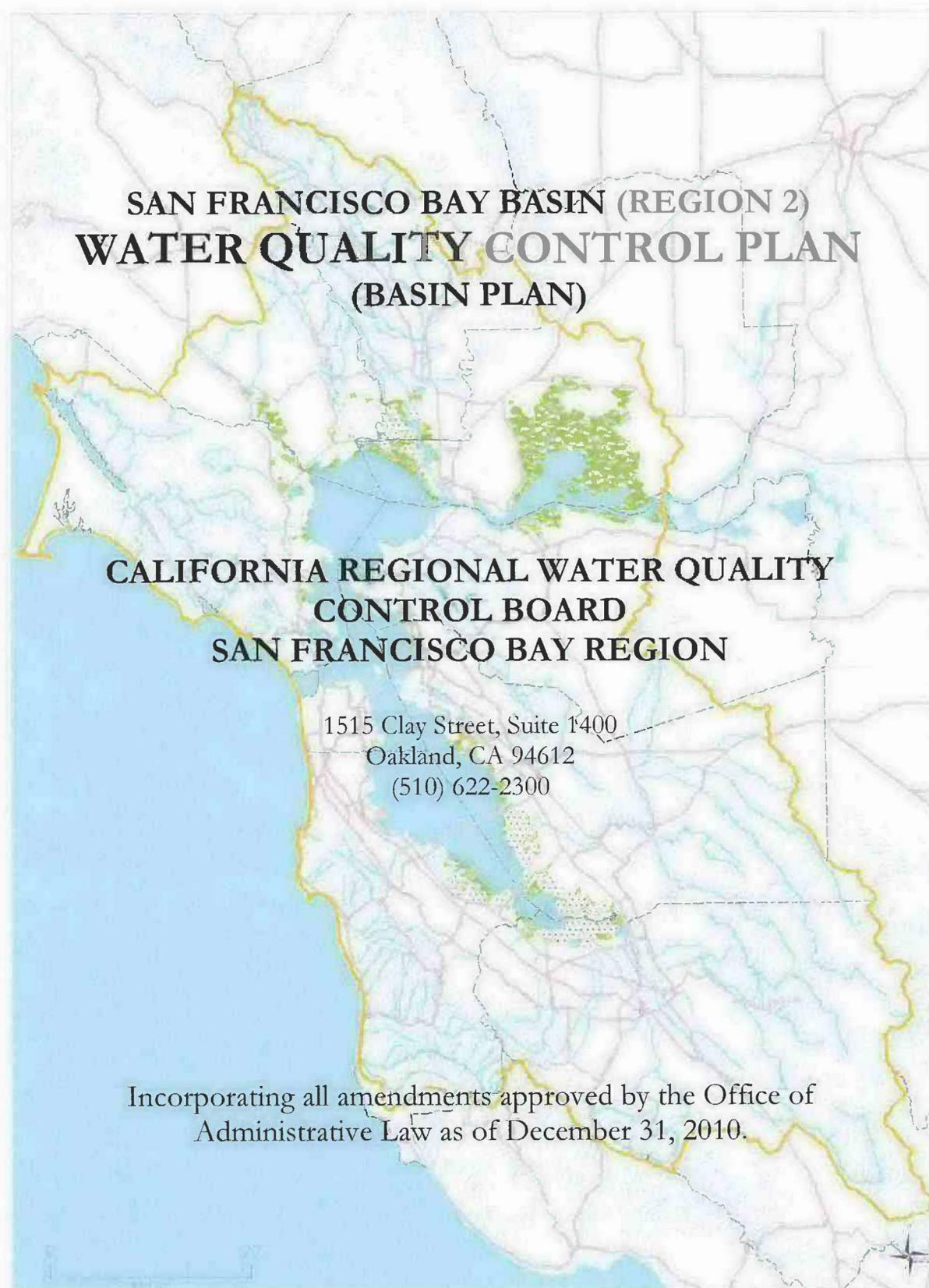
Table 3-8. Median Ground Water Objectives, mg/l<sup>a</sup>

Sub-basin/Sub-Area	TDS	Cl	SO <sub>4</sub>	B	Na	N <sub>b</sub>
<b>South Coast</b>						
Goleta	1000	150	250	0.2	150	5
Santa Barbara	700	50	150	0.2	100	5
Carpinteria	700	100	150	0.2	100	7
<b>Santa Ynez</b>						
Santa Ynez	600	50	10	0.5	20	1
Santa Rita	1500	150	700	0.5	100	1
Lompoc Plain <sup>f</sup>	1250	250	500	0.5	250	2
Lompoc Upland <sup>f</sup>	600	150	100	0.5	100	2
Lompoc Terrace <sup>f</sup>	750	210	100	0.3	130	1
<b>San Antonio Creek</b>						
	600	150	150	0.2	100	5
<b>Santa Maria<sup>c</sup></b>						
Upper Guadalupe <sup>f</sup>	1000 <sup>d</sup>	165	500 <sup>d</sup>	0.5	230	1.4 <sup>e</sup>
Lower Guadalupe <sup>f</sup>	1000 <sup>d</sup>	85	500 <sup>d</sup>	0.2	90	2.0 <sup>e</sup>
Lower Nipomo Mesa <sup>f</sup>	710	95	250	0.15	90	5.7 <sup>e</sup>
Orcutt <sup>f</sup>	740	65	300	0.1	65	2.3 <sup>e</sup>
Santa Maria <sup>f</sup>	1000 <sup>d</sup>	90	510	0.2	105	8.0 <sup>e</sup>
Cuyama Valley	1500	80	—	0.4	—	5
<b>Soda Lake</b>						
	e	e	e	e	e	e
<b>Estero Bay</b>						
Santa Rosa	700	100	80	0.2	50	5
Chorro	1000	250	100	0.2	50	5
San Luis Obispo	900	200	100	0.2	50	5
Arroyo Grande	800	100	200	0.2	50	10
<b>Salinas River</b>						
Upper Valley <sup>f</sup>	600	150	150	0.5	70	5
Upper Forebay <sup>f</sup>	800	100	250	0.5	100	5
Lower Forebay <sup>f</sup>	1500	250	850	0.5	150	8
180 foot Aquifer <sup>f</sup>	1500	250	600	0.5	250	1
400 foot Aquifer <sup>f</sup>	400	50	100	0.2	50	1
<b>Paso Robles<sup>g</sup></b>						
Central Basin <sup>f</sup>	400	60	45	0.3	80	3.4
San Miguel <sup>f</sup>	750	100	175	0.5	105	4.5
Paso Robles <sup>f</sup>	1050	270	200	2.0	225	2.3
Templeton <sup>f</sup>	730	100	120	0.3	75	2.7
Atascadero <sup>f</sup>	550	70	85	0.3	65	2.3
Estrella <sup>f</sup>	925	130	240	0.75	170	3.2
Shandon	1390	430	1025 <sup>h</sup>	2.8	730	2.3
<b>Pajaro River</b>						
Hollister	1200	150	250	1.0	200	5
Tres Pinos	1000	150	250	1.0	150	5
Llagas	300	20	50	0.2	20	5
<b>Big Basin</b>						
Near Felton	100	20	10	0.2	10	1
Near Boulder Creek	250	30	50	0.2	20	5

- a Objectives shown are median values based on data averages; objectives are based on preservation of existing quality or water quality enhancement believed attainable following control of point sources.
- b Measured as Nitrogen
- c Basis for objectives is in the "Water Quality Objectives for the Santa Maria Ground Water Basin Revised Staff Report, May 1985" and February 1986, Staff Report
- d These are maximum objectives in accordance with Title 22 of the Code of Regulations.
- e Ground water basin currently exceeds usable mineral quality.
- f Ground water basin boundary map available in appendix.
- g Basis for objectives is in the report "A Study of the Paso Robles Ground Water Basin to Establish Best Management Practices and Establish Salt Objectives", Coastal Resources Institute, June 1993.
- h Standard exceeds California Secondary Drinking Water Standards contained in Title 22 of the Code of Regulations. Water quality standard is based upon existing water quality. If water quality degradation occurs, the Regional Board may consider salt limits on appropriate discharges.

The restrictions specified for Table 3-7 are applicable to the values indicated in Table 3-8; i.e., the values are at best representative of gross areas only. Ground waters in the Upper Valley of the Salinas River Sub-basin have average Total Dissolved Solids (TDS) concentrations that range from 300 mg/l to over 3000 mg/l. Therefore, application of these objectives must be consistent with the objectives previously stated in this chapter and synchronously reflect the actual ground water quality naturally present. The Regional Board must afford full consideration to: (1) present and probable future beneficial uses affected by the waste discharge; (2) competing beneficial uses; (3) degree of impact on existing beneficial uses; (4) receiving water quality; and (5) water quality objectives, before adjudging priority of dominant use and promulgating waste discharge requirements.

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral constituents where sufficient information is presently not available for the establishment of such objectives.



## **CHAPTER 1: INTRODUCTION**

### **1.1 THE SAN FRANCISCO BAY REGION**

The San Francisco Bay Region (Region) is 4,603 square miles, roughly the size of the State of Connecticut, and characterized by its dominant feature, 1,100 square miles of the 1,600 square mile San Francisco Bay Estuary (Estuary), the largest estuary on the west coast of the United States, where fresh waters from California's Central Valley mix with the saline waters of the Pacific Ocean. The Region also includes coastal portions of Marin and San Mateo counties, from Tomales Bay in the north to Pescadero and Butano Creeks in the south.

The Estuary conveys the waters of the Sacramento and San Joaquin rivers into the Pacific Ocean. Located on the central coast of California (Figure 1-1), the Bay system functions as the only drainage outlet for waters of the Central Valley. It also marks natural topographic separation between the northern and southern coastal mountain ranges. The Region's waterways, wetlands, and bays form the centerpiece of the United States' fourth-largest metropolitan region, including all or major portions of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties.

Because of its highly dynamic and complex environmental conditions, the Bay system supports an extraordinarily diverse and productive ecosystem. Within each section of the Bay lie deepwater areas that are adjacent to large expanses of very shallow water. Salinity levels range from hypersaline to fresh water, and water temperature varies throughout the Bay system. These factors greatly increase the number of species that can live in the Estuary and enhance its biological stability.

The Bay system's deepwater channels, tidelands, marshlands, freshwater streams, and rivers provide a wide variety of habitats that have become increasingly vital to the survival of several plant and animal species as other estuaries are reduced in size or lost to development. These areas sustain rich communities of crabs, clams, fish, birds, and other aquatic life and serve both as important wintering sites for migrating waterfowl and as spawning areas for anadromous fish.

### **1.2 THE BAY SYSTEM'S SURFACE WATER & GROUNDWATER**

The Sacramento and San Joaquin rivers, which enter the Bay system through the Delta at the eastern end of Suisun Bay, contribute almost all the freshwater inflow to the Bay. Many small rivers and streams also convey fresh water to the Bay system. The rate and timing of these freshwater flows are among the most important factors influencing physical, chemical, and biological conditions in the Estuary. Much of the freshwater inflow, however, is trapped upstream by the dams, canals, and reservoirs of California's water diversion projects, which provide vital water to industries, farms, homes, and businesses throughout the state. This freshwater diversion has sparked statewide controversy over possible adverse effects on the Estuary's water quality, fisheries, and ecosystem.

Flows in the Region are highly seasonal, with more than 90 percent of the annual runoff occurring during the winter rainy season between October and April. Many streams go dry during the middle or late summer. For example, the Napa River, which is least affected by

upstream regulation, clearly shows the seasonal nature of runoff. Only 4-1/2 percent of this river's average annual runoff occurs during the summer months.

Groundwater is an important component of the hydrologic system in the Region. Groundwater provides excellent natural storage, distribution, and treatment systems. Groundwater also supplies high quality water for drinking, irrigation, and industrial processing and service. As an important source of freshwater replenishment, groundwater may also discharge to surface streams, wetlands, and San Francisco Bay.

A variety of historical and ongoing industrial, urban, and agricultural activities and their associated discharges degrade groundwater quality, including industrial and agricultural chemical spills, underground and above-ground tank and sump leaks, landfill leachate, septic tank failures, and chemical seepage via shallow drainage wells and abandoned wells. In addition, saltwater intrusion directly attributed to over-pumping has degraded the purity of some groundwater aquifers.

These adverse impacts on groundwater quality often have long-term effects that are costly to remediate. Consequently, as additional discharges are identified, source removal, pollution containment, and cleanup must be undertaken as quickly as possible. Activities that may potentially pollute groundwater must be managed to ensure that groundwater quality is protected.

### **1.3 PROTECTING SAN FRANCISCO BAY: THE WATER BOARD**

Because of its unique characteristics, the San Francisco Bay estuarine system merits special protection. The adverse effects of waste discharges must be controlled. Extensive upstream water diversions must be limited, and their effects mitigated. To address these and other water issues, the California Legislature established the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards) in 1949. Operating under the provisions of the California Water Code (Water Code), their unique relationship couples state-level coordination and regional familiarity with local needs and conditions. Their joint actions constitute a comprehensive program for managing water quality in California, as well as for effective state administration of federal water pollution control laws.

The State Water Board administers water rights, water pollution control, and water quality functions for the state as part of the California Environmental Protection Agency (Cal/EPA). It provides policy guidance and budgetary authority to the Regional Water Boards, which conduct planning, permitting, and enforcement activities. The State Water Board shares authority for implementation of the federal Clean Water Act and the state Porter-Cologne Act with the Regional Water Boards.

The San Francisco Bay Regional Water Quality Control Board (Water Board) regulates surface water and groundwater quality in the Region. The area under the Water Board's jurisdiction comprises all of the San Francisco Bay segments extending to the mouth of the Sacramento-San Joaquin Delta (Winter Island near Pittsburg).

California's governor appoints the nine-member Water Board, whose members serve for four-year terms. Water Board members must reside or maintain a place of business within the Region and must be associated with or have special knowledge of specific activities related to water quality control. Members of the Water Board serve without pay and conduct their business at regular meetings and frequent public hearings where public participation is encouraged.

The Water Board's overall mission is to protect surface waters and groundwater in the Region. The Water Board carries out its mission by:

- Addressing Region-wide water quality concerns through the creation and triennial update of a Water Quality Control Plan (Basin Plan);
- Preparing new or revised policies addressing Region-wide water quality concerns;
- Adopting, monitoring compliance with, and enforcing waste discharge requirements and National Pollutant Discharge Elimination System (NPDES) permits;
- Providing recommendations to the State Water Board on financial assistance programs, proposals for water diversion, budget development, and other statewide programs and policies;
- Coordinating with other public agencies that are concerned with water quality control; and
- Informing and involving the public on water quality issues.

#### **1.4 WATER QUALITY CONTROL PLAN**

By law, the Water Board is required to develop, adopt (after public hearing), and implement a Basin Plan for the Region. The Basin Plan is the master policy document that contains descriptions of the legal, technical, and programmatic bases of water quality regulation in the Region. The plan must include:

- A statement of beneficial water uses that the Water Board will protect;
- The water quality objectives needed to protect the designated beneficial water uses; and
- The strategies and time schedules for achieving the water quality objectives.

The Water Board first adopted a plan for waters inland from the Golden Gate in 1968. After several revisions, the first comprehensive Basin Plan for the Region was adopted by the Water Board and approved by the State Water Board in April 1975. Subsequently, major revisions were adopted in 1982, 1986, 1992, 1995, 2002, and 2004. Each proposed amendment to the Basin Plan is subject to an extensive public review process. The Water Board must then adopt the amendment, which is then subject to approval by the State Water Board. In most cases, the Office of Administrative Law and the U.S. Environmental Protection Agency (U.S. EPA) must approve the amendment as well.

The basin planning process drives the Water Board's effort to manage water quality. The Basin Plan provides a definitive program of actions designed to preserve and enhance water quality and to protect beneficial uses in a manner that will result in maximum benefit to the people of California. The Basin Plan fulfills the following needs:

- The U.S. EPA requires such a plan in order to allocate federal grants to cities and districts for construction of wastewater treatment facilities.
- The Basin Plan provides a basis for establishing priorities as to how both state and federal grants are disbursed for constructing and upgrading wastewater treatment facilities.
- The Basin Plan fulfills the requirements of the Porter-Cologne Act that call for water quality control plans in California.
- The Basin Plan, by defining the resources, services, and qualities of aquatic ecosystems to be maintained, provides a basis for the Water Board to establish or revise waste discharge requirements and for the State Water Board to establish or revise water rights permits.
- The Basin Plan establishes conditions (discharge prohibitions) that must be met at all times.
- The Basin Plan establishes or indicates water quality standards applicable to waters of the Region, as required by the federal Clean Water Act.
- The Basin Plan establishes water quality attainment strategies, including total maximum daily loads (TMDLs) required by the Clean Water Act, for pollutants and water bodies where water quality standards are not currently met.

The intent of this comprehensive planning effort is to provide positive and firm direction for future water quality control. However, adequate provision must be made for changing conditions and technology. The Water Board will review the Basin Plan at least once every three years. Unlike traditional plans, which often become obsolete within a few years after their preparation, the Basin Plan is updated as deemed necessary to maintain pace with technological, hydrological, political, and physical changes in the Region.

This Basin Plan contains water quality regulations adopted by the Water Board, and approved by the State Water Board, the Office of Administrative Law, and U.S. EPA. It also contains statewide regulations adopted by the State Water Board and other state agencies that refer to activities regulated by the Water Board. For the most recent list of statewide regulations applicable in the Region, please refer to the State Water Board's "Compendium of Current, Statewide Applicable Water Quality Regulations." Federal laws and regulations also specify water quality standards and are available at U.S. EPA's website.

## **1.5 WATERSHED MANAGEMENT PLANNING**

In 1995, the Water Board initiated a watershed management approach to regulating water quality, expanding its primary focus from point sources of pollution to include more diffuse sources such as urban and agricultural runoff. A five-year statewide Strategic Plan was completed in 2001 and guides the water resource protection efforts by the State and Regional Water Boards. A key component of the Strategic Plan is the Watershed Management Initiative (WMI).

A watershed is the area of land drained by a stream or river system. It is where water precipitates and collects, extending from ridges down to the topographic low points where the water drains into a river, bay, ocean, or other water body. A watershed includes surface water bodies (e.g., streams, rivers, lakes, reservoirs, wetlands, and estuaries), groundwater (e.g., aquifers and

groundwater basins) and the surrounding landscape. Watershed management is a strategy for protecting water quality in all water bodies by looking at all components that make up a watershed area, including the natural environment, water supply, land uses and their effects on drainage, wastewater collection and discharges, and the ways humans interact with the water bodies.

In the Water Board's watershed management approach to water quality protection, water resource problems are identified and prioritized primarily on the basis of water quality within individual watersheds (i.e., the geographic drainage areas and groundwater basins used for management purposes). Unique solutions are developed for each watershed that consider all local conditions and pollution sources and rely on the input and involvement of local stakeholders. Major features of a watershed management approach are: targeting priority problems based on water quality information and monitoring, promoting stakeholder involvement in prioritization and management decisions, developing integrated solutions that make use of the expertise and authority of multiple agencies and organizations, and measuring success through monitoring and other collected data. The approach culminates in the creation and implementation of "watershed action plans."

The water quality of many water bodies continues to be degraded from pollutants discharged from diffuse sources, referred to as nonpoint sources, and from the cumulative impacts of multiple point sources such as drainage from urban areas, known as urban runoff. This degradation persists despite successful pollutant reduction efforts in the regulation of municipal and industrial wastewater point source discharges through the NPDES program. Watershed management represents a shift from the approach that focuses on regulation of point sources to a more regional approach that acknowledges environmental impacts from all activities, and prioritizes regulation of these activities with input from local stakeholders.

Watersheds transcend political, social, and economic boundaries. It is important to engage all affected stakeholders in designing and implementing goals for the watershed to protect water quality. Groups formed to create watershed action plans may include representatives from all levels of government, public interest groups, industry, academic institutions, private landowners, concerned citizens and others. Tasks in a watershed action plan could include a wide range of actions, such as improving coordination between regulatory and permitting agencies, increasing citizen participation in watershed planning activities, improving public education on water quality and protection issues, and enforcing current regulations on a more consistent and prioritized basis.

## **1.6 THE SAN FRANCISCO ESTUARY PROJECT**

The Water Board has been an active participant in the San Francisco Estuary Project (Estuary Project), a cooperative program aimed at promoting effective, environmentally sound management of the San Francisco Bay Estuary while protecting and restoring its natural resources. In 1993, the Estuary Project reached its goal of developing a Comprehensive Conservation and Management Plan (CCMP). The CCMP addresses five critical concerns identified by the Estuary Project's broad-based advisory committees: decline of biological resources; increased pollutants; freshwater diversion and altered flow regime; dredging and waterway modification; and intensified land use.

Implementation of the CCMP's over 140 recommended actions has been ongoing since the early 1990s. The Water Board serves as lead state agency, undertaking responsibility for ensuring that CCMP actions are carried out. The Estuary Project's Public Involvement and Education Program, which seeks to inform and involve the public in Estuary issues, is currently housed at the Water Board office.

## FIGURES

Figure 1-1: San Francisco Bay Basin

## CHAPTER 3: WATER QUALITY OBJECTIVES

The overall goals of water quality regulation are to protect and maintain thriving aquatic ecosystems and the resources those systems provide to society and to accomplish these in an economically and socially sound manner. California's regulatory framework uses water quality objectives both to define appropriate levels of environmental quality and to control activities that can adversely affect aquatic systems.

### 3.1 WATER QUALITY OBJECTIVES

There are two types of objectives: narrative and numerical. Narrative objectives present general descriptions of water quality that must be attained through pollutant control measures and watershed management. They also serve as the basis for the development of detailed numerical objectives.

Historically, numerical objectives were developed primarily to limit the adverse effect of pollutants in the water column. Two decades of regulatory experience and extensive research in environmental science have demonstrated that beneficial uses are not fully protected unless pollutant levels in all parts of the aquatic system are also monitored and controlled. The Regional Board is actively working towards an integrated set of objectives, including numerical sediment objectives, that will ensure the protection of all current and potential beneficial uses.

Numerical objectives typically describe pollutant concentrations, physical/chemical conditions of the water itself, and the toxicity of the water to aquatic organisms. These objectives are designed to represent the maximum amount of pollutants that can remain in the water column without causing any adverse effect on organisms using the aquatic system as habitat, on people consuming those organisms or water, and on other current or potential beneficial uses (as described in [Chapter 2](#)).

The technical bases of the region's water quality objectives include extensive biological, chemical, and physical partitioning information reported in the scientific literature, national water quality criteria, studies conducted by other agencies, and information gained from local environmental and discharge monitoring (as described in [Chapter 6](#)). The Regional Board recognizes that limited information exists in some cases, making it difficult to establish definitive numerical objectives, but the Regional Board believes its conservative approach to setting objectives has been proper. In addition to the technical review, the overall feasibility of reaching objectives in terms of technological, institutional, economic, and administrative factors is considered at many different stages of objective derivation and implementation of the water quality control plan.

Together, the narrative and numerical objectives define the level of water quality that shall be maintained within the region. In instances where water quality is better than that prescribed by the objectives, the state Antidegradation Policy applies ([State Board Resolution 68-16: Statement of Policy With Respect to Maintaining High Quality of Waters in California](#)). This policy is aimed at protecting relatively uncontaminated aquatic systems where they exist and preventing further degradation. The state's Antidegradation Policy is consistent with the federal Antidegradation Policy, as interpreted by the State Water Resources Control Board in State Board Order No. 86-17.

When uncontrollable water quality factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, the Regional Board will conduct a case-by-case analysis of the benefits and costs of preventing further degradation. In cases where this analysis indicates that beneficial uses will be adversely impacted by allowing further degradation, then the Regional Board will not allow controllable water quality factors to cause any further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the state and that may be reasonably controlled.

The Regional Board establishes and enforces waste discharge requirements for point and nonpoint source of pollutants at levels necessary to meet numerical and narrative water quality objectives. In setting waste discharge requirements, the Regional Board will consider, among other things, the potential impact on beneficial uses within the area of influence of the discharge, the existing quality of receiving waters, and the appropriate water quality objectives.

In general, the objectives are intended to govern the concentration of pollutant constituents in the main water mass. The same objectives cannot be applied at or immediately adjacent to submerged effluent discharge structures. Zones of initial dilution within which higher concentrations can be tolerated will be allowed for such discharges.

For a submerged buoyant discharge, characteristic of most municipal and industrial wastes that are released from submerged outfalls, the momentum of the discharge and its initial buoyancy act together to produce turbulent mixing. Initial dilution in this case is completed when the diluting wastewater ceases to rise in the water column and first begins to spread horizontally.

For shallow water submerged discharges, surface discharges, and nonbuoyant discharges, characteristic of cooling water wastes and some individual discharges, turbulent mixing results primarily from the momentum of discharge. Initial dilution, in these cases, is considered to be completed when the momentum-induced velocity of the discharge ceases to produce significant mixing of the waste, or the diluting plume reaches a fixed distance from the discharge to be specified by the Regional Board, whichever results in the lower estimate for initial dilution.

Compliance with water quality objectives may be prohibitively expensive or technically impossible in some cases. The Regional Board will consider modification of specific water quality objectives as long as the discharger can demonstrate that the alternate objective will protect existing beneficial uses, is scientifically defensible, and is consistent with the state Antidegradation Policy. This exception clause properly indicates that the Regional Board will conservatively compare benefits and costs in these cases because of the difficulty in quantifying beneficial uses.

These water quality objectives are considered necessary to protect the present and potential beneficial uses described in Chapter 2 of this Plan and to protect existing high quality waters of the state. These objectives will be achieved primarily through establishing and enforcing waste discharge requirements and by implementing this water quality control plan.

### **3.2 OBJECTIVES FOR OCEAN WATERS**

The provisions of the State Board's "Water Quality Control Plan for Ocean Waters of California" (Ocean Plan) and "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (Thermal Plan) and any revision to them will apply to ocean waters. These plans describe objectives and effluent limitations for ocean waters.

### **3.3 OBJECTIVES FOR SURFACE WATERS**

The following objectives apply to all surface waters within the region, except the Pacific Ocean.

#### **3.3.1 BACTERIA**

Table 3-1 provides a summary of the bacterial water quality objectives and identifies the sources of those objectives. Table 3-2 summarizes U.S. EPA's water quality criteria for water contact recreation based on the frequency of use a particular area receives. These criteria will be used to differentiate between pollution sources or to supplement objectives for water contact recreation.

#### **3.3.2 BIOACCUMULATION**

Many pollutants can accumulate on particles, in sediment, or bioaccumulate in fish and other aquatic organisms. Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life. Effects on aquatic organisms, wildlife, and human health will be considered.

#### **3.3.3 BIOSTIMULATORY SUBSTANCES**

Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses. Changes in chlorophyll a and associated phytoplankton communities follow complex dynamics that are sometimes associated with a discharge of biostimulatory substances. Irregular and extreme levels of chlorophyll a or phytoplankton blooms may indicate exceedance of this objective and require investigation.

#### **3.3.4 COLOR**

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

#### **3.3.5 DISSOLVED OXYGEN**

For all tidal waters, the following objectives shall apply:

In the Bay:

Downstream of Carquinez Bridge	5.0 mg/l minimum
Upstream of Carquinez Bridge	7.0 mg/l minimum

For nontidal waters, the following objectives shall apply:

Waters designated as:

Cold water habitat	7.0 mg/l minimum
Warm water habitat	5.0 mg/l minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80 percent of the dissolved oxygen content at saturation.

Dissolved oxygen is a general index of the state of the health of receiving waters. Although minimum concentrations of 5 mg/l and 7 mg/l are frequently used as objectives to protect fish life, higher concentrations are generally desirable to protect sensitive aquatic forms. In areas unaffected by waste discharges, a level of about 85 percent of oxygen saturation exists. A three-month median objective of 80 percent of oxygen saturation allows for some degradation from this level, but still requires a consistently high oxygen content in the receiving water.

### 3.3.6 FLOATING MATERIAL

Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

### 3.3.7 OIL AND GREASE

Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

### 3.3.8 POPULATION AND COMMUNITY ECOLOGY

All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota. In addition, the health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors.

### 3.3.9 pH

The pH shall not be depressed below 6.5 nor raised above 8.5. This encompasses the pH range usually found in waters within the basin. Controllable water quality factors shall not cause changes greater than 0.5 units in normal ambient pH levels.

### **3.3.10 RADIOACTIVITY**

Radionuclides shall not be present in concentrations that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life. Waters designated for use as domestic or municipal supply shall not contain concentrations of radionuclides in excess of the limits specified in Table 4 of Section 64443 (Radioactivity) of Title 22 of the California Code of Regulations (CCR), which is incorporated by reference into this Plan. This incorporation is prospective, including future changes to the incorporated provisions as the changes take effect (see Table 3-5).

### **3.3.11 SALINITY**

Controllable water quality factors shall not increase the total dissolved solids or salinity of waters of the state so as to adversely affect beneficial uses, particularly fish migration and estuarine habitat.

### **3.3.12 SEDIMENT**

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Controllable water quality factors shall not cause a detrimental increase in the concentrations of toxic pollutants in sediments or aquatic life.

### **3.3.13 SETTLEABLE MATERIAL**

Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.

### **3.3.14 SUSPENDED MATERIAL**

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

### **3.3.15 SULFIDE**

All water shall be free from dissolved sulfide concentrations above natural background levels. Sulfide occurs in Bay muds as a result of bacterial action on organic matter in an anaerobic environment.

Concentrations of only a few hundredths of a milligram per liter can cause a noticeable odor or be toxic to aquatic life. Violation of the sulfide objective will reflect violation of dissolved oxygen objectives as sulfides cannot exist to a significant degree in an oxygenated environment.

### 3.3.16 TASTES AND ODORS

Waters shall not contain taste- or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

### 3.3.17 TEMPERATURE

Temperature objectives for enclosed bays and estuaries are as specified in the "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California," including any revisions to the plan.

In addition, the following temperature objectives apply to surface waters:

- The natural receiving water temperature of inland surface waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.
- The temperature of any cold or warm freshwater habitat shall not be increased by more than 5°F (2.8°C) above natural receiving water temperature.

### 3.3.18 TOXICITY

All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms. Detrimental responses include, but are not limited to, decreased growth rate and decreased reproductive success of resident or indicator species. There shall be no acute toxicity in ambient waters. Acute toxicity is defined as a median of less than 90 percent survival, or less than 70 percent survival, 10 percent of the time, of test organisms in a 96-hour static or continuous flow test.

There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community.

Attainment of this objective will be determined by analyses of indicator organisms, species diversity, population density, growth anomalies, or toxicity tests (including those described in Chapter 4), or other methods selected by the Water Board. The Water Board will also consider other relevant information and numeric criteria and guidelines for toxic substances developed by other agencies as appropriate.

The health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors.

**3.3.19 TURBIDITY**

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.

**3.3.20 UN-IONIZED AMMONIA**

The discharge of wastes shall not cause receiving waters to contain concentrations of un-ionized ammonia in excess of the following limits (in mg/l as N):

Annual Median	0.025
Maximum, Central Bay (as depicted in Figure 2-5) and upstream	0.16
Maximum, Lower Bay (as depicted in Figures 2-6 and 2-7):	0.4

The intent of this objective is to protect against the chronic toxic effects of ammonia in the receiving waters. An ammonia objective is needed for the following reasons:

- Ammonia (specifically un-ionized ammonia) is a demonstrated toxicant. Ammonia is generally accepted as one of the principle toxicants in municipal waste discharges. Some industries also discharge significant quantities of ammonia.
- Exceptions to the effluent toxicity limitations in Chapter 4 of the Plan allow for the discharge of ammonia in toxic amounts. In most instances, ammonia will be diluted or degraded to a nontoxic state fairly rapidly. However, this does not occur in all cases, the South Bay being a notable example. The ammonia limit is recommended in order to preclude any build up of ammonia in the receiving water.
- A more stringent maximum objective is desirable for the northern reach of the Bay for the protection of the migratory corridor running through Central Bay, San Pablo Bay, and upstream reaches.

**3.3.21 OBJECTIVES FOR SPECIFIC CHEMICAL CONSTITUENTS**

Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water quality objectives for selected toxic pollutants for surface waters are given in Tables 3-3, 3-3A, 3-3B, 3-3C, 3-4 and 3-4A.

The Water Board intends to work towards the derivation of site-specific objectives for the Bay-Delta estuarine system. Site-specific objectives to be considered by the Water Board shall be developed in accordance with the provisions of the federal Clean Water Act, the State Water Code, State Board water quality control plans, and this Plan. These site-specific objectives will take into consideration factors such as all available scientific information and monitoring data and the latest U.S. EPA guidance, and local environmental conditions and impacts caused by bioaccumulation. The objectives in Tables 3-3 and 3-4 apply throughout the region except as otherwise indicated in the tables or when site-specific objectives for the pollutant parameter have been adopted. Site-specific objectives have been adopted for copper in segments of San Francisco Bay (see Figure 7.2-1-01), for nickel in South San Francisco Bay (Table 3-3A), and for cyanide in all

San Francisco Bay segments (Table 3-3C). Objectives for mercury that apply to San Francisco Bay are listed in Table 3-3B. Objectives for mercury that apply to Walker Creek, Soulajule Reservoir, and their tributaries, and to waters of the Guadalupe River watershed are listed in Table 3-4A.

South San Francisco Bay south of the Dumbarton Bridge is a unique, water-quality-limited, hydrodynamic and biological environment that merits continued special attention by the Water Board. Controlling urban and upland runoff sources is critical to the success of maintaining water quality in this portion of the Bay. Site-specific water quality objectives have been adopted for dissolved copper and nickel in this Bay segment. Site-specific objectives may be appropriate for other pollutants of concern, but this determination will be made on a case-by-case basis, and after it has been demonstrated that all other reasonable treatment, source control and pollution prevention measures have been exhausted. The Water Board will determine whether revised water quality objectives and/or effluent limitations are appropriate based on sound technical information and scientific studies, stakeholder input, and the need for flexibility to address priority problems in the watershed.

### **3.3.22 CONSTITUENTS OF CONCERN FOR MUNICIPAL AND AGRICULTURAL WATER SUPPLIES**

At a minimum, surface waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of constituents in excess of the maximum (MCLs) or secondary maximum contaminant levels (SMCLs) specified in the following provisions of Title 22, which are incorporated by reference into this plan: Table 64431-A (Inorganic Chemicals) of Section 64431, and Table 64433.2-A (Fluoride) of Section 64433.2, Table 64444-A (Organic Chemicals) of Section 64444, and Table 64449-A (SMCLs-Consumer Acceptance Limits) and 64449-B (SMCLs-Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. Table 3-5 contains water quality objectives for municipal supply, including the MCLs contained in various sections of Title 22 as of the adoption of this plan.

At a minimum, surface waters designated for use as agricultural supply (AGR) shall not contain concentrations of constituents in excess of the levels specified in Table 3-6.

### **3.4 OBJECTIVES FOR GROUNDWATER**

Groundwater objectives consist primarily of narrative objectives combined with a limited number of numerical objectives. Additionally, the Water Board will establish basin- and/or site-specific numerical groundwater objectives as necessary. For example, the Water Board has groundwater basin-specific objectives for the Alameda Creek watershed above Niles to include the Livermore-Amador Valley as shown in Table 3-7.

The maintenance of existing high quality of groundwater (i.e., "background") is the primary groundwater objective.

In addition, at a minimum, groundwater shall not contain concentrations of bacteria, chemical constituents, radioactivity, or substances producing taste and odor in excess of the objectives described below unless naturally occurring background concentrations are greater. Under existing law, the Water Board regulates waste discharges to land that could affect water quality,

including both groundwater and surface water quality. Waste discharges that reach groundwater are regulated to protect both groundwater and any surface water in continuity with groundwater. Waste discharges that affect groundwater that is in continuity with surface water cannot cause violations of any applicable surface water standards.

#### **3.4.1 BACTERIA**

In groundwater with a beneficial use of municipal and domestic supply, the median of the most probable number of coliform organisms over any seven-day period shall be less than 1.1 most probable number per 100 milliliters (MPN/100 mL) (based on multiple tube fermentation technique; equivalent test results based on other analytical techniques as specified in the National Primary Drinking Water Regulation, 40 CFR, Part 141.21 (f), revised June 10, 1992, are acceptable).

#### **3.4.2 ORGANIC AND INORGANIC CHEMICAL CONSTITUENTS**

All groundwater shall be maintained free of organic and inorganic chemical constituents in concentrations that adversely affect beneficial uses. To evaluate compliance with water quality objectives, the Water Board will consider all relevant and scientifically valid evidence, including relevant and scientifically valid numerical criteria and guidelines developed and/or published by other agencies and organizations (e.g., U.S. Environmental Protection Agency (U.S. EPA), the State Water Board, California Department of Health Services (DHS), U.S. Food and Drug Administration, National Academy of Sciences, California Environmental Protection Agency's (Cal/EPA) Office of Environmental Health Hazard Assessment (OEHHA), U.S. Agency for Toxic Substances and Disease Registry, Cal/EPA Department of Toxic Substances Control (DTSC), and other appropriate organizations.)

At a minimum, groundwater designated for use as domestic or municipal supply (MUN) shall not contain concentrations of constituents in excess of the maximum (MCLs) or secondary maximum contaminant levels (SMCLs) specified in the following provisions of Title 22, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) of Section 64431, Table 64433.2-A (Fluoride) of Section 64433.2, and Table 64444-A (Organic Chemicals) of Section 64444. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.)

Groundwater with a beneficial use of agricultural supply shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. In determining compliance with this objective, the Water Board will consider as evidence relevant and scientifically valid water quality goals from sources such as the Food and Agricultural Organizations of the United Nations; University of California Cooperative Extension, Committee of Experts; and McKee and Wolf's "Water Quality Criteria," as well as other relevant and scientifically valid evidence. At a minimum, groundwater designated for use as agricultural supply (AGR) shall not contain concentrations of constituents in excess of the levels specified in Table 3-6.

Groundwater with a beneficial use of freshwater replenishment shall not contain concentrations of chemicals in amounts that will adversely affect the beneficial use of the receiving surface water.

Groundwater with a beneficial use of industrial service supply or industrial process supply shall not contain pollutant levels that impair current or potential industrial uses.

#### **3.4.3 RADIOACTIVITY**

At a minimum, groundwater designated for use as domestic or municipal supply (MUN) shall not contain concentrations of radionuclides in excess of the MCLs specified in Table 4 (Radioactivity) of Section 64443 of Title 22, which is incorporated by reference into this plan. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.)

#### **3.4.4 TASTE AND ODOR**

Groundwater designated for use as domestic or municipal supply (MUN) shall not contain taste- or odor-producing substances in concentrations that cause a nuisance or adversely affect beneficial uses. At a minimum, groundwater designated for use as domestic or municipal supply shall not contain concentrations in excess of the SMCLs specified in Tables 64449-A (Secondary MCLs-Consumer Acceptance Limits) and 64449-B (Secondary MCLs-Ranges) of Section 64449 of Title 22, which is incorporated by reference into this plan. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.)

### **3.5 OBJECTIVES FOR THE DELTA**

The objectives contained in the State Water Board's 1995 "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary" and any revisions thereto shall apply to the waters of the Sacramento-San Joaquin Delta and adjacent waters as specified in that plan.

### **3.6 OBJECTIVES FOR ALAMEDA CREEK WATERSHED**

The water quality objectives contained in Table 3-7 apply to the surface and groundwaters of the Alameda Creek watershed above Niles.

Wastewater discharges that cause the surface water limits in Table 3-7 to be exceeded may be allowed if they are part of an overall wastewater resource operational program developed by those agencies affected and approved by the Water Board.

#### **TABLES**

Table 3-1: Water Quality Objectives for Coliform Bacteria

Table 3-2: U.S. EPA Bacteriological Criteria for Water Contact Recreation

Table 3-3: Marine Water Quality Objectives for Toxic Pollutants for Surface Waters

Table 3-3A: Water Quality Objectives for Copper and Nickel in San Francisco Bay Segments

Table 3-3B: Marine Water Quality Objectives for Mercury in San Francisco Bay

Table 3-3C: Marine Water Quality Objectives for Cyanide in San Francisco Bay

Table 3-4: Freshwater Water Quality Objectives for Toxic Pollutants for Surface Waters

Table 3-4A: Freshwater Water Quality Objectives for Mercury in Walker Creek, Soulajule Reservoir, and All Tributary Waters

Table 3-5: Water Quality Objectives for Municipal Supply

Table 3-6: Water Quality Objectives for Agricultural Supply

Table 3-7: Water Quality Objectives for the Alameda Creek Watershed above Niles

**Table 3-1: Water Quality Objectives for Coliform Bacteria<sup>a</sup>**

<b>Beneficial Use</b>	<b>Fecal Coliform (MPN/100ml)</b>	<b>Total Coliform (MPN/100ml)</b>
Water Contact Recreation	geometric mean < 200 90th percentile < 400	median < 240 no sample > 10,000
Shellfish Harvesting <sup>b</sup>	median < 14 90th percentile < 43	median < 70 90th percentile < 230 <sup>c</sup>
Non-contact Water Recreation <sup>d</sup>	mean < 2000 90th percentile < 4000	
Municipal Supply:		
- Surface Water <sup>e</sup>	geometric mean < 20	geometric mean < 100
- Groundwater		< 1.1 <sup>f</sup>

NOTES:

- a. Based on a minimum of five consecutive samples equally spaced over a 30-day period.
- b. Source: National Shellfish Sanitation Program.
- c. Based on a five-tube decimal dilution test or 300 MPN/100 ml when a three-tube decimal dilution test is used.
- d. Source: Report of the Committee on Water Quality Criteria, National Technical Advisory Committee, 1968.
- e. Source: DOHS recommendation.
- f. Based on multiple tube fermentation technique; equivalent test results based on other analytical techniques, as specified in the National Primary Drinking Water Regulation, 40 CFR, Part 141.21(f), revised June 10, 1992, are acceptable.

**Table 3-2: U.S. EPA Bacteriological Criteria for Water Contact Recreation<sup>1,2</sup>**  
 (in colonies per 100 ML)

	Fresh Water		Salt Water
	Enterococci	E. Coli	Enterococci
Steady State (all areas)	33	126	35
Maximum at:			
- designated beach	61	235	104
- moderately used area	89	298	124
- lightly used area	108	406	276
- infrequently used area	151	576	500

NOTES:

1. The criteria were published in the Federal Register, Vol. 51, No. 45 / Friday, March 7, 1986 / 8012-8016. The Criteria are based on:  
 (a) Cabelli, V.J. 1983. Health Effects Criteria for Marine Recreational Waters. U.S. EPA, EPA 600/1-80-031, Cincinnati, Ohio, and  
 (b) Dufour, A.P. 1984. Health Effects Criteria for Fresh Recreational Waters. U.S. EPA, EPA 600/1-84-004, Cincinnati Ohio.
2. The U.S. EPA criteria apply to water contact recreation only. The criteria provide for a level of production based on the frequency of usage of a given water contact recreation area. The criteria may be employed in special studies within this region to differentiate between pollution sources or to supplement the current coliform objectives for water contact recreation.

**Table 3-3: Marine<sup>a</sup> Water Quality Objectives for Toxic Pollutants for Surface Waters (all values in ug/l)**

<b>Compound</b>	<b>4-day Average</b>	<b>1-hr Average</b>	<b>24-hr Average</b>
Arsenic <sup>b, c, d</sup>	36	69	
Cadmium <sup>b, c, d</sup>	9.3	42	
Chromium VI <sup>b, c, d, e</sup>	50	1100	
Copper <sup>c, d, f</sup>			
Cyanide <sup>g</sup>			
Lead <sup>b, c, d</sup>	8.1	210	
Mercury <sup>h</sup>	0.025	2.1	
Nickel <sup>b, c, d</sup>	8.2	74	
Selenium <sup>i</sup>			
Silver <sup>b, c, d</sup>		1.9	
Tributyltin <sup>j</sup>			
Zinc <sup>b, c, d</sup>	81	90	
PAHs <sup>k</sup>			15

NOTES:

- a. Marine waters are those in which the salinity is equal to or greater than 10 parts per thousand 95% of the time, as set forth in Chapter 4 of the Basin Plan. Unless a site-specific objective has been adopted, these objectives shall apply to all marine waters except for the South Bay south of Dumbarton Bridge (where the California Toxics Rule (CTR) applies) or as specified in note h (below). For waters in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the freshwater (Table 3-4) or marine objectives.
- b. Source: 40 CFR Part 131.38 (California Toxics Rule or CTR), May 18, 2000.
- c. These objectives for metals are expressed in terms of the dissolved fraction of the metal in the water column.
- d. According to the CTR, these objectives are expressed as a function of the water-effect ratio (WER), which is a measure of the toxicity of a pollutant in site water divided by the same measure of the toxicity of the same pollutant in laboratory dilution water. The 1-hr. and 4-day objectives = table value X WER. The table values assume a WER equal to one.
- e. This objective may be met as total chromium.
- f. Water quality objectives for copper were promulgated by the CTR and may be updated by U.S. EPA without amending the Basin Plan. Note: at the time of writing, the values are 3.1 ug/l (4-day average) and 4.8 ug/l (1-hr. average). The most recent version of the CTR should be consulted before applying these values.
- g. Cyanide criteria were promulgated in the National Toxics Rule (NTR) (Note: at the time of writing, the values are 1.0 ug/l (4-day average) and 1.0 ug/l (1-hr. average)) and apply, except that site-specific

marine water quality objectives for cyanide have been adopted for San Francisco Bay as set forth in Table 3-3C.

- h. Source: U.S. EPA Ambient Water Quality Criteria for Mercury (1984). The 4-day average value for mercury does not apply to San Francisco Bay; instead, the water quality objectives specified in Table 3-3B apply. The 1-hour average value continues to apply to San Francisco Bay.
- i. Selenium criteria were promulgated for all San Francisco Bay/Delta waters in the National Toxics Rule (NTR). The NTR criteria specifically apply to San Francisco Bay upstream to and including Suisun Bay and Sacramento-San Joaquin Delta. Note: at the time of writing, the values are 5.0 ug/l (4-day average) and 20 ug/l (1-hr. average).
- j. Tributyltin is a compound used as an antifouling ingredient in marine paints and toxic to aquatic life in low concentrations. U.S. EPA has published draft criteria for protection of aquatic life (Federal Register: December 27, 2002, Vol. 67, No. 249, Page 79090-79091). These criteria are cited for advisory purposes. The draft criteria may be revised.
- k. The 24-hour average aquatic life protection objective for total PAHs is retained from the 1995 Basin Plan. Source: U.S. EPA 1980.

**Table 3-3A: Water Quality Objectives for Copper and Nickel in San Francisco Bay Segments (ug/L)**

Compound	4-day Average (CCC) <sup>1</sup>	1-hr Average (CMC) <sup>2</sup>	Extent of Applicability
Copper	6.9	10.8	The portion of Lower San Francisco Bay south of the line representing the Hayward Shoals shown on Figure 7.1. and South San Francisco Bay
Copper	6.0	9.4	The portion of the delta located in the San Francisco Bay Region, Suisun Bay, Carquinez Strait, San Pablo Bay, Central San Francisco Bay, and the portion of Lower San Francisco Bay north of the line representing the Hayward Shoals on Figure 7.1.
Nickel	11.9	62.4*	South San Francisco Bay

<sup>1</sup>Criteria Continuous Concentration

<sup>2</sup>Criteria Maximum Concentration

\*Handbook of Water Quality Standards, 2nd ed. 1994 in Section 3.7.6 states that the CMC = Final Acute Value/2; 62.4 is the Final Acute Value (resident species database)/2; so the site-specific CMC is lower than the California Toxics Rule value because we are using the resident species database instead of the National Species Database.

Protection of Human Health	0.2 mg mercury per kg fish tissue	Average wet weight concentration measured in the edible portion of trophic level 3 and trophic level 4 fish <sup>c</sup>
Protection of Aquatic Organisms and Wildlife	0.03 mg mercury per kg fish	Average wet weight concentration measured in whole fish 3–5 cm in length

Notes:

- a. Marine waters are those in which the salinity is equal to or greater than 10 parts per thousand 95% of the time, as set forth in Chapter 4 of the Basin Plan. For waters in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the freshwater or marine objectives.
- b. Objectives apply to all segments of San Francisco Bay, including Sacramento/San Joaquin River Delta (within San Francisco Bay region), Suisun Bay, Carquinez Strait, San Pablo Bay, Richardson Bay, Central San Francisco Bay, Lower San Francisco Bay, and South San Francisco Bay (including the Lower South Bay).
- c. Compliance shall be determined by analysis of fish tissue as described in Chapter 6, Surveillance and Monitoring.

Cyanide	Chronic Objective (4-day Average)	2.9
Cyanide	Acute Objective (1-hour Average)	9.4

Notes:

- a. Marine waters are those in which the salinity is equal to or greater than 10 parts per thousand 95% of the time, as set forth in Chapter 4 of the Basin Plan. For waters in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the freshwater or marine objectives.
- b. Objectives apply to all segments of San Francisco Bay, including Sacramento/San Joaquin River Delta (within San Francisco Bay region), Suisun Bay, Carquinez Strait, San Pablo Bay, Central San Francisco Bay, Lower San Francisco Bay, and South San Francisco Bay.

**Table 3-4: Freshwater<sup>a</sup> Water Quality Objectives for Toxic Pollutants for Surface Waters (all values in ug/l)**

Compound	4-day Average	1-hr Average
Arsenic <sup>b, c, d</sup>	150	340
Cadmium <sup>b, d</sup>	e	e
Chromium III <sup>f</sup>		
Chromium VI <sup>b, c, d, g</sup>	11	16
Copper <sup>b, c, d</sup>	9.0 <sup>h</sup>	13 <sup>h</sup>
Cyanide <sup>i</sup>		
Lead <sup>b, c, d</sup>	2.5 <sup>j</sup>	65 <sup>j</sup>
Mercury <sup>k</sup>	0.025	2.4
Nickel <sup>b, c, d</sup>	52 <sup>l</sup>	470 <sup>l</sup>
Selenium <sup>m</sup>		
Silver <sup>b, c, d</sup>		3.4 <sup>n</sup>
Tributyltin <sup>o</sup>		
Zinc <sup>b, c, d</sup>	120 <sup>p</sup>	120 <sup>p</sup>

Notes:

- Freshwaters are those in which the salinity is equal to or less than 1 part per thousand 95% of the time, as set forth in Chapter 4 of the Basin Plan. Unless a site-specific objective has been adopted, these objectives shall apply to all freshwaters except for the South Bay south of Dumbarton Bridge, where the California Toxics Rule (CTR) applies. For waters in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the marine (Table 3-3) and freshwater objectives.
- Source: 40 CFR Part 131.38 (California Toxics Rule or CTR), May 18, 2000.
- These objectives for metals are expressed in terms of the dissolved fraction of the metal in the water column.
- These objectives are expressed as a function of the water-effect ratio (WER), which is a measure of the toxicity of a pollutant in site water divided by the same measure of the toxicity of the same pollutant in laboratory dilution water. The 1-hr. and 4-day objectives = table value X WER. The table values assume a WER equal to one.
- The objectives for cadmium and other noted metals are expressed by formulas where H = ln (hardness) as CaCO<sub>3</sub> in mg/l: The four-day average objective for cadmium is  $e^{(0.7852H - 3.490)}$ . This is 1.1 µg/l at a hardness of 100 mg/l as CaCO<sub>3</sub>. The one-hour average objective for cadmium is  $e^{(1.126H - 3.828)}$ . This is 3.9 µg/l at a hardness of 100 mg/l as CaCO<sub>3</sub>.
- Chromium III criteria were promulgated in the National Toxics Rule (NTR). The NTR criteria specifically apply to San Francisco Bay upstream to and including Suisun Bay and Sacramento-San Joaquin Delta. Note: at the time of writing, the values are 180 ug/l (4-day average) and 550 ug/l (1-hr. average). The objectives for chromium III are based on hardness. The values in this footnote assume a hardness of 100 mg/l CaCO<sub>3</sub>. At other hardnesses, the objectives must be calculated using the following formulas where H = ln (hardness): The 4-day average objective for chromium III is  $e^{(0.8190H + 1.561)}$ . The 1-hour average for chromium III is  $e^{(0.8190H + 3.688)}$ .
- This objective may be met as total chromium.
- The objectives for copper are based on hardness. The table values assume a hardness of 100 mg/l CaCO<sub>3</sub>. At other hardnesses, the objectives must be calculated using the following formulas where H = ln (hardness): The 4-day average objective for copper is  $e^{(0.8545H - 1.702)}$ . The 1-hour average for copper is  $e^{(0.9422H - 1.700)}$ .
- Cyanide criteria were promulgated in the National Toxics Rule (NTR). The NTR criteria specifically apply to San Francisco Bay upstream to and including Suisun Bay and Sacramento-San Joaquin Delta. Note: at the time of writing, the values are 5.2 ug/l (4-day average) and 22 ug/l (1-hr. average).

- j. The objectives for lead are based on hardness. The table values assume a hardness of 100 mg/l  $\text{CaCO}_3$ . At other hardnesses, the objectives must be calculated using the following formulas where  $H = \ln(\text{hardness})$ : The 4-day average objective is  $e^{(1.273H - 4.705)}$ . The 1-hour average for lead is  $e^{(1.273H - 1.460)}$ .
- k. Source: U.S. EPA Quality Criteria for Water 1986 (EPA 440/5-86-001), which established a mercury criterion of 0.012 ug/l. The Basin Plan set the objective at 0.025 based on considerations of the level of detection attainable at that time. The 4-day average value for mercury does not apply to Walker Creek and Soulagule Reservoir and their tributaries nor to waters of the Guadalupe River watershed; instead, the water quality objectives specified in Table 3-4A apply. The 1-hour average value continues to apply to waters specified in Table 3-4A.
- l. The objectives for nickel are based on hardness. The table values assume a hardness of 100 mg/l  $\text{CaCO}_3$ . At other hardnesses, the objectives must be calculated using the following formulas where  $H = \ln(\text{hardness})$ : The 4-day average objective is  $e^{(0.8460H + 0.0584)}$ . The 1-hour average objective is  $e^{(0.8460H + 2.255)}$ .
- m. Selenium criteria were promulgated for all San Francisco Bay/Delta waters in the National Toxics Rule (NTR). The NTR criteria specifically apply to San Francisco Bay upstream to and including Suisun Bay and Sacramento-San Joaquin Delta. Note: at the time of writing, the values are 5.0 ug/l (4-day average) and 20 ug/l (1-hr. average).
- n. The objective for silver is based on hardness. The table value assumes a hardness of 100 mg/l  $\text{CaCO}_3$ . At other hardnesses, the objective must be calculated using the following formula where  $H = \ln(\text{hardness})$ : The 1-hour average objective for silver is  $e^{(1.72H - 6.52)}$ . U.S. EPA has not developed a 4-day criterion.
- o. Tributyltin is a compound used as an antifouling ingredient in marine paints and toxic to aquatic life in low concentrations. U.S. EPA has published draft criteria for protection of aquatic life (Federal Register: December 27, 2002, Vol. 67, No. 249, Page 79090-79091). These criteria are cited for advisory purposes. The draft criteria may be revised.
- p. The objectives for zinc are based on hardness. The table values assume a hardness of 100 mg/l  $\text{CaCO}_3$ . At other hardnesses, the objectives must be calculated using the following formulas where  $H = \ln(\text{hardness})$ : The 4-day average objective for zinc is  $e^{(0.8473H + 0.884)}$ . The 1-hour average for zinc is  $e^{(0.8473H + 0.884)}$ .

**Table 3-4A: Freshwater Water Quality Objectives for Mercury in Walker Creek, Soulajule Reservoir, and Their Tributaries; and in Waters of the Guadalupe River Watershed, Except Los Gatos Creek and its Tributaries Upstream of Vasona Dam, Lake Elsmán, Lexington Reservoir, and Vasona Lake**

Protection of Aquatic Organisms and Wildlife <sup>a</sup>	0.05 mg methylmercury per kg fish	Average wet weight concentration measured in whole trophic level 3 fish 5–15 cm in length
	0.1 mg methylmercury per kg fish	Average wet weight concentration measured in whole trophic level 3 fish 15 – 35 cm in length

a. The freshwater water quality objectives for the protection of aquatic organisms and wildlife also protect humans who consume fish from the Walker Creek and Guadalupe River watersheds.

**Table 3-5: Water Quality Objectives for Municipal Supply**

Parameter	Objective (in MG/L)	Parameter	Objective (in MG/L)	Parameter	Objective (in MG/L)
<b>Physical:</b>					
Color (units) <sup>a</sup>	15.0	<b>Synthetic Organic Chemicals:</b>			
Odor (number) <sup>a</sup>	3.0	Alachor <sup>h</sup>	0.002	<b>Volatile Organic Chemicals (cont'd):</b>	
Turbidity (NTU) <sup>a</sup>	5.0	Atrazine <sup>h</sup>	0.001	1,1,2-Trichloro-1,2,2-trifluoromethane <sup>h</sup>	1.2
pH <sup>b</sup>	6.5 - 8.0	Bentazon <sup>h</sup>	0.018	Toluene <sup>h</sup>	0.15
TDS <sup>c</sup>	500.0	Benzo(a)pyrene <sup>h</sup>	0.0002	Vinyl Chloride <sup>h</sup>	0.0005
EC (mmhos/cm) <sup>c</sup>	900	Dalapon <sup>h</sup>	0.2	Xylenes (single or sum of isomers) <sup>h</sup>	1.750
Corrosivity	non-corrosive	Dinoseb <sup>h</sup>	0.007		
<b>Inorganic Parameters:</b>					
Aluminum <sup>d</sup>	1.0 <sup>d</sup> / 0.2 <sup>a</sup>	Diquat <sup>h</sup>	0.02		
Antimony <sup>d</sup>	0.006	Endothall <sup>h</sup>	0.1		
Arsenic <sup>d</sup>	0.05	Ethylene dibromide <sup>h</sup>	0.00005		
Asbestos <sup>d</sup>	7 MFL <sup>e</sup>	Glyphosate <sup>h</sup>	0.7		
Barium <sup>d</sup>	1.0	Heptachlor <sup>h</sup>	0.00001		
Beryllium <sup>d</sup>	0.004	Heptachlor epoxide <sup>h</sup>	0.00001		
Chloride <sup>e</sup>	250.0	Hexachloreyclopentadiene <sup>h</sup>	0.001		
Cadmium <sup>d</sup>	0.005	Molinate <sup>h</sup>	0.02		
Chromium <sup>d</sup>	0.05	Oxamyl <sup>h</sup>	0.05		
Copper <sup>e</sup>	1.0	Pentachlorophenol <sup>h</sup>	0.001		
Cyanide <sup>d</sup>	0.15	Picloram <sup>h</sup>	0.5		
Fluoride <sup>f</sup>	0.6 - 1.7 <sup>g</sup>	Polychlorinated Biphenyls <sup>h</sup>	0.0005		
Iron <sup>a</sup>	0.3	Simazine <sup>h</sup>	0.004		
Lead <sup>b</sup>	0.05	Thiobencarb <sup>h</sup>	0.07 / 0.001		
Manganese <sup>a</sup>	0.05	<b>Volatile Organic Chemicals:</b>			
Mercury <sup>d</sup>	0.002	Benzene <sup>h</sup>	0.001		
Nickel <sup>d</sup>	0.1	Carbon Tetrachloride <sup>h</sup>	0.005		
Nitrate (as NO <sub>3</sub> ) <sup>d</sup>	45.0	1,2-Dibromo-3-chloropropane <sup>h</sup>	0.0002		
Nitrate + Nitrite (as N) <sup>d</sup>	10.0	1,2-Dichlorobenzene <sup>h</sup>	0.6		
Nitrite (as N) <sup>d</sup>	1.0	1,4-Dichlorobenzene <sup>h</sup>	0.005		
Selenium <sup>d</sup>	0.05	1,1-Dichloroethane <sup>h</sup>	0.005		
Silver <sup>b</sup>	0.1	1,2-Dichloroethane <sup>h</sup>	0.0005		
Sulfate <sup>e</sup>	250.0	cis-1,2-Dichloroethylene <sup>h</sup>	0.006		
Thallium <sup>d</sup>	0.002	trans-1,2-Dichloroethylene <sup>h</sup>	0.01		
Zinc <sup>a</sup>	5.0	1,1-Dichloroethylene <sup>h</sup>	0.006		
<b>Organic Parameters:</b>					
MBAS (Foaming agents) <sup>a</sup>	0.5	Dichloromethane <sup>h</sup>	0.005		
Oil and grease <sup>b</sup>	none	1,2-Dichloropropane <sup>h</sup>	0.005		
Phenols <sup>b</sup>	0.001	1,3-Dichloropropane <sup>h</sup>	0.0005		
Trihalomethanes <sup>b</sup>	0.1	Ethylbenzene <sup>h</sup>	0.7		
<b>Chlorinated Hydrocarbons:</b>					
Endrin <sup>h</sup>	0.002	Methyl-tert-butyl ether <sup>h</sup>	0.13 / 0.005		
Lindane <sup>h</sup>	0.0002	Monochlorobenzene <sup>h</sup>	0.07		
Methoxychlor <sup>h</sup>	0.03	Styrene <sup>h</sup>	0.1		
Toxaphene <sup>h</sup>	0.003	1,1,2,2-Tetrachloroethane <sup>h</sup>	0.001		
2,3,7,8-TCDD (Dioxin) <sup>h</sup>	3 x 10 <sup>-8</sup>	Tetrachloroethylene <sup>h</sup>	0.005		
2,4-D <sup>h</sup>	0.07	1,2,4-Trichlorobenzene <sup>h</sup>	0.005		
2,4,4-TP Silvex <sup>h</sup>	0.05	1,1,1-Trichloroethane <sup>h</sup>	0.200		
		1,1,2-Trichloroethane <sup>h</sup>	0.005		
		Trichloroethylene <sup>h</sup>	0.005		
		Trichlorofluoromethane <sup>h</sup>	0.15		

Parameter	Objective (in MG/L)
<b>Radioactivity:</b>	
Combined Radium-226 and Radium-228 <sup>i</sup>	5
Gross Alpha Particle Activity <sup>j</sup>	15i
Tritium <sup>i</sup>	20,000
Strontium-90 <sup>i</sup>	8
Gross Beta Particle Activity <sup>j</sup>	50
Uranium <sup>i</sup>	20

- NOTES:**
- a. Secondary Maximum Contaminant Levels as specified in Table 64449-A of Section 64449, Title 22 of the California Code of Regulations, as of June 3, 2005.
  - b. Table III-2, 1986 Basin Plan
  - c. Secondary Maximum Contaminant Levels as specified in Table 64449-B of Section 64449, Title 22 of the California Code of Regulations, as of June 3, 2005. (Levels indicated are "recommended" levels. Table 64449-B contains a complete list of upper and short-term ranges.)
  - d. Maximum Contaminant Levels as specified in Table 64431-A (Inorganic Chemicals) of Section 64431, Title 22 of the California Code of Regulations, as of June 3, 2005.
  - e. MFL = million fibers per liter; MCL for fibers exceeding 10 um in length.
  - f. Fluoride objectives depend on temperature.
  - g. A complete list of optimum and limiting concentrations is specified in Table 64433.2-A of Section 64433.2, Title 22 of the California Code of Regulations, as of June 3, 2005.
  - h. Maximum Contaminant Levels as specified in Table 64444-A (Organic Chemicals) of Section 64444, Title 22 of the California Code of Regulations, as of June 3, 2005.
  - i. Maximum Contaminant Levels as specified in Table 4 (Radioactivity) of Section 64443, Title 22 of the California Code of Regulations, as of June 3, 2005.
  - j. Included Radium-226 but excludes Radon and Uranium.

MG/L Milligrams per liter  
 pCi/L pico Curries per liter

**Table 3-6: Water Quality Objectives for Agricultural Supply<sup>a</sup> (in mg/l)**

Parameter	Threshold	Limit	Limit for Livestock Watering
<i>Physical:</i>			
pH	5.5-8.3	4.5-9.0	
TDS			10,000.0
EC (mmhos / cm)		0.2-3.0	
<i>Inorganic Parameters:</i>			
Aluminum	5.0	20.0	5.0
Arsenic	0.1	2.0	0.2
Beryllium	0.1	0.5	
Boron	0.5	2.0	5.0
Chloride	142.0	355.0	
Cadmium	0.01	0.5	0.05
Chromium	0.1	1.0	1.0
Cobalt	0.05	5.0	1.0
Copper	0.2	5.0	0.5
Flouride	1.0	15.0	2.0
Iron	5.0	20.0	
Lead	5.0	10.0	0.1
Lithium		2.5 <sup>b</sup>	
Manganese	0.2	10.0	
Molybdenum	0.01	0.05	0.5
Nickel	0.2	2.0	
NO <sub>3</sub> + NO <sub>2</sub> (as N)	5.0	30 <sup>c</sup>	100.0
Selenium		0.02	0.05
Sodium adsorption ratio (adjusted) <sup>d</sup>	3.0	9.0	
Vanadium	0.1	1.0	0.1
Zinc	2.0	10.0	25

NOTES:

- a. For an extensive discussion of water quality for agricultural purposes, see "A Compilation of Water Quality Goals," Central Valley Regional Water Quality Control Board, May 1993.
- b. For citrus irrigation, maximum 0.075 mg/l.
- c. For sensitive crops. Values are actually for  $\text{NO}_3\text{-N} + \text{NH}_4\text{-N}$ .
- d. Adjusted SAR =  $\{ \text{Na} / [(\text{Ca} + \text{Mg}) + 2]^{0.5} \} \{ 1 + [8.4 - \text{pHc}] \}$ , where pHc is a calculated value based on total cations, Ca + Mg, and  $\text{CO}_3 + \text{HCO}_3$ , in me/l. Exact calculations of pHc can be found in "Guidelines for Interpretation of Water Quality for Agriculture" prepared by the Univ. of California Cooperative Extension.

### **Table 3-7: Water Quality Objectives for the Alameda Creek Watershed Above Niles**

#### **SURFACE WATER QUALITY OBJECTIVES (ALAMEDA CREEK AND TRIBUTARIES)**

TDS: 250 mg/l (90 day-arithmetic mean)  
360 mg/l (90 day-90<sup>th</sup> percentile)  
500 mg/l (daily maximum)

Chlorides: 60 mg/l (90 day-arithmetic mean)  
100 mg/l (90 day-90<sup>th</sup> percentile)  
250 mg/l (daily maximum)

#### **GROUNDWATER QUALITY OBJECTIVES**

(Concentration not to be exceeded more than 10 percent of the time during one year.)

##### **Central Basin**

TDS: Ambient or 500 mg/l, whichever is lower  
Nitrate (NO<sub>3</sub>): 45 mg/l

##### **Fringe Subbasins**

TDS: Ambient or 1000 mg/l, whichever is lower  
Nitrate (NO<sub>3</sub>): 45 mg/l

##### **Upland and Highland Areas**

California domestic water quality standards set forth in California Code of Regulations, Title 22 and current county standards.

Ambient water quality conditions at a proposed project area will be determined by Zone 7 of the Alameda County Flood Control and Water Conservation District at the time the project is proposed, with the cost borne by the project proponents. Ambient conditions apply to the water-bearing zone with the highest quality water.

Waters designated for use as domestic or municipal water supply shall not contain concentrations of chemicals in excess of natural concentrations or the limits specified in California Code of Regulations, Title 22, Chapter 15, particularly Tables 64431-A and 64431-B of Section 64431, Table 64444-A of Section 64444, and Table 4 of Section 64443.

# **EXHIBIT**

## **“26”**

4837-0090-6752.2

**EXHIBIT 26 TO SCVSD'S TEST CLAIM**  
**DECLARATION OF STEPHEN R. MAGUIN**

1. I, Stephen R. Maguin, am the Chief Engineer and General Manager for the County Sanitation Districts of Los Angeles County, which includes the Santa Clarita Valley Sanitation District (the "District" or "SCVSD"). I am authorized to attest to the foregoing. If called as a witness, I could and would competently testify to the assertions provided below.

**Overview of the TMDL Chloride Mandate**

2. In 2002, the Los Angeles Regional Water Quality Control Board ("Regional Water Board") adopted Resolution No. 02-118, which amended the Water Quality Control Plan for the Los Angeles Region ("Basin Plan") to include a Total Maximum Daily Load ("TMDL") for chloride in the Santa Clara River. (Regional Water Board Resolution No. R02-018: *Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Regional to Incorporate a TMDL for Chloride in the USCR*) (Oct. 24, 2002), attached as Exh. 12.)

In that resolution, the Regional Water Board restricted final waste load allocations ("WLAs") for the Valencia and Saugus Water Reclamation Plants ("WRPs") to 100 mg/L for inclusion in their National Pollutant Discharge Elimination System ("NPDES") permits. The TMDL also included interim WLAs for the plants to provide the District time to implement chloride source reduction, complete site-specific objective ("SSO") studies, and make any necessary modifications to the WRPs.

3. At that time, the District determined that complying with this TMDL would, among other things, require it to construct advanced treatment facilities that would cost approximately \$500 million. Because of the magnitude of the costs to comply with the TMDL, the District appealed the Regional Water Board's decision to the California State Water Quality Control Board ("the State Water Board").

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4. In 2003, the State Water Board remanded the TMDL to the Regional Water Board in State Water Board Resolution No. 2003-0014. The State Board required the Regional Water Board to “consider a phased implementation approach to allow SCVSD to complete special studies prior to planning and construction of advanced treatment technologies.” (Exh. 1 at p. 2, ¶7; *see also* Exh. 13, State Water Board Resolution No. 2003-0014: *Remanding an Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate TMDL for Chloride in USCR* (Feb. 19, 2003).) The Regional Water Board modified the TMDL in July 2003. (Regional Water Board Resolution No. R03-008: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate TMDL for Chloride in USCR* (Jul. 10, 2003), attached as Exh. 14.)

5. In May 2004, the Regional Water Board’s Resolution No. 04-004 further revised the interim WLAs and implementation plan. (Exh. 1 at p. 2, ¶9.) That resolution: (1) extended the final compliance deadline to 2018; and, (2) directed that studies be performed to characterize the sources, fate, transport, and specific impacts of chloride in the upper Santa Clarita River, including impacts to downstream reaches and underlying groundwater basins. (*See* Exh. 1 at p. 2, ¶9.) This version of the TMDL was approved by the United States Environmental Protection Agency (“US EPA”) and became effective in May 2005.

6. In 2006, the Regional Water Board shortened the overall compliance period in the implementation plan by two years. This made the WLA-based final effluent limitations for chloride operative eleven years after the May 2005 effective date of the revised TMDL. (Regional Water Board Resolution No. R4-2006-016: *Amendment to the Water Quality Control Plan for the Los Angeles Region through revision to the Implementation Plan for the USCR Chloride TMDL, Resolution 04-004* (Aug. 3, 2006), attached as Exh. 16.)

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7. The Regional Board further shortened the compliance period by another year in December 2008. This modification required the District to comply with the current TMDL and associated WLAs by May 4, 2015. The NPDES permits for the Saugus and Valencia WRPs, last updated in July 2009, reflect these terms.

8. On December 11, 2008, the Regional Water Board amended the Basin Plan to once again modify the chloride requirements. This amendment included “relaxed” SSOs for chloride in the Santa Clara River conditioned upon the completion of activities set forth in a further revised TMDL. The revised TMDL contained new final WLAs and a detailed implementation plan. The Regional Water Board referred to these modifications as the “alternative water resources management approach” or “AWRM.” (Exh. 1 at p. 4, ¶15.)

9. The revised TMDL and the Saugus and Valencia WRP NPDES permits require final compliance with the conditional SSOs and final WLAs for chloride by May 4, 2015. (See Exh. 1, Attachment “A” at p. 20.) In order to meet these requirements, the District must implement ultra-violet light disinfection at both WRPs, construct advanced treatment facilities at the Valencia WRP (i.e., microfiltration-reverse osmosis and brine disposal), and provide salt management facilities (i.e., extraction wells and water supply conveyance pipelines), supplemental water (i.e., water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. (See generally, Exh. 1, Attachment “A”.)

In addition, the desalinated recycled water must also be: (1) discharged to ensure compliance with water quality objectives for Reaches 4A, 4B, and 5; (2) used to protect of salt-sensitive agricultural beneficial uses; (3) used to remove excess chloride load above 117 mg/L from the East Piru Basin; and, (4) used to enhance water supplies in Ventura and Los Angeles Counties. (See, e.g. Exh. 1 at p. 5, ¶22.) This lengthy “implementation” process involves great expense, particularly with respect to initial capital investments and operating costs. This expense far exceeds the District’s resources and generated revenues.

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10. The District's present estimate of the cost to comply with the TMDL's conditional SSOs and WLAs is \$250 million. (See Report: *Santa Clarita Valley Sanitation District USCR Chloride TMDL: SCR Reaches 5 & 6 Cost Estimate Summary for Conceptual Compliance Alternatives -Task 9* (June 2008), attached as Exh. 21 at p. 17.)

11. The District has always put forth its best efforts to facilitate and implement the Regional Water Board's regulations in an efficient and cost-effective manner. Given the large scale of the projects involved, the District has organized the implementation tasks in the phased approach described in Attachment "A" to Resolution No. R4-2008-0012, attached as Exhibit 1.

### **Summary of the Phased Implementation Approach**

12. The implementation tasks for and the costs of complying with the final WLAs are:

#### **Implementation Task 4**

*The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature, develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.*

The District retained a consulting firm to assist in leading the collaborative process required by the Regional Water Board. As part of this process, the District convened a stakeholder work group. To date, the District has spent approximately \$800,000 on consulting services to accomplish this task.

#### **Implementation Task 5**

*Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans*

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*on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.*

The District retained a technical consulting firm to develop the groundwater/surface water interaction model, required by the TMDL, to examine the feasibility of various compliance alternatives. As of the time this claim is submitted, the District has spent approximately \$3.1 million on consulting services to accomplish this task.

#### Implementation Task 6

*Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.*

The District retained technical consulting firms to complete the agricultural chloride threshold, and the threatened and endangered species chloride threshold studies, required by the TMDL. The District has spent approximately \$700,000 and \$100,000, respectively, for these studies.

#### Implementation Task 7

*Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.*

#### Implementation Task 8

*Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.*

The District retained a technical consulting firm to prepare the SSOs study and anti-degradation analysis required by the TMDL. The Regional Board used information prepared for these reports as the technical basis to revise the Basin Plan. The Basin Plan incorporated the

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revised TMDL under Resolution R4-2008-012. The District has spent approximately \$300,000 for consulting services to complete these tasks.

Implementation Task 9

*Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.*

The District retained the services of a technical consulting firm to develop a report on potential compliance measures and costs. The District has spent approximately \$500,000 on this task.

Implementation Task 17a

*Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.*

The District retained technical consulting firms to prepare a facilities plan and environmental to comply with the TMDL. The District has spent approximately \$1.1 million on this task to date.

Summary of the Implementation Tasks Completed to Date:

<b>TMDL Study/Task</b>	<b>Cost</b>
TMDL Collaborative Process Facilitation Services (Task 4)	\$0.8 million
Groundwater Surface Water Interaction Model (Task 5)	\$3.1 million
Agricultural Chloride Threshold Study (Task 6)	\$0.7 million
Threatened and Endangered Species Study (Task 6)	\$0.1 million
Site Specific Objectives and Anti-Degradation Study (Tasks 7 & 8)	\$0.3 million
Chloride Compliance Cost Study (Task 9)	\$0.5 million
Facilities Plan & EIR (Task 17a)	\$1.1 million
<b>Total TMDL Study Costs to Date</b>	<b>\$6.6 million</b>

\*These expenditures do not include the cost of District staff time expended on these tasks.

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Implementation Task 20

Implementation Task 20 of the TMDL provides the schedule for compliance of WLAs that will also be incorporated into the Saugus and Valencia WRP's NPDES permits.

*The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.*

**Summary of the Phased Implementation Approach**

13. In addition to its work on the implementation tasks, the District has also designed projects to comply with the final WLAs for chloride by reducing chloride levels in the WRPs' recycled water. Specifically, the District implemented an innovative automatic water softener public outreach and rebate program, in compliance with Senate Bill 475, to remove automatic water softeners, which contribute significant amounts of chloride to the recycled water produced at the District's WRPs. The total cost of the program for the removal of automatic water softeners, not including the cost of the District's staff time, is approximately \$4.8 million.

Although the removal of automatic water softeners has reduced chloride levels in the District's recycled water discharged to the river, that reduction is not sufficient to achieve compliance with the revised TMDL without additional facilities. In order to meet the chloride TMDL requirements set forth in Regional Board Resolution No. R4-2008-012, the District must also implement the AWRM program. The estimated costs of implementing that program are set forth below:

<b>AWRM Project Element</b>	<b>Estimated Capital Cost *</b>
Facilities Plan & Environmental Impact Report (EIR)	\$2.5 million
Advanced Treatment (Micro Filtration, MF & Reverse Osmosis, RO)	\$30.0 million
Brine Disposal (Deep Well Injection, DWI)	\$53.0 million
Ventura Salt Export Facilities	
(a) MF/RO Conveyance Pipeline from Valencia WRP	\$46.5 million
(b) GW Extraction Wells in Ventura County	\$5.5 million
(c) Blend Water Pipeline from Wells to River	\$52.3 million
Supplemental Water from local pumped groundwater	\$30.0 million

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Supplemental Water conveyance	\$12.0 million
UV Disinfection Facilities at Saugus & Valencia WRP	\$16.5 million
Removal of Automatic Water Softeners	\$2.4 million

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**Total Estimated Capital Cost** **\$250.7 million**

\* Costs based on 2007 dollars.

**Note:** The costs listed above are capital costs and do not include operation and maintenance expenses required for continued operation of the facilities, which are estimated to be approximately \$4.5 million per year.

**Costs of the AWRM Program**

14. If the District cannot comply with the AWRM program, the chloride requirements contained in Regional Board Resolution No. R4-2006-016 will become effective. These include a final WLA of 100 mg/L to assigned to the District's WRPs' discharge, which would require the District to construct advanced treatment and brine disposal facilities, resulting in a combined cost of \$500 million dollars, which includes operation and maintenance expenses required for continued operation.

**Actual and Projected Costs Associated with Mandate**

15. In this test claim, the District seeks all eligible costs for fiscal year 2009-2010. Actual increased costs incurred during fiscal year 2009-2010, and projected increased costs incurred during the fiscal year 2010-2011, are as follows:

Expense (TMDL/AWRM Task)	FY 09-10 Cost	FY 10-11 Estimate
Payroll & Benefits (TMDL General Compliance)	\$ 96,750	\$ 396,000
Payroll & Benefits (Facilities Plan & EIR - Task 17)	\$ 613,525	
Legal Services (TMDL General Compliance)	\$ 19,492	\$ 220,000
Consultants (TMDL Task 5)	\$ 4,022	
Consultants (TMDL Task 4)	\$ 1,192	
Consultants (TMDL Task 17)	\$ 774,980	
Consultants (TMDL General Compliance)		\$ 65,000
Payroll & Benefits (Automatic Water Softener Program)	\$ 17,300	
Rebates (Automatic Water Softener Program)	\$ 739,408	\$ 100,000
Consultants (Automatic Water Softener Program)	\$ 363,210	\$ 100,000
<b>Total Incurred Costs</b>	<b>\$ 2,629,870</b>	<b>\$ 881,000</b>

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### Unsuccessful Attempts to Secure Other Funding Sources

16. The District has attempted to secure other sources of state and federal funding. Despite the District's good faith efforts, it has been unable to secure any alternate local, state, or federal funding sources, or identify any other fee authority that may be used to offset the increased costs that will be incurred by the District to implement the project.

17. The District's numerous efforts to secure funding to comply with the mandates are outlined below:

- a. Dedicated State Funds. During 2009 and 2010, no state funding has been available from which the District could seek to fund the mandates. It is possible that a relatively small amount (up to several million dollars) of grant funding may be sought in the future from the Department of Water Resources through the Integrated Regional Water Management Planning Program.
- b. Dedicated Federal Funds. Over the course of several years, the District has pursued outside sources of federal funding applicable to this mandate. For fiscal year 2011, the District submitted appropriations requests to Congressmen McKeon and Gallegly and Senators Boxer and Feinstein to obtain funding under the State and Tribal Assistance Grants ("STAG") Program (through the US EPA) for \$1 million. Notwithstanding its efforts, the District was not awarded any appropriation for fiscal year 2011. The District also submitted, but did not receive, funding for an appropriations request in fiscal year 2010 for STAG funding.

In the previous Congress, the District prepared and submitted requests for authorization of funding through the Water Resources Development Act ("WRDA") to several members of the House of Representatives and to California's two Senators. However, these authorization requests were not acted on by either the House or the Senate. WRDA reauthorization may be considered again in the 112th Congress.

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18. Although the District intends to submit additional requests for STAG and WRDA funding authorization, the outlook for funding at the federal level is bleak, and any funds that become available could at best provide only a small amount towards the project's total cost. The present policy of Congress and the current administration appears to be to afford preference to funding the current backlog of authorized, but not yet funded projects, as opposed to appropriating funds for new projects. Additionally, it is unclear whether the 112th Congress will authorize any new projects under programs like WRDA, or appropriate any funds for new projects under STAG or other accounts that were previously available. These developments may preclude or substantially delay the District's obtaining federal funding for this project.

19. In order to generate the \$250 million needed to fund the TMDL project, the District performed several service charge rate projections, which indicated that rates would be increased over the next thirteen years. After conducting service charge projections, the District initiated the Proposition 218 process, and provided notice to all affected ratepayers.

20. On June 11, 2010, the District disseminated a "Notice of Public Hearing," which outlined the various rate increases and provided a brief overview of the regulatory issues concerning the TMDL chloride requirements. (*See* Attachment "A" to this declaration.) The District's elected officials could not support the proposed rate increases in the face of fierce public opposition. The potential consequences of future rate increase implementation include a referendum to overturn them. Therefore, this source of funding remains uncertain.

As a result, the District's board declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum. Since that time, the likelihood that the proposed rate increases would pass muster, in light of strong disapproval of the proposed length and level of rate increases, has been reduced even further.

20. The District is not aware at this time of any other local, state or federal funding that could be used to offset the increased costs that will be incurred in connection with the proposed project.

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Exhibit 26 to SCVSD Test Claim*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, based on my personal knowledge, information, or belief, and that this declaration was executed on March 28, 2011, at Whittier, California.

A handwritten signature in blue ink that reads "Stephen R. Maguin". The signature is written in a cursive style and is positioned above a horizontal line.

Stephen R. Maguin  
Chief Engineer and General Manager  
County Sanitation Districts of Los Angeles County

4814-6023-3481.1

*Declaration of Stephen R.  
Exhibit 26 to SCVSD Test Claim*



**SANTA CLARITA VALLEY SANITATION DISTRICT**

1955 Workman Mill Road, P.O. Box 4000, Whittier, CA 90607-4000  
 Telephone: (800) 388-4602  
 www.lacsd.org

June 11, 2010

John and Mary Smith  
 1234 Main Street  
 Santa Clarita, CA 91310

**ATTENTION**  
 This notice contains important information about a proposed increase in rates for wastewater service.  
 Please read.

**NOTICE OF PUBLIC HEARING  
 SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY  
 REGARDING A PROPOSED SEWER SERVICE CHARGE RATE INCREASE  
 TO THE OWNER OF RECORD OF**

Assessor's Parcel No. 1234-567-890  
 1234 Main Street, Santa Clarita, CA 91310

Notice is hereby given that the Santa Clarita Valley Sanitation District will conduct a public hearing on July 27, 2010, at 6:30 p.m. in the Santa Clarita City Council Chambers, 23920 Valencia Boulevard to consider public input on the proposed increase in sewer service charge rates.

**Important Dates**

Information Meetings:

Location	Date	Time(s)
Santa Clarita City Hall	June 29	7:00 pm
West Ranch Town Council Meeting	July 7	7:00 pm
Santa Clarita City Hall	July 8	1:00 pm and 7:00 pm
Santa Clarita City Hall	July 14	1:00 pm and 7:00 pm
Santa Clarita City Hall	July 19	7:00 pm
Castaic Area Town Council Meeting	July 21	7:00 pm

Public Hearing:

Location	Date	Time
Santa Clarita City Hall	July 27	6:30 pm

**Protest Procedure**

**How To Protest The Proposed Rates**

Under Proposition 218, the owner of record for a parcel that is subject to the proposed increase can submit a written protest against the proposed rate increases to the District at or before the time set for the public hearing. If a majority of affected property owners submit written protests, the proposed rate increases will not go into effect.

The written protest must identify the parcel(s) in which the party signing the protest has an interest. The best means of identifying the parcel(s) is by the Assessor's Parcel Number (APN), shown above. If the party signing the protest is not shown on the last equalized assessment roll of Los Angeles County as the owner of the parcel(s) (e.g. if you recently bought the parcel), the protest must contain or be accompanied by written evidence that such party is the owner of the parcel(s).

Using the enclosed envelope and form on page 3, please mail written protests to:

Secretary of the Board  
 Santa Clarita Valley Sanitation District  
 P.O. Box 4000  
 Whittier, CA 90607

**Basis for the Rates\***

	Current	Proposed			
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Existing Facilities	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$19.17 / month (\$230 / year)	\$19.83 / month (\$238 / year)	\$20.50 / month (\$246 / year)
Chloride - Related Efforts	\$0 / month (\$0 / year)	\$0 / month (\$0 / year)	\$1.33 / month (\$16 / year)	\$2.75 / month (\$33 / year)	\$4.17 / month (\$50 / year)
Total Rate	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$20.50 / month (\$246 / year)	\$22.58 / month (\$271 / year)	\$24.67 / month (\$296 / year)

\* Rate per sewage unit (equivalent to the discharge from one single family home).

**Total Charge for Your Parcel\***

	Current	Proposed			
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Your Charge	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$20.50 / month (\$246 / year)	\$22.58 / month (\$271 / year)	\$24.67 / month (\$296 / year)

\* The District offers a sewer service charge rebate program for parcels that have low water usage. Details of this program, including claim forms, are available on the District's website ([www.lacsd.org](http://www.lacsd.org)).

**Background Information**

- This notice is about a proposal to increase your wastewater service charge over the next four years as shown above.
- Santa Clarita Valley Sanitation District is the public agency responsible for managing the wastewater that is generated on your parcel.
- Approximately half of the proposed increase is for the continued operation of the existing treatment facilities. The other half is for planning and design efforts related to the facilities that are needed to comply with state-mandated chloride limits.

**Regulatory Issues (Chlorides)**

- In 2002, the Regional Water Quality Control Board (state regulatory agency) adopted a chloride standard that would have necessitated the construction of large-scale advanced treatment facilities costing over \$500 million.
- The District appealed that decision and, in 2004, the Regional Board agreed to allow additional studies to assess the correctness of the chloride standard as adopted.
- In 2006, the Regional Board halted the studies after the first study's conclusion supported their position and took action to reaffirm the chloride standard as adopted.
- In 2008, after lengthy negotiations, the Regional Board agreed to relax the standard in exchange for the District implementing an alternative project that included the removal of water softeners, much smaller advanced treatment facilities, and salt management facilities. The estimated cost of this alternative project is \$250 million.
- In 2008, the community took the initiative to pass Measure S to discontinue the use of self-regenerating water softeners.
- In 2009, the District's Board of Directors instructed staff to work with the Regional Board with the goal of further lowering the cost of the project.

- Based upon this direction, District's staff developed a phased approach to the project that would spread the cost of the project over significantly more years and would provide some additional relief during drought conditions, reducing the total project cost to approximately \$209 million, if ultimately approved by the Regional Board.

### **Recommendation**

- After opposing the strict standards for over ten years, negotiating with the Regional Board, exploring all technical alternatives, and considering potential large fines and penalties for non-compliance, the Sanitation District staff is recommending the proposed increases as the lowest cost of all viable options that will allow for compliance with the adopted chloride standards.
- While the recommendation is for a four-year rate increase that will keep the District on the path to compliance, we will continue to work with the regulators to revise the adopted chloride limits and grant additional regulatory relief during drought conditions, to work with state and federal legislatures for regulatory relief during these tough economic times, and to pursue all state and federal grant funding opportunities.
- Please note that the proposed recommendation will only fund the facilities planning and design support work. Additional service charge rate increases related to compliance with the chloride standards beginning in fiscal year 2014-15 through fiscal year 2022-23 will be necessary if the project is approved and proceeds to construction.

### **Protest Process**

- You may file a protest against the proposed rate increase following the procedure outlined on the first page. Pursuant to Proposition 218, the protest must be submitted in writing and must be received by the District prior to or at the public hearing on July 27, 2010. For your convenience, you may submit your protest using the enclosed self-addressed envelope and the form at the bottom of this page.
- Protesting the proposed rates does not negate the District's responsibility to comply with all legally adopted discharge standards. Consequently, failure to adequately fund the necessary facilities could result in the District (and, ultimately, you the ratepayer) being subject to significant fines and penalties, and potentially a much more expensive project than what is currently recommended.

### **More Information / Contact Us**

- Telephone: (800) 388 -4602 (toll free)
- Regular Mail: P.O. Box 4000  
Whittier, CA 90607-4000
- E-mail: rates@lacs.d.org
- Internet: www.lacs.d.org
- Please include your name, address, telephone number, and Assessor's Parcel Number (shown just under the title of this notice) with any correspondence to help us promptly and accurately respond. Normal business hours are Monday through Friday, 7:30 am to 4:00 pm.
- Para información en español por favor de mirar el reverso.

(cut here)



### **PROTEST FORM**

Assessor's Parcel No.: 1234-567-890

Property Location: 1234 Main Street, Santa Clarita, CA 91310

As the owner of record of the above-identified parcel, I hereby officially protest the proposed rate increase.

\_\_\_\_\_  
Owner of Record (print name)

\_\_\_\_\_  
Owner of Record (signature)

\_\_\_\_\_  
Date

**Para Información en Español**

**¿Acerca de qué es este aviso?**

El Distrito Sanitario Santa Clarita Valley del Condado de Los Angeles propone aumentar la tasa por Cargo de Servicio de alcantarillado y tratamiento de aguas residuales. Este aviso discute las razones y la cantidad del aumento propuesto. Además, se le notifica que se conducirá una Audiencia Pública el día 27 de Julio del 2010 a las 6:30 p.m. en la Cámara de Consejo de la Ciudad de Santa Clarita, que se encuentra localizada en la siguiente dirección 23920 Valencia Boulevard, para considerar los aumentos que se proponen. Si usted recibió este aviso, los aumentos propuestos de Cargo de Servicio son aplicables a su propiedad. ¡Favor de notar que ESTO NO ES UN COBRO! ¡No mande dinero!

¿Si usted desea recibir este aviso y más información en español, por favor llame a los Distritos Sanitarios al teléfono (800) 388-4602. También usted nos puede visitar en nuestra pagina en la Internet en [www.lacsd.org](http://www.lacsd.org).

# EXHIBIT "27"

4837-0090-6752.2

**C**

**Effective: November 3, 2004**

West's Annotated California Codes Currentness

Constitution of the State of California 1879 (Refs & Annos)

▣ Article XIII B. Government Spending Limitation (Refs & Annos)

→ **§ 6. New programs or services mandated by legislature or state agencies; subvention; appropriation of funds or suspension of operation**

SEC. 6. (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b)(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local govern-

ment employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

**CREDIT(S)**

(Adopted Nov. 6, 1979. Amended by Stats.2004, Res. c. 133 (S.C.A.4)(Prop.1A, approved Nov. 2, 2004, eff. Nov. 3, 2004).)

Current with all 2010 Reg.Sess. laws; all 2009-2010 1st through 8th Ex.Sess. laws; and all Props. on 2010 ballots.

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**END OF DOCUMENT**

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# EXHIBIT "28"

4837-0090-6752.2



**Effective: October 19, 2010**

West's Annotated California Codes Currentness

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 4. Fiscal Affairs (Refs & Annos)

Part 7. State-Mandated Local Costs (Refs & Annos)

Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)

Article 1. Commission Procedure (Refs & Annos)

→ § 17556. Findings; costs not mandated upon certain conditions

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

#### CREDIT(S)

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

#### VALIDITY

*A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.*

Current with all 2010 Reg.Sess. laws; all 2009-2010 1st through 8th Ex.Sess. laws; and all Props. on 2010 ballots.

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END OF DOCUMENT

# EXHIBIT "29"

4837-0090-6752.2

150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622  
(Cite as: 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762)

**C**

Court of Appeal, Second District, Division 3, California.

COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES, Defendant and Appellant;

Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.

City of Artesia, etc., et al., Plaintiffs and Appellants,

v.

Commission on State Mandates, Defendant and Appellant;

Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.

**No. B183981.**

May 10, 2007.

**Background:** County and cities presented test claims to California Commission on State Mandates, seeking reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board. Commission would not adjudicate claims on the ground that subvention was precluded by statute. County and cities sued Commission, seeking an order requiring State to reimburse them for carrying out new obligations, along with other relief. Commission and county and cities filed cross-motions for judgment on the pleadings. The Superior Court, Los Angeles County, Nos. BS089769 and BS089785, Victoria G. Chaney, J., entered partial grant of cross-motions. Trial court also granted in part the petitions by county and cities for a writ of mandate directing Commission to consider the test claims and determine whether

county and cities were entitled to reimbursement. Commission appealed and county and cities cross-appealed.

**Holdings:** The Court of Appeal, Aldrich, J., held that

(1) Commission forfeited its statute of limitations defense based on failure to raise it in trial court, and (2) question of whether obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by Commission.

Affirmed.

West Headnotes

[1] States 360 ↪ 111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and

Statutory Liabilities. Most Cited Cases

“Subvention” under constitutional provision concerning reimbursement to local government for state-mandated programs generally means grant of financial aid or assistance, or subsidy. West’s Ann.Cal. Const. Art. 13B, § 6.

[2] States 360 ↪ 111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and

Statutory Liabilities. Most Cited Cases

Constitutional rule of state subvention that requires state to pay for new governmental programs imposed on local governments does not require state to reimburse local agencies for any incidental cost that may result from enactment of state law; rather, subvention requirement is restricted to governmental services which local agency is required by state law to provide to its residents. West’s Ann.Cal. Const. Art. 13B, § 6.

**[3] States 360** ⚡111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

Constitutional rule of state subvention which requires state to reimburse local government for implementing required governmental programs is intended to prevent state from transferring costs of government from itself to local agencies. West's Ann.Cal. Const. Art. 13B, § 6.

**[4] States 360** ⚡111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

Under constitutional rule of state subvention which requires state to reimburse local government for governmentally imposed programs, reimbursement is required when state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb. West's Ann.Cal. Const. Art. 13B, § 6.

**[5] Pleading 302** ⚡343

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k343 k. In General. Most Cited Cases

**Pleading 302** ⚡350(2)

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k350 Application and Proceedings

Thereon

302k350(2) k. Time for Proceedings.

Most Cited Cases

A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired; the rules governing demurrers apply.

**[6] Pleading 302** ⚡350(8)

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k350 Application and Proceedings

Thereon

302k350(3) Hearing, Determination, and Relief

302k350(8) k. Matters Considered.

Most Cited Cases

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice.

**[7] Appeal and Error 30** ⚡863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In General. Most Cited

Cases

On review of a judgment on the pleadings, the appellate court must determine if the complaint states a cause of action as a matter of law.

**[8] Appeal and Error 30** ⚡893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In General. Most

Cited Cases

On review of a judgment on the pleadings, the appellate court reviews the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory.

**[9] Mandamus 250** ⚡187.9(1)

250 Mandamus

250III Jurisdiction, Proceedings, and Relief

250k187 Appeal and Error

250k187.9 Review

250k187.9(1) k. Scope and Extent in

General. Most Cited Cases

In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence; however, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

[10] Mandamus 250 ↪ 187.4

250 Mandamus

250III Jurisdiction, Proceedings, and Relief

250k187 Appeal and Error

250k187.4 k. Presentation and Reservation in Lower Court of Grounds of Review. Most Cited Cases

On appeal from trial court's issuance of a writ of mandate directing the California Commission on State Mandates to set aside its decisions rejecting test claims of city and counties, which claims sought reimbursement pursuant to constitutional requirement for subvention for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit, Commission forfeited any right it may have had to assert 90-day statute of limitations defense, where Commission failed to raise the defense in its pleadings in the trial court. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.C.C.P. § 341.5.

[11] Limitation of Actions 241 ↪ 180(2)

241 Limitation of Actions

241V Pleading, Evidence, Trial, and Review

241k180 Demurrer, Exception, or Motion Raising Defense

241k180(2) k. Matters Appearing on Face of Pleadings. Most Cited Cases

The time-bar of a statute of limitations may be

raised by demurrer where the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, for the reason that it fails to state facts sufficient to state a cause of action.

[12] Limitation of Actions 241 ↪ 182(5)

241 Limitation of Actions

241V Pleading, Evidence, Trial, and Review

241k181 Pleading Statute as Defense

241k182 Necessity

241k182(5) k. Waiver or Estoppel by Failure to Plead. Most Cited Cases

Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer.

[13] States 360 ↪ 111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

In proceedings initiated by county and cities against California Commission on State Mandates for reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board, the question of whether the obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by the Commission; although provision of Government Code would have excluded from subvention any order that included a permit issued by Regional Water Boards, that section was unconstitutional under article imposing subvention requirement whenever the Legislature "or any state agency" mandated a new program or higher level of service, making it necessary to determine whether state mandates existed. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17516(c).

See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 119-122; Cal. Jur. 3d, State of Cali-

*fornia, § 101 et seq.*

West Codenotes

Held Unconstitutional West's Ann. Cal. Gov. Code § 17516(c) \*\*764 Raymond G. Fortner, Jr., County Counsel, Judith A. Fries, Principal Deputy County Counsel for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

Burhenn & Gest, Howard Gest, Los Angeles, and David Burhenn for Plaintiffs and Appellants County of Los Angeles, Los Angeles County Flood Control District and Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village.

Thomas F. Casey III, County Counsel, (San Mateo) and Miruni Soosaipillai, Deputy for City/County Association of Governments of San Mateo County, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Morrison & Foerster and Robert L. Falk, San Francisco, for Bay Area Stormwater Management Agencies Association, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Camille Shelton, Sacramento, and Eric D. Feller for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Tom Green and Mary E. Hackenbracht, Assistant Attorneys General, Helen G. Arens and Jennifer F. Novak, Deputy Attorneys General for Regional Water Quality Control Board, Los Angeles Region as Amicus Curiae on behalf of Defendant and Appellant.

ALDRICH, J.

#### \*903 INTRODUCTION

The California Commission on State Mandates (the Commission) appeals from the judgment entered

following the partial grant of cross-motions for judgment on the pleadings. The County of Los Angeles, the Los Angeles County Flood Control District, and the Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village (collectively, County/Cities) filed a cross-appeal from the judgment.

In 2001, the Regional Water Quality Control Board (Regional Water Board), Los Angeles Region, issued a National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater and urban runoff discharges, which obligated County/Cities to inspect industrial, \*904 commercial and construction water treatment facilities (which obligation County/Cities claim the State previously performed) and to install and maintain trash receptacles at transit stops.

County/Cities presented "test claims" FN1 to the Executive Director of the Commission\*\*765 seeking reimbursement for carrying out these obligations pursuant to the constitutional requirement for subvention arising from a state mandate (Cal. Const., art. XIII B, § 6). The Executive Director returned the claims adjudicated, because they did not involve an executive order under section 17516 of the Government Code (Section 17516c). In denying the appeals of County/Cities, the Commission noted it was without authority to declare a statute unconstitutional and concluded that Section 17516c excludes from the subvention requirement any order, which includes a permit, issued by the Regional Water Boards of the State Water Resources Control Board (State Water Board).

FN1. " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." ( Gov.Code, § 17521.)

Section 6 of article XIII B of the California Consti-

150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622  
(Cite as: 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762)

tution (article XIII B, section 6) provides in pertinent part: "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 that local government for the costs of the program or increased level of service...." (Italics added.)

As we shall discuss, Section 17516c is unconstitutional to the extent it exempts Regional Water Boards from the constitutional state mandate subvention requirement. Its creation of an exception for Regional Water Boards, which are state agencies, contravenes the plain, unequivocal, and all-inclusive reference to "any state agency" in article XIII B, section 6. Moreover, a contrary conclusion is not compelled by virtue of the fact that Section 17516c essentially mirrors the language of section 2209, subdivision (c) (§ 2209(c)) of the Revenue and Taxation Code. A statute cannot trump the constitution.

We decline to consider the Commission's new claim that the constitutional challenge to Section 17516c by County/Cities is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure. This statute of limitations defense, which should have been raised before the trial court, is not cognizable on this appeal.

\*905 The Commission urges that should this court conclude Section 17516c is unconstitutional, the appropriate remedy is to afford the Commission the opportunity to pass on the merits of the subject test claims on the issues of whether: (1) the subject permit qualifies as a state mandated program under article XIII B, section 6; (2) the permit amounts to a new program or higher level of service; and (3) the permit imposes costs on local entities (Gov.Code, §§ 17514, 17556). We find its position persuasive.

The cross-appeal filed by County/Cities is premised on the theory that if subvention of funds from the Commission is foreclosed by Section 17516c, County/Cities are entitled to pursue an independent action against the Regional Water Board, Los

Angeles Region (LA Regional Water Board). This cross-appeal, which is simply protective in nature, is moot.

In sum, we uphold the trial court's issuance of a writ of mandate directing the Commission to set aside its decisions affirming its Executive Director's rejections of the subject test claims and to consider fully these test claims and determine whether County/Cities are entitled to reimbursement without consideration of Section 17516c, and we affirm the judgment in its entirety.

## BACKGROUND

### 1. Article XIII B, section 6, Subvention of Funds for State Mandates

"The electorate approved Proposition 4 in 1979, thus adding article XIII B to the \*\*766 state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called 'Spirit of 13,' imposed a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) This measure also "provided [for] reimbursement to local governments for the costs of complying with certain requirements mandated by the state." (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 275 Cal.Rptr. 449.)

"[V]oters were told that section 6 of Proposition 4 was intended to prevent state government attempts 'to force programs on local governments without the state paying for them.' (Ballot Pamp., Special Statewide Elec. [ (Nov. 6, 1979) ] p. 18.)" (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784; see also, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr.

38, 729 P.2d 202 [intent was not all local costs arising from compliance with state law to be reimbursable; rather, intent was to prevent “the perceived \*906 attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public”].)

“Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [Citation.] The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the ‘state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,’ read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, italics original; see also, *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318 [a reimbursement requirement was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources”].)

Article XIII B, section 6 provides: “(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not,

provide such a subvention of funds for the following mandates. [¶] (1) Legislative mandates requested by the local agency affected. [¶] (2) Legislation defining a new crime or changing an existing definition of a crime. [¶] (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

[1] “ ‘Subvention’ generally means a grant of financial aid or assistance, or a \*\*767 subsidy. [Citation.] As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

[2][3][4] “Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.] This does not mean that the state is required to \*907 reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by state law to provide to its residents. [Citation.] The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. [Citation.] Reimbursement is required when the state ‘freely chooses to impose on local agencies any peculiarly “governmental” cost which they were not previously required to absorb.’ [Citation.]” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, at 1577-1578, 15 Cal.Rptr.2d 547.)

The subvention requirement of article XIII B, section 6 is triggered if “the Legislature or any state agency” mandates a new program or higher level of service. (Art. XIII B, § 6.) Such requirement is inapplicable where the additional costs on local governments are imposed by a federal mandate, i.e., the federal government. Article XIII B, section 9, subdivision (b), defines federally mandated appropri-

ations as those “required to comply with mandates of the courts or the federal government which, *without discretion*, require an expenditure for additional services or which *unavoidably make the provision of existing services more costly.*” FN2 (Italics added.)

FN2. “In 1980, after the adoption of article XIII B, [the Legislature] amended the statutory definition of ‘costs mandated by the federal government’ to provide that these include ‘costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties or loss of funds to public or private persons in the state...*’ (Rev. & Tax.Code, § 2206, italics added; Stats.1980, ch. 1256, § 3, p. 4247.)” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 75, 266 Cal.Rptr. 139, 785 P.2d 522.)

There is no precise formula or rule for determining whether the “costs” are the product of a federal mandate. Our Supreme Court explained: “Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9(b): neither state nor local agencies may es-

cape their spending limits when their participation in federal programs is truly voluntary.” (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

## 2. Existence of State Mandate Matter for the Commission

Whether a particular cost incurred by a local government arises from carrying out a state mandate for which subvention is required under article XIII B, section 6, is a matter for the Commission to determine in the first instance.

\*908 A local government initiates the process for subvention under article XIII B, section 6 by filing a claim with the Commission.\*\*768 (Gov.Code, § 17521; cf. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89, 61 Cal.Rptr.2d 134, 931 P.2d 312 [futility exception to exhaustion of administrative remedies doctrine applicable to failure to file claim before Commission].) The initial claim is referred to as a “test claim.” (Gov.Code, § 17521.)

“The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov.Code, § 17500.)” (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.) The provisions of Government Code sections 17500 et seq. “provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by” article XIII B, section 6. (Gov.Code, § 17552.)

“It created a ‘quasi-judicial body’ (*ibid.*) called the Commission on State Mandates ... ( [Gov.Code], § 17525) to ‘hear and decide upon [any] claim’ by a local government that the local government ‘is entitled to be reimbursed by the state for costs’ as required by article XIII B, section 6. (Gov.Code, § 17551, subd. (a).) It defined ‘costs’ as ‘costs mandated by the state’-‘any increased costs’ that the local government ‘is required to incur ... as a result

of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program' within the meaning of article XIII B, section 6. (Gov.Code, § 17514.) Finally, in section 17556(d) it declared that 'The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that' the local government 'has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.' (County of Fresno v. State of California, supra, 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.)

### 3. Regional Water Board Order Not "Executive Order"

Section 17516c defines, in pertinent part, an "[e]xecutive order" [as] any order, plan, requirement, rule, or regulation issued by ... [a]ny agency ... of state government[.]" except an "[e]xecutive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code." FN3 (Added by Stats.1984, ch. 1459, § 1.)

FN3. Section 17516c further provides: "It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

LA Regional Water Board argues the tri-

al court's ruling sustaining its demurrer to the fourth cause of action for a writ of mandate directing it to delete the subject two obligations under the Permit as violative of section 17516 should be upheld, because section 17516 "applies to construction of major waste treatment facilities, not trash receptacles or inspections." This analysis, however, is inconsistent with the plain language of section 17516 in its entirety.

\*909 In light of the above definition, the subject permit issued by an order of the LA Regional Water Board cannot constitute an "executive order implementing any statute[.]" ... which mandates a new program or higher level of service of an existing program within the meaning of" the \*\*769 article XIII B, section 6 requirement of subvention of funds to local governments for carrying out a state mandate. (Gov.Code, § 17514.)

### 4. Procedural Posture

LA Regional Water Board issued Order No. 01-182, which adopted NPDES Permit No. CAS004001 (Permit). This Permit imposed two obligations on County/Cities for the purpose of regulating municipal stormwater and urban runoff discharges in Los Angeles County. The first required County/Cities to inspect industrial, commercial and construction sites to ensure compliance with the law, and the other required County/Cities to install and maintain trash receptacles at transit stops.

County/Cities filed four test claims, i.e., Test Claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, seeking reimbursement of costs for carrying out these obligations. The Executive Director rejected these test claims as excluded from subvention pursuant to Section 17516c.

In the administrative appeals, the Commission found it was bound by Section 17516c, upheld its executive director's decision, and denied the ap-

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peals.

In their amended and consolidated petitions and complaints, County/Cities sought, among other things: (1) an order requiring the State to reimburse them for the new programs or higher level of service under the permit or, alternatively, to allow them to offset payment of permit and other fees or moneys owed or to be transferred to the State against their costs; (2) an order enjoining State from refusing to reimburse them in the future; or, alternatively, (3) a preemptory writ of mandate directing the Commission to accept their test claims and find they are entitled to reimbursement; (4) a declaration that section 17516 is unconstitutional; (5) a preemptory writ of mandate directing LA Regional Water Board either to delete or not \*910 enforce the subject obligations under the permit; and (6) a stay of the challenged portions of the permit.

The Commission and County/Cities filed cross-motions for judgment on the pleadings. The trial court granted the Commission's motion as to the second cause of action for declaratory relief. The court explained: "The only actual controversy between [County/Cities] and [Commission] is whether [County/Cities]' claims should be deemed reimbursable. The sole and exclusive procedure by which to adjudicate this controversy is a mandate action under Code of Civil Procedure section 1094.5. ( [Government Code] sections 17552, 17559.) The only pertinent relief under ... section 1094.5 is a finding that [the Commission] 'has not proceeded in the manner required by law.' Declaratory relief is not available."

After construing the motion addressed to the third cause of action as a motion to strike improper requested relief, the court granted the motion and struck that part of the third cause of action requesting an order directing the Commission to find their claims to be reimbursable on the ground "[t]he court has no power at this time to do so. [Citations.]"

Turning to County/Cities' motion for judgment on

the pleadings, the trial court granted the motion as to the third cause of action for extraordinary writ relief, except as to the stricken request for improper relief.<sup>FN4</sup>

FN4. In the third cause of action, County/Cities sought a writ of mandate (Code Civ. Proc., § 1094.5) compelling a court finding that section 17516 was unconstitutional on its face or as applied in this action and directing the Commission to accept their test claims for filing and approving them for reimbursement.

The court found that to the extent Section 17516c excepted the orders of Regional\*\*770 Water Boards from the definition of "executive orders," Section 17516c was unconstitutional in that it expressly contravened article XIII B, section 6. The court ordered the Commission to set aside its order affirming its executive director's rejections of the four test claims and to consider these claims on the merits.

In granting in part County/Cities' petitions for a writ of mandate, the trial court found the Commission, "though it proceeded as required by statutory law, as it was constrained to do, has not proceeded as required by superior constitutional law. (Code Civ. Proc., [§] 1094.5, subd. (a).) The question whether [County/Cities] state valid claims for reimbursement must be remanded to [C]ommission, which is ordered to consider [these] claims on their merits. [Citations.]"

\*911 A preemptory writ of mandate was issued on May 24, 2005. Judgment was entered the same date. This appeal and cross-appeal followed.

#### STANDARD OF REVIEW

[5][6][7][8] "The standard for reviewing a judgment on the pleadings is settled: 'A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired. The rules governing demurrers

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apply. [Citation.] The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice. [Citations.] On review we must determine if the complaint states a cause of action as a matter of law.' [Citation.] 'We review the complaint de novo to determine whether [it] alleges facts sufficient to state a cause of action under any legal theory. [Citation.] [Citation.]' (*McCormick v. Travelers Ins. Co.* (2001) 86 Cal.App.4th 404, 408, 103 Cal.Rptr.2d 258.)

[9] "In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407, 216 Cal.Rptr. 782, 703 P.2d 122.) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)" (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 394, 69 Cal.Rptr.2d 231.)

## DISCUSSION

### 1. Defense of Statute of Limitations Forfeited

[10] On appeal for the first time, the Commission asserts the challenge of County/Cities to the constitutionality of Section 17156c is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure, which governs the timeliness of actions challenging the constitutionality of state funding for municipalities, school districts, special districts, and local agencies.

Code of Civil Procedure section 341.5 provides: "Notwithstanding any other provision of law, any action or proceeding in which a county, city, city and county, school district, special district, or any other local agency is a plaintiff or petitioner, that is brought against the State of California challenging

the constitutionality of any statute relating to state funding for counties, cities, cities and counties, school districts, special districts, or other local agencies, shall be commenced within 90 days of the effective date of the \*912 statute at issue in the action. For purposes of this section, 'State of California' means the State of California itself, or any of its agencies, departments, commissions, boards, or public officials." (Added by \*\*771 Stats.1994, ch. 155 (Assem. Bill No. 860), § 1, eff. July 11, 1994; amended by Stats.1994, ch. 156 (Sen. Bill No. 2127), § 1, eff. July 11, 1994.)

The Commission argues the constitutional challenge to Section 17516c is time-barred, because: "Government Code section 17500 et seq., including section 17516, relates to state funding for counties and cities relative to state-mandated local programs.... [S]ection 17516 was enacted in 1984 and became effective January 1, 1985. The petition in this case challenging section 17516 as unconstitutional was filed April 28, 2004[,] which was more than 90 days after the effective date of section 17516.

[11][12] The time-bar of a statute of limitations may be raised by demurrer "[w]here the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, [for the reason that] it fails to state facts sufficient to state a cause of action. [Citation.]" (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, 30 Cal.Rptr.3d 588.) Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer. (See e.g., *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581, 15 Cal.Rptr. 641, 364 P.2d 473; *Davies v. Krasna* (1975) 14 Cal.3d 502, 508, 121 Cal.Rptr. 705, 535 P.2d 1161; *Mitchell v. County Sanitation District No. 1 of Los Angeles County* (1957) 150 Cal.App.2d 366, 371, 309 P.2d 930; see also, Code Civ. Proc., § 458.)

As the Commission concedes, it did not raise "[Code of Civil Procedure] section 341.5 as an affirmative defense in its pleadings in the trial court."

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This omission signifies that the Commission therefore has forfeited any right it may have had to assert section 341.5 to bar, as untimely, the claims of County/Cities to the constitutionality of Section 17516c.

For a contrary conclusion, the Commission argues “the statute of limitations to challenge an administrative action is jurisdictional and should not be considered waived. (*United Farm Workers of America v. Agricultural Labor Relations Board* (1977) 74 Cal.App.3d 347, 350, 141 Cal.Rptr. 437; *Tielsch v. City of Anaheim* (1984) 160 Cal.App.3d 576, 578, 206 Cal.Rptr. 740; *Donnellan v. City of Novato* (2001) 86 Cal.App.4th 1097, 1103, 103 Cal.Rptr.2d 882.) If a time limit in a mandamus proceeding is held to be jurisdictional, estoppel or waiver cannot extend the time. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666, 674, 125 Cal.Rptr. 757, 542 P.2d 1349.)”

**\*913** The Commission's fall-back position is that this court should exercise its discretion to determine the applicability of the time-bar, because this “issue is a question of law rather than of fact” and “[t]his matter affects the public interest since [County/Cities] are seeking reimbursement from the state for costs incurred to comply with a permit” issued by the LA Regional Water Board. In other words, “taxpayers statewide could unjustly suffer the consequences of funding a local program if Code of Civil Procedure section 341.5 is not considered and ... section 17516 is held to be unconstitutional.” As authority, the Commission relies primarily on *City of Sacramento v. State of California* (1990) 50 Cal.3d at pages 64-65, 266 Cal.Rptr. 139, 785 P.2d 522 [where issue of law rather than fact raised, public-interest exception governs over collateral estoppel bar] and *Connell v. Superior Court, supra*, 59 Cal.App.4th at pages 387-388, 396-397, 69 Cal.Rptr.2d 231 [public interest exception applicable to allow review of question of law as to whether recycled waste water regulation constituted reimbursable state mandate].)

Neither of the Commission's positions is successful.

In the first instance, the time-**\*\*772** bar of section 341.5 of the Code of Civil Procedure applies to a challenge to the constitutionality of any statute relating to state funding for counties and other local governmental entities, *not* to a challenge to an action by an administrative agency. As for the second, neither *City of Sacramento* nor *Connell* stand for the proposition that the bar of the applicable statute of limitations may be raised for the first time on appeal.

Additionally, the Commission's characterization of the public interest to be served is a non sequitur. If section 17516 were in fact unconstitutional, it does not follow that “taxpayers statewide could *unjustly* suffer the consequences of funding a local program[.]” (Italics added.) How could such funding result in injustice when any requirement of reimbursement to local governments would be under the constitutional compulsion of article XIII B, section 6?

## 2. Existence of Federal or State Mandate Issue for the Commission

[13] It is undisputed that a federal mandate is not subject to the subvention requirement of article XIII B, section 6 for a state mandate. Accordingly, if the Permit, including the subject two obligations thereunder, constitutes a federal mandate, the constitutionality of Section 17516c is not implicated, and thus, no issue as to its constitutionality is before this court to address on the merits. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912, 83 Cal.Rptr. 670, 464 P.2d 126 [“The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.”].)

**\*914** In its amicus curiae brief, LA Regional Water Board takes the position that, as a matter of law, Section 17516c is consistent with article XIII B, section 6 (and thus not unconstitutional) “to the extent Division 7, Chapter 5.5 (commencing with Water Code section 13370)” simply implements federal mandates under the Clean Water Act (33 U.S.C.

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§ 1342(b)). The water boards, i.e., the State Water Board and its Regional Water Boards, implement the federal permit program under Chapter 5.5, which the California Legislature enacted to by-pass administration of such program directly by the federal Environmental Protection Agency.

LA Regional Water Board takes the further position that the federal mandate nature of its NPDES permits remains constant although it exercises discretion to control the discharge of pollutants through municipal stormwater programs not appearing in federal regulations. Specifically, LA Regional Water Board argues: "When a state [Regional Water Board] issues an NPDES permit requiring municipalities to inspect facilities as a means of controlling their discharge of pollutants, this is not shifting state responsibilities onto local agencies [, because f]ederal law imposes inspection requirements upon municipal permittees."

As for the trash receptacle obligation, LA Regional Water Board points out the Clean Water Act allows the use of programs to control discharge of pollutants in connection with a municipal stormwater permit and argues one such program under the Permit is the ability of "municipalities to employ 'Best Management Practices' (BMPs) to ... attain water quality standards." It identifies "[t]he Permit's trash receptacle requirement as one such [BMP]."

It further argues that the trash receptacle obligation cannot be deemed a state-mandated program, because it is not "an absolute requirement. Any permittee may petition the Regional Water Board to substitute another equally effective BMP for one included within the Permit.[ ] [For instance, i]f a permittee demonstrates that \*\*773 a pre-existing program or level of service will be equally effective in controlling pollution, it may seek to substitute that program."

We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances. As explained ante, the existence of a

federal, as contrasted with a state, mandate is not easily ascertainable.

By letter, we invited the parties and LA Regional Water Board to address whether an obligation under an NPDES permit by a Regional Water Board can qualify as a state mandate within the meaning of article XIII B, section 6, assuming an NPDES permit itself qualified as a federal mandate, and if so, \*915 why each of the subject two obligations does or does not constitute a state mandate. We have received their responses.

a. "NPDES" Permits Issued by Regional Water Boards

"California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76; *WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389.)

For purposes of this case, the important point is described by the California Supreme Court in *Burbank*: "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* [ (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239].) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollut-

ants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional [water] boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)” (*Burbank, supra*, 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

“California’s Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional [water] boards, overseen by the State [Water] Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional [Water] Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)” <sup>FN5</sup> \*\*774\*916(*City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In a related case, Division Five of this District upheld the authority of LA Regional Water Board to issue the Permit here. (*County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 999-1000, 50 Cal.Rptr.3d 619 [holding the nine Regional Water Boards authorized under state law to issue NPDES permits] review den.)

FN5. In pertinent part, article XIII B, section 6, provides: “[T]he Legislature may, but need not, provide a subvention of funds for the following mandates: [¶] ... [¶] (3) Legislative mandates enacted prior to January 1, 1995, or executive orders ... initially implementing legislation enacted prior to January 1, 1975.” (Art. XIII B, § 6, subd. par. (a)(3).) LA Regional Water Board argues that subvention under article XIII B, section 6, is not required as to the Permit, because it is an executive order implementing the Porter-Cologne Act, (Wat. Code, § 13020 et seq.) which is legislation enacted in 1969. This argument fails for the reason that the executive order resulting in the 2001 Permit was not one “ini-

tially” implementing such pre-1975 legislation. Equally unsuccessful is LA Regional Water Board’s apparent argument that Section 17516c should be deemed constitutional for the reason that “most of” the Porter-Cologne Act (Division 7) was enacted prior to 1975. The fatal fallacy of this position is that the exclusion of Section 17516c applies to all orders issued pursuant to Division 7 *regardless* of the date the statute in question was enacted.

b. *Potential Federal and State Components of NPDES Permit*

As expected, LA Regional Water Board contends that as in the case of NPDES “permits as a whole, the individual conditions of an NPDES permit are federally required to meet the mandates of the Clean Water Act.” It argues: “The Permit is federally required. The conditions within it are federally required to implement the Clean Water Act’s mandates. The two cannot be separated into a ‘federal’ permit with ‘state’ conditions. [Citation.]”

County/Cities respond, contrariwise, that “[a]n NPDES permit can contain both federal and non[-]federal requirements.” As case authority, they rely primarily on *Burbank, supra*, 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862. Our Supreme Court concluded that under the supremacy clause of the federal Constitution, a Regional Water Board must comply with the federal Clean Water Act in issuing an NPDES permit. (*Id.* at pp. 626-627, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Nonetheless, “[u]nder the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not ‘less stringent’ than those set out in the Clean Water Act [citation].” (*Id.* at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Court thus acknowledged in *Burbank* that an NPDES permit may contain terms federally mandated and terms exceeding federal law. (See also, *Burbank, supra*, at pp. 618, 628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) County/Cities also point out that the po-

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tential for non-federally mandated components of an NPDES permit is acknowledged under both federal law<sup>FN6</sup> and state law.<sup>FN7</sup>

FN6. In this regard, they rely on this federal statute: "Except as expressly provided in this Act [33 USCS §§ 1251 et seq.], nothing in this Act [33 USCS §§ 1251 et seq.] shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation ... is in effect under this Act [33 USCS §§ 1251 et seq.], such State [, etc.] ... may not adopt or enforce any effluent limitation or other limitation ... which is less stringent than the effluent limitation, or other limitation...." (33 U.S.C. § 1370.)

FN7. On this point, they rely on this statutory provision: "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Wat.Code, § 13377.)

**\*\*775 \*917** Additionally, County/Cities argue "that an obligation imposed on a municipality arises as a result of a federal law or program does not, in and of itself, render that obligation a federal mandate." Rather, they assert that to qualify as a federal mandate, "federal law itself must impose the obligation upon the municipality." They point out Government

Code section 17556 provides that costs flowing from a federal mandate may be subject to subvention if such costs exceed such mandate.<sup>FN8</sup> They also cite two cases in support of their position.

FN8. Government Code section 17556, subdivision (c), provides: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds ... [¶] ... [¶][t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, our Supreme Court concluded the costs incurred by school districts in holding mandatory expulsion hearings under Education Code section 48915 were state mandates subject to subvention under article XIII B, section 6. The court explained that expulsion was mandated under the Education Code, rather than federal law, and thus, the fact the costs were incurred to comport with federal due process, a federal mandate, was not controlling. (*San Diego Unified School Dist. v. Commission on State Mandates, supra*, at pp. 880-882, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In the other case, *Hayes v. Commission on State Mandates, supra*, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the appellate court concluded that the finding a mandate was federal turned on whether "the state freely chose to impose the costs upon the local agency as a means of implementing a federal program" and that under these circumstances, "the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Id.* at p. 1594, 15 Cal.Rptr.2d 547.)

*c. Existence of State Mandates Matter for the Commission*

A review of the pleadings and the matters that may be judicially noticed (Evid.Code, §§ 451, 452, 459) leads to the inescapable conclusion that whether the two obligations in question constitute federal or state mandates presents factual issues which must be addressed in the first instance by the \*918 Commission if Section 17516c were found to be unconstitutional. Resolution of the federal or state nature of these obligations therefore is premature and, thus, not properly before this court.

In its response, the Commission argues that if this court determines Section 17516c is unconstitutional, the subject test claims “should be remanded to ... Commission to ‘decide in the first instance whether a local agency is entitled to reimbursement under [article XIII B,] section 6[.]’ (*Lucia Mar Unified School District v. Honig* [, *supra*,] 44 Cal.3d 830, 837 [244 Cal.Rptr. 677, 750 P.2d 318]; Gov.Code, § 17552.)”

The Commission stated that on such remand, it would apply the following cases in determining whether state mandates exist: *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, which sets forth various factors and criteria for determining whether the federal program imposes a mandate on the state; \*\*776*Hayes v. Commission on State Mandates*, *supra*, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, which it contends “provides guidance on whether the state, in turn, has mandated a federal program on the local governments”; *Long Beach Unified Sch. Dist. v. State of California*, *supra*, 225 Cal.App.3d 155, 275 Cal.Rptr. 449, which analyzes whether the state-mandated activities exceed federal requirements; and *San Diego Unified School Dist. v. Commission on State Mandates*, *supra*, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, which also provides guidance on this same issue.

3. “Executive Order” under Revenue and Taxation

*Code Not Probative*

The Commission contends the exclusion of orders of the Regional Water Boards from the definition of “executive order” in Section 17516c does not contravene article XIII B, section 6, because section 17516 derives from the definition of “executive order” in Revenue and Taxation Code section 2209, FN9 of which the voters were presumed to have known to exist \*919 when they adopted Proposition 4 (i.e., art. XIII B, § 6) in 1979, and thus, Proposition 4 intended to endorse and continue such exclusion from the definition of “executive order” which was later carried over to Section 17516c. We disagree.

FN9. Revenue and Taxation Code section 2209(c) provides: “ ‘Executive order’ means any order, plan, requirement, rule or regulation issued ... [¶] ... [¶][b]y any agency ... of state government; provided that the term ‘executive order’ shall not include any order ... issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

“It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned discharges which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.

“ ‘Major’ means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.” (Rev. & Tax Code, § 2209(c); added by Stats.1974, ch. 457, p. 1079, § 2 and amended by Stats.1975, ch. 486, p. 998, § 2, eff. Sept. 2, 1975.)

We further disagree with the Commission's reliance on a presumption that when the voters adopted Proposition 1A in November 2004, they knew of, and thus, necessarily approved of Section 17516c's exclusion of orders of Regional Water Boards from the definition of "executive order."

Our focus, instead, must be on the import of article XIII B, section 6, not on the pre-constitutional scheme for subvention of funds to local agencies of which section 2209 of the Revenue and Taxation Code was part. As our Supreme Court instructs: "In construing the meaning of the constitutional provision (i.e., article XIII B, section 6), our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. [Citation.]" (*County of Los Angeles v. California, supra*, 43 Cal.3d 46, at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

The subvention requirement of article XIII B, section 6 applies "[w]henver the Legislature or any state agency mandates a new program or higher level of service...." The all-encompassing "any state agency" language defeats any perceived presumption that the electorate intended to incorporate into article XIII B, section 6 the exclusion of a particular state agency, e.g., the Regional Water Board, from its subvention requirement.

**\*\*777 4. Section 17516c Unconstitutional as to Regional Water Boards**

LA Regional Water Board argues in its amicus brief that Section 17516c is constitutional for the additional reason that its exemption from the subvention requirement of article XIII B, section 6, is "appropriate because the Water Boards regulate water pollution with an even hand. Whether the pollution originates from a local public agency or a private industrial source, the Water Boards must assure their permits protect water quality consistent

with state and federal law."

This argument is not persuasive. Whether the permit in question issued by Regional Water Boards governs both public and private pollution dischargers to the same extent presents factual issues not yet resolved. In any event, the applicability of permits to public and private discharges does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6. (See *\*920Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 530-531, 534, 537, 541, 234 Cal.Rptr. 795 [executive orders for protective fire clothing and equipment state mandated even if record, which was incomplete, revealed private sector firefighters also subject to the executive orders].)

In contrast, the constitutional infirmity of Section 17516c is readily apparent from its plain language that the definition of " '[e]xecutive order' does not include *any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board* pursuant to Division 7 (commencing with Section 13000) of the Water Code." (§ 17516c, italics added.) This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of article XIII B, section 6 that subvention of funds is required "[w]henver ... *any state agency* mandates a new program or higher level of service on any local government ...." FN10 (§ 17516c, italics added.) We therefore conclude that Section 17516c is unconstitutional to the extent it excludes "any order ... issued by ... any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code" from the definition of " 'executive order.' "

FN10. At oral argument, when asked to identify the public policy or other reason that would be served by exempting Regional Water Boards from the constitutional subvention requirement, counsel for LA

Regional Water Board responded exemption is warranted, because water is an important concern. No one can quarrel with the fact water plays an important role in California. Nonetheless, this reason does not compel the conclusion that an exemption should be carved out for Regional Water Boards as contrasted with those state agencies which regulate other important state interests.

This conclusion leads to the further conclusion that whether one or both of the subject two obligations constitutes a state mandate necessitating subvention of funds under article XIII B, section 6 is an issue that must in the first instance be resolved by the Commission. Accordingly, we uphold the trial court's issuance of a writ of mandate directing the Commission to vacate its decisions affirming its executive director's rejection of the four test claims and to consider these claims on the merits.

#### 5. Cross-Appeal Moot

County/Cities filed a protective cross-appeal from the judgment to the extent the trial court dismissed the portions of their writ of mandate petitions against LA Regional Water Board.<sup>FN11</sup> The threshold \*\*778 issue raised is whether County/Cities are entitled to proceed directly in superior court against LA \*921 Regional Water Board for reimbursement relief if they are statutorily precluded from obtaining a hearing before the Commission.

FN11. The trial court sustained the demurrer to the fourth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the inspection and trash receptacle obligations. The court granted its own motion for judgment on the pleadings without leave to amend as to LA Regional Water Board on the first cause of action for a writ of mandate directing reimbursement; the second cause of action for declaratory relief; and the fifth

cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the subject obligations.

County/Cities' position is they are entitled to a hearing on the merits of their claims before either the Commission or LA Regional Water Board. If this court determines the Commission's jurisdiction is exclusive, the Commission must afford them a hearing and determine the merits of their subvention claim under article XIII B, section 6. If not exclusive, County/Cities must be allowed to seek relief directly against Regional Water Board before the superior court.

LA Regional Water Board argues County/Cities have no right to seek subvention relief from a Regional Water Board, because reimbursement of costs mandated by state must be pursued through the statutory subvention scheme, which is "the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B ...." (Gov.Code, § 17552.) Their claims thus must be addressed exclusively to the Commission in first instance.

The cross-appeal against LA Regional Water Board is moot in light of our above conclusion that the Commission is to hear and determine the merits of the County/Cities' test claims. We therefore do not reach the merits of the issues raised in the cross-appeal.

#### CONCLUSION

Section 17516c is unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of "executive orders" for which subvention of funds to local governments for carrying out state mandates is required pursuant to article XIII B, section 6. The trial court therefore properly issued a writ of mandate directing the Commission to resolve the four test claims on the merits without reference to Section 17516c. In light

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of this conclusion, we need not, and therefore do not, address the issues raised on the now moot cross-appeal.

**\*922 DISPOSITION**

The judgment is affirmed. Each party shall bear its own costs on appeal and cross-appeal.

We concur: KLEIN, P.J., and CROSKEY, J.  
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County of Los Angeles v. Commission on State Mandates  
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# EXHIBIT "30"

4837-0090-6752.2

11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, 79 Ed. Law Rep. 924

(Cite as: 11 Cal.App.4th 1564)

▷

THOMAS WILLIAM HAYES, as Director, etc.,  
Plaintiff and Respondent,

v.

COMMISSION ON STATE MANDATES, Defendant,  
Cross-defendant, and Respondent; DALE S.  
HOLMES, as Superintendent, etc., Real Party in Interest,  
Cross-complainant and Appellant; WILLIAM CIRONE,  
as Superintendent, etc., Real Party in Interest and Respondent;  
STATE OF CALIFORNIA et al., Cross-defendants and Respondents.

No. C009519.

Court of Appeal, Third District, California.  
Dec 30, 1992.

#### SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of

the costs of implementation upon local school districts. The court held that to the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

#### HEADNOTES

Classified to California Digest of Official Reports  
(1) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs:Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

[See Cal.Jur.3d, State of California, § 78; 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 123, 124.]

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**(2) Schools § 4--School Districts--Relationship to State.**

A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

**(3) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Federally Mandated Costs.**

Pursuant to Rev. & Tax. Code, § 2271 (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

**(4) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Costs Incurred Before Effective Date of Constitutional Provision.**

Since Cal. Const., art. XIII B, requiring sub-

vention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

**(5) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Federal Rehabilitation Act--Obligations Imposed on Districts.**

Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

**(6) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Education of the Handicapped Act.**

The federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to establish a basic floor of opportunity that would bring into compliance all school districts

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with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

(7) Civil Rights §  
6--Education--Handicapped--Scope of Federal Statute.

Congress intended the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Accordingly, where it is applicable, the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

(8a, 8b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education:Schools § 4--School Districts; Financing; Funds--Special Education Costs--Reimbursement by State.

The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the

Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

(9) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs.

The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

(10) Statutes §  
28--Construction--Language--Consistency of Meaning Throughout Statute.

As a general rule and unless the context clearly requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

(11) State of California § 11--Fiscal Matters--

-Reimbursement to Local Governments--Federally Mandated Costs--Subvention.

Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education--Applicable Criteria in Determining Whether Subvention Required.

In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits. The board relied upon the "cooperative federalism" nature of

the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

(13) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--Opinion Elucidating Existing Law.

In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

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Breon, O'Donnell, Miller, Brown & Dannis and Emi R. Uyehara as Amici Curiae on behalf of Real Party in Interest, Cross-complainant and Appellant.

No appearance for Real Party in Interest and Respondent.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian and Marsha A. Bedwell, Deputy Attorneys General, and Daniel G. Stone for Plaintiff and Respondent.

Gary D. Hori for Defendant, Cross-defendant and Respondent.

Richard J. Chivaro and Patricia A. Cruz for Cross-defendants and Respondents.

**SPARKS, Acting P. J.**

This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that “[w]henver 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 program or increased level of service, ...” The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ. Proc., § 1094.5), directing the Commission on State Mandates (the successor to the Board of \*1571 Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522]; and (2) denied

the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ. Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

*I. The Parties*

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov. Code, § 17525.) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov. Code, § 17630.) The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

The Santa Barbara County Superintendent of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and,

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although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. \*1572 Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross-defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

## II. *Factual and Procedural Background*

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [ 222 Cal.Rptr. 750], at pages 71 and 72, we described these procedures as follows (with footnotes deleted): "Section 2250 [Revenue &

Taxation Code] and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.) \*1573

"At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3)

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find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

“Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) ‘Costs mandated by the state’ are defined as ‘any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute en-

acted on or after January 1, 1975, which \*1574 mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.’ (Gov. Code, § 17514.) The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; [Rev. & Tax. Code,] § 2239.)”

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the “mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child.” Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).<sup>FN1</sup> Santa Barbara's initial claim was for \$10,500 in state-mandated costs for the 1979-1980 fiscal year.

FN1 Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, tit. I, §§ 119, 122(d)(2) (Nov.

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6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; Pub.L. No. 99- 506, tit. I, § 103(d)(2)(B), tit. X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100-259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, tit. II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to title 29, United States Code, section 794.

During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of \$520,000 for the cost of these services during the 1979- 1980 fiscal year. \*1575

Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.)<sup>FN2</sup>

FN2 The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended

the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, tit. IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, tit. IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of \$474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according to Riverside, "mandates a 10% cap on ratio of students served by special education and within that 10% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective

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July 28, 1980, and that at that time it was already "locked into" providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae.  
FN3

FN3 The 1980 legislation required that a local agency adopt an annual budget plan for special education services. (Ed. Code, § 56200.) Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed. Code, §§ 56760, 56761.) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed. Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of 9 percent. (Ed. Code, § 56195.8.) The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.

The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of \*1576 Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied.

Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of \$2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of \$7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985-1986 fiscal years failed to pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.)) A separate bill which would have appropriated funds to reimburse

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Riverside \*1577 for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 (1987-1988 Reg. Sess.))

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in City of Sacramento v. State of California, supra*, 50 Cal.3d 51, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [ 203 Cal.Rptr. 258]. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates to set aside the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra*, 50 Cal.3d 51, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

### III. Principles of Subvention

(1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [ 233 Cal.Rptr. 38, 729 P.2d 202].) This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by \*1578 state law to provide to its residents. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 70.) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.) Reimbursement is required when the state "freely chooses to impose on local agencies any peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 188.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented the state from imposing the cost of new programs or higher levels of service upon local governments. (*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.)<sup>FN4</sup> The act provided that the state would pay each county, city and county, city, and special district the sums

which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

FN4 In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (Gov. Code, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.)

(2)(See fn. 5.) Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs.<sup>FN5</sup> (Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were \*1579 undergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) 5 Cal.3d 584 [ 96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.) In *Serrano*, the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of

opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.) A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano*. (Stats. 1972, ch. 1406, §§ 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest* (1976) 18 Cal.3d 728, 736- 737 [ 135 Cal.Rptr. 345, 557 P.2d 929].)<sup>FN6</sup>

FN5 A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1524 [ 7 Cal.Rptr.2d 699].) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legis-

lature. (*Id.* at pp. 1523-1524.)

FN6 After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. ( *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34 48-56, 61-62 [ 36 L.Ed.2d 16, 42-43, 51-56, 59-60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. ( *Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 761-766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. ( *Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed. Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff*, *supra*, 5 Cal.App.4th 1513.)

The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by execu-

tive regulation after January 1, 1973. (Rev. & Tax. Code, § 2231, subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 \*1580 and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax. Code, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." (3) In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. ( *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.)<sup>FN7</sup> The appropriations subject to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the pro-

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vision of existing services more costly.” (Cal. Const., art. XIII B, § 9, subd. (b).)

FN7 As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff*, *supra*, 5 Cal.App.4th 1513.)

Like its statutory predecessor, the constitutional initiative measure includes a provision designed “to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.” (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 [ 244 Cal.Rptr. 677, 750 P.2d 318].) Section 6 of article XIII B of the state Constitution provides: “Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the \*1581 State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

Although article XIII B of the state Constitution requires subvention for state mandates enacted after January 1, 1975, the article had an effective

date of July 1, 1980. (Cal. Const., art. XIII B, § 10.) (4) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (*City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever “the Legislature or any State agency” mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state subvention is not required when the federal government imposes new costs on local governments. (*City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d at p. 188; see also *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 543 [ 234 Cal.Rptr. 795].) In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. ( 156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion, FN8 the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. ( 50 Cal.3d at p. 73.) However, “certain regulatory standards imposed by the federal government \*1582 under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense.” (*Id.* at pp. 73-74.) The test for determining whether there is a federal mandate is whether compliance with federal standards “is a matter of true choice,” that is, whether participation in the federal program “is truly voluntary.” (*Id.* at p. 76.) The court went on to

say: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Ibid.*)

FN8 The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60.)

#### IV. Special Education

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See *Smith v. Robinson* (1984) 468 U.S. 992, 1010 [82 L.Ed.2d 746, 763, 104 S.Ct. 3457].) Two federal district court cases, *Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa.* (E.D.Pa. 1972) 343 F.Supp. 279 (see also *Pennsylvania Ass'n, Retard. Child. v. Common-*

*wealth of Pa.* (E.D.Pa. 1971) 334 F.Supp. 1257), and *Mills v. Board of Education of District of Columbia* (D.D.C. 1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 180, fn. 2 [ 73 L.Ed.2d 690, 695, 102 S.Ct. 3034].)

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa.*, *supra*, 343 F.Supp. at p. 282.) The matter was assigned to a three-judge panel which heard evidence on the plaintiffs' due process and equal protection claims. (*Id.* at p. 285.) The parties then agreed to resolve the litigation by means of a consent \*1583 judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with placement decisions. (*Id.* at pp. 303-306.) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa.*, *supra*, 343 F.Supp. at p. 291.) The court said that it was convinced the due process and equal protection claims were colorable. (*Id.* at pp. 295-296.)

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In the *Mills* case, an action was brought on behalf of a number of school-age children with exceptional needs who were excluded from the Washington, D.C., public school system. (*Mills v. Board of Education of District of Columbia, supra*, 348 F.Supp. at p. 868.) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.) The court said: "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, \*1584 shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...." (29 U.S.C. § 794, Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.)<sup>FN9</sup> Since federal assistance to education is pervasive (see, e.g., Ed. Code, §§ 12000-12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtu-

ally all public educational programs in this and other states.

FN9 In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, 635-636 [ 79 L.Ed.2d 568, 577-578, 104 S.Ct. 1248].)

The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 by educational agencies.<sup>FN10</sup> The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex. 1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational

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agencies “the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free \*1585 public education for the handicapped child.” ( *Doe v. Marshall, supra*, 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra*, 446 F.Supp. at p. 1323.)

FN10 HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [ 60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)

(5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra*, 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does

not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively and substantially. ( 442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990- 991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. ( 442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672, 105 S.Ct. 712].)

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental right. ( *Serrano v. Priest, supra*, 18

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Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate \*1586 the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate*, *supra*, 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis*, *supra*, 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." ( *Alexander v. Choate*, *supra*, 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case

means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. ( *N. M. Ass'n for Retarded Citizens v. State of N. M.*, *supra*, 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].) <sup>FN11</sup> We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action. \*1587

FN11 Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, *supra*, eventually wound up in the Supreme Court. ( *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.

In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient states to adopt a goal of providing full educational opportunities to all handicapped children. (*Ibid.* [73 L.Ed.2d at pp. 695-696].) The following year Congress amended

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the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. (*Ibid.* [73 L.Ed.2d at p. 696].)

Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) (6) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson, supra*, 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the “right to education” cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is “strikingly similar” to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra*, 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme Court has noted that Congress intended the act to establish “ ‘a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.’ ” (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.)<sup>FN12</sup>

FN12 Consistent with its “basic floor of opportunity” purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided non-handicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)

It is demonstrably manifest that in the view of

Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local \*1588 educational agencies. Congress found that “State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;” and “it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.” (20 U.S.C. former § 1400(b)(8) & (9).) FN13

FN13 That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223 at pages 231 and 232 [ 105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

It is also apparent that Congress intended the act to achieve nationwide application: “It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped chil-

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dren, and to assess and assure the effectiveness of efforts to educate handicapped children.” (20 U.S.C. former § 1400(c).)

In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a “cooperative federalism” scheme, which has also been referred to as the “carrot and stick” approach. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at pp. 73-74; *City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d at p. 195.) As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. §§ 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979-1980, the base year for Santa Barbara's claim, California received \$71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received \$79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. (7) Congress intended the act to serve as a means by which state and \*1589 local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].) <sup>FN14</sup>

FN14 In *Smith v. Robinson*, *supra*, the court concluded that since the Education of the Handicapped Act did not include a pro-

vision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)

As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson*, *supra*, 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p.

698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. \*1590

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) 495 F.Supp. 391, a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.)<sup>FN15</sup> The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. ( 495 F.Supp. at pp. 398-399.)

FN15 The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)

After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra*, 678 F.2d 847.) The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have

applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. ( 678 F.2d at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. ( 678 F.2d at p. 854.) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped \*1591 children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate ad-

equately the educational needs of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (*Ibid.*) Litigation was becoming so prevalent that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.) FN16

FN16 Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals*, *supra*, 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting Ed. Code, § 7001.) In 1977 the Legislature acted to

further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed. Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed. Code, § 56000.)

As this history demonstrates, in determining whether to adopt the requirements of the Education of the Handicapped Act as amended in 1975, our \*1592 Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

(8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to

the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California, supra*, 50 Cal.3d at page 76. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

#### V. Subvention for Special Education

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California, supra*, 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general \*1593 application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

(9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former §§ 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which

11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, 79 Ed. Law Rep. 924

(Cite as: 11 Cal.App.4th 1564)

\*1594 is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. §§ 1412, 1413.) (8b) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c), (d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trig-

ger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the \*1595 extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of Sacramento v. State of California, supra*, 156 Cal.App.3d 182, and concluded that the Education of the Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state's voluntary choice in its implementation of the federal program.

#### VI. Riverside's Objections

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsid-

eration.

Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different with respect to state subvention than with respect to taxing and spending limitations. (10) As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. ( *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [ 285 Cal.Rptr. 777].) (11) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in \*1596 the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

(12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the

board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37 [ 196 Cal.Rptr. 704, 672 P.2d 110].) ( 13) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (*Ibid.* See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953- 954 [ 148 Cal.Rptr. 379, 582 P.2d 970]; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680-681 [ 312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However,

# EXHIBIT "31"

4837-0090-6752.2

**C**

**Effective:[See Text Amendments]**

West's Annotated California Codes Currentness

Constitution of the State of California 1879 (Refs & Annos)

▣ Article XIIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

→ § 6. **New or existing increased fees and charges; procedures and requirements; voter approval**

Sec. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately avail-

able to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

#### CREDIT(S)

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Current with all 2010 Reg.Sess. laws; all 2009-2010 1st through 8th Ex.Sess. laws; and all Props. on 2010 ballots.

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# EXHIBIT “32”

4837-0090-6752.2



Supreme Court of California  
SILICON VALLEY TAXPAYERS ASSOCI-  
ATION, INC., Plaintiffs and Appellants,

v.

SANTA CLARA COUNTY OPEN SPACE AU-  
THORITY, Defendant and Respondent.

No. S136468.

July 14, 2008.

**Background:** Taxpayer organizations and individual taxpayers brought action challenging special assessment for open-space land levied by county open-space authority. The Superior Court, Santa Clara County, Nos. 1-02-CV804474 and 1-03-CV000705, William J. Elfving, J., entered judgment in favor of open-space authority. Taxpayers appealed. The Court of Appeal affirmed. The Supreme Court granted taxpayers' petition for review, superseding the opinion of the Court of Appeal.

**Holdings:** The Supreme Court, Chin, J., held that:  
(1) courts should exercise independent judgment in reviewing local agency decisions on constitutionality of special assessments, disapproving *Not About Water Com. v. Board of Supervisors*, 95 Cal.App.4th 982, 116 Cal.Rptr.2d 526;  
(2) anticipated benefits of open-space land were general benefits that could not be funded by special assessment; and  
(3) assessment was not proportional to benefits conferred on particular parcels.

Reversed and remanded.

Opinion, 30 Cal.Rptr.3d 853, superseded.

West Headnotes

[1] **Municipal Corporations 268** ↪ 405

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k405 k. Nature of assessment or tax.

Most Cited Cases

A "special assessment" is a compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein, and levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.

[2] **Taxation 371** ↪ 2001

371 Taxation

371I In General

371k2001 k. Nature of taxes. Most Cited Cases

**Taxation 371** ↪ 2061

371 Taxation

371III Property Taxes

371III(A) In General

371k2061 k. Nature of property tax. Most Cited Cases

Unlike a special assessment, a tax can be levied without reference to peculiar benefits to particular individuals or property.

[3] **Constitutional Law 92** ↪ 584

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k584 k. Intent in general. Most Cited Cases

The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue.

**[4] Constitutional Law 92 ↪580**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k580 k. In general. Most Cited Cases

The principles of constitutional interpretation are similar to those governing statutory construction.

**[5] Constitutional Law 92 ↪593**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k590 Meaning of Language in General

92k593 k. Existence of ambiguity.

Most Cited Cases

If the language of a constitutional provision is clear and unambiguous, the plain meaning governs.

**[6] Constitutional Law 92 ↪603**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k603 k. Extrinsic aids to construction in general. Most Cited Cases

**Constitutional Law 92 ↪604**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k604 k. History in general. Most Cited Cases

Cases

If the language of a constitutional provision enacted by initiative is ambiguous, courts consider extrinsic evidence in determining voter intent, including the Legislative Analyst's analysis and ballot arguments for and against the initiative.

**[7] Municipal Corporations 268 ↪450(4)**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k450 Assessment or Taxing Districts

268k450(4) k. Proceedings for establishment. Most Cited Cases

Although the substantial evidence standard of review is less deferential than the *Dawson/ Knox* abuse of discretion standard formerly used to review the formation of assessment districts by local governmental agencies, it nevertheless is still highly deferential.

**[8] Constitutional Law 92 ↪655**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(F) Constitutionality of Statutory Provisions

92k655 k. In general. Most Cited Cases

All legislation regulating the exercise of a constitutional right must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.

**[9] Constitutional Law 92 ↪655**

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(F) Constitutionality of Statutory Provisions

92k655 k. In general. Most Cited Cases

A local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect.

**[10] Constitutional Law 92 ↪961**

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional

Questions

92VI(C)1 In General

92k960 Judicial Authority and Duty in

General

92k961 k. In general. Most Cited

Cases

The California Supreme Court must enforce the provisions of the state Constitution, and may not lightly disregard or blink at a clear constitutional mandate.

[11] Constitutional Law 92 ↪585

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(A) General Rules of Construction

92k585 k. Policy and purpose in general.

Most Cited Cases

Courts are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law.

[12] Municipal Corporations 268 ↪407(1)

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k407 Constitutional Requirements and Restrictions

268k407(1) k. In general. Most Cited

Cases

Purpose of Proposition 218, which limited local government's ability to impose real property assessments, was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges. West's Ann.Cal.Const. Art. 13D.

[13] Municipal Corporations 268 ↪503

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Spe-

cial Taxes

268k496 Confirmation or Revision of Assessment by Court

268k503 k. Scope of inquiry and powers of court. Most Cited Cases

Courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments on real property are proportional to special benefits, as required for such assessments to be permitted under constitutional provision limiting local government's ability to impose real property assessments. West's Ann.Cal.Const. Art. 13D.

[14] Taxation 371 ↪2100

371 Taxation

371III Property Taxes

371III(B) Laws and Regulation

371III(B)3 Constitutional Requirements and Restrictions

371k2100 k. In general. Most Cited Cases

Voter consent cannot convert an unconstitutional legislative assessment on real property into a constitutional one. West's Ann.Cal.Const. Art. 13D.

[15] Municipal Corporations 268 ↪407(1)

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k407 Constitutional Requirements and Restrictions

268k407(1) k. In general. Most Cited Cases

Taxation 371 ↪2100

371 Taxation

371III Property Taxes

371III(B) Laws and Regulation

371III(B)3 Constitutional Requirements and Restrictions

371k2100 k. In general. Most Cited

Cases

Neither the separation of powers nor property owner consent justifies allowing a local legislative body or property owners to usurp the judicial function of interpreting and applying the constitutional provisions that govern real property assessments. West's Ann.Cal.Const. Art. 13D.

**[16] Municipal Corporations 268 ↪438**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

Local governments may not impose assessments to pay for the cost of providing a general benefit to the community, as opposed to a special benefit. West's Ann.Cal.Const. Art. 13D, § 4.

**[17] Municipal Corporations 268 ↪438**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

General benefits to real estate parcels within open-space district could not be classified as "special benefits," as could be funded by special assessment without violating constitutional provision limiting local government's ability to impose real property assessments, since such general benefits would be "conferred on real property located in the district or to the public at large." West's Ann.Cal.Const. Art. 13D, §§ 2(i), 4(f).

**[18] Municipal Corporations 268 ↪438**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Spe-

cial Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

If a special assessment district is narrowly drawn, the fact that a benefit funded by the assessment is conferred on all real property throughout the district does not make the benefit a "general benefit," as may not be funded by assessment, despite constitutional language defining "special benefits" as only those "over and above" the benefits received by other properties "located in the district." West's Ann.Cal. Const. Art. 13D, § 2(d, i).

**[19] Municipal Corporations 268 ↪438**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

If a special assessment district is narrowly drawn so that a benefit funded by the assessment is conferred on all parcels throughout the district, the characterization of the benefit as general or special, for purposes of determining whether the benefit may constitutionally be funded by assessment, may depend on whether the parcel receives a direct advantage from the improvement, such as proximity to a park, or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement, such as general enhancement of the district's property values. West's Ann.Cal. Const. Art. 13D, § 2(i).

**[20] Municipal Corporations 268 ↪438**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

A “special benefit,” as may constitutionally be funded by assessment, must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share. West's Ann.Cal. Const. Art. 13D, § 2(i).

**[21] Counties 104**

104 Counties

104II Government

104II(A) Organization and Powers in General

104k22 k. Public improvements. Most Cited Cases

Enhanced recreational opportunities, expanded access to recreational areas, and protection of views, scenery, and other resources values and environmental benefits, as intended benefits of purchase and maintenance of unspecified lands by county open-space authority, were “general benefits” that could not be funded by special assessment, since the benefits would be conferred on all properties within a district of over 800 square miles and over 1,000,000 people; all people in district would benefit broadly, generally, and directly from the assessment, resulting in all properties receiving a derivative, indirect benefit. West's Ann.Cal. Const. Art. 13D, § 2(i).

*See Cal. Jur. 3d, Public Improvements, § 18 et seq.; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 141, 143.*

**[22] Counties 104**

104 Counties

104II Government

104II(A) Organization and Powers in General

104k22 k. Public improvements. Most Cited Cases

Increased economic activity and expanded employment opportunity, as intended benefits of purchase and maintenance of unspecified lands by county open-space authority, were “general benefits” that could not be funded by special assessment, absent any direct connection to any particular

properties; the benefits would be conferred on all properties within a district of over 800 square miles and over 1,000,000 people. West's Ann.Cal. Const. Art. 13D, § 2(i).

**[23] Counties 104**

104 Counties

104II Government

104II(A) Organization and Powers in General

104k22 k. Public improvements. Most Cited Cases

Reduction in the costs of health care, law enforcement, and public utility services, as intended benefits of purchase and maintenance of unspecified lands by county open-space authority, were “general benefits” that could not be funded by special assessment, since these benefits would free county funds that would benefit parcels and increase property values in the open-space district generally. West's Ann.Cal. Const. Art. 13D, § 2(i).

**[24] Counties 104**

104 Counties

104II Government

104II(A) Organization and Powers in General

104k22 k. Public improvements. Most Cited Cases

Enhanced overall quality of life, and desirability of the area, as intended benefits of purchase and maintenance of unspecified lands by county open-space authority, were “general benefits” that could not be funded by special assessment, absent any measurement of benefits that would accrue to particular parcels; benefits would be conferred on all properties within a district of over 800 square miles and over 1,000,000 people, and benefits to parcels would be derivative of benefits to people in district. West's Ann.Cal. Const. Art. 13D, § 2(i).

**[25] Municipal Corporations 268**

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

Derivative benefits from a proposed special assessment, such as benefits to property resulting from quality-of-life benefits to people living in, working in, and patronizing businesses in the assessment district, are only "general benefits," and thus cannot be funded by special assessment. West's Ann.Cal. Const. Art. 13D, § 2(i).

[26] Municipal Corporations 268 ↪438

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

Under constitutional provision limiting local government's ability to impose real property assessments, "general benefits" which cannot be funded by special assessment are not restricted to benefits conferred only on persons and property outside the assessment district. West's Ann.Cal. Const. Art. 13D, § 2(i).

[27] Municipal Corporations 268 ↪438

268 Municipal Corporations

268IX Public Improvements

268IX(E) Assessments for Benefits, and Special Taxes

268k436 Benefits to Property

268k438 k. General or special. Most

Cited Cases

The "public at large," within meaning of constitutional provision defining "special benefits" which may be funded by special assessment as particular and distinct benefits "over and above general benefits conferred on real property located in the district or to the public at large," means all mem-

bers of the public, including those who live, work, and shop within the assessment district, and not simply transient visitors. West's Ann.Cal. Const. Art. 13D, § 2(i).

[28] Taxation 371 ↪2119

371 Taxation

371III Property Taxes

371III(B) Laws and Regulation

371III(B)3 Constitutional Requirements and Restrictions

371k2119 k. Restrictions as to purposes of taxation. Most Cited Cases

It is not the purpose of an assessment to fund an agency's ongoing budget. West's Ann.Cal. Const. Art. 13D.

[29] Counties 104 ↪22

104 Counties

104II Government

104II(A) Organization and Powers in General

104k22 k. Public improvements. Most Cited Cases

Special assessment imposed by county open-space authority was not proportional to the benefit conferred on particular parcels, as constitutionally required, where assessment was imposed across a district of 314,000 parcels based on estimated number of people using each parcel, without regard to proximity of each parcel to any open-space land that authority proposed to purchase or maintain; assessment was based on authority's projected annual budget rather than on a calculation or estimation of the cost of the particular public improvement. West's Ann.Cal. Const. Art. 13D, § 4(a).

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CHIN, J.

\*437 \*\*41 In 1996, Proposition 218<sup>FN1</sup> limited local government's ability to impose real property assessments in two significant ways. An assessment can be imposed only for a "special benefit" conferred on real property (art. XIID, § 2, subd. (b)), and the assessment on any parcel must be in proportion to the \*\*42 special benefit conferred on the particular parcel. (Art. XIID, § 4,

subd. (a))

FN1. Article XIIIID of the California Constitution (article XIIIID).

In 2001, the Santa Clara County Open Space Authority (OSA) imposed a countywide assessment to fund a program to acquire, improve, and maintain unspecified open space lands in the county. Plaintiffs sued, challenging that assessment on the grounds that it fails to satisfy the special benefit and proportionality requirements of Proposition 218. To decide whether OSA's 2001 assessment violates article XIIIID, we must first determine the appropriate standard of judicial review of a local governmental agency's assessment determination. We conclude that Proposition 218 requires courts to make an independent review of local agency decisions that are governed by express constitutional provisions, as in this case, and that OSA's assessment does not comply with the special benefit and proportionality requirements of article XIIIID.

### \*\*\*318 I. FACTUAL AND PROCEDURAL HISTORY

#### A. The Creation of OSA and the 1994 Special Assessment District

In 1992, the Santa Clara County Open-Space Authority Act (Pub. Res.Code, § 35100 et seq.) created OSA, with the express purpose of acquiring and preserving open space within the county to counter the conversion of land to urban uses, to preserve quality of life, and to encourage agricultural activities. (Pub.Res.Code, § 35101, subd. (a).) The act provides no particular method to fund open space acquisitions, but it authorizes OSA to levy special assessments under the Streets and Highways Code. (Pub.Res.Code, § 35173.) OSA's jurisdiction included all Santa Clara \*438 County lands except those already within the boundaries of the Midpeninsula Regional Open-Space District.

In 1994, OSA formed an original assessment district under the authority of the Landscape and Lighting Act of 1972 (LLA).<sup>FN2</sup> (Sts. & Hy.Code, § 22500 et seq.) OSA levied an annual special as-

essment on the district's property owners to acquire and preserve open space land under the LLA's procedures. Certain taxpayers challenged the 1994 assessment, but the Court of Appeal upheld it. The 1994 assessment raised approximately \$4 million annually and allowed OSA to purchase thousands of acres of open space lands.<sup>FN3</sup>

FN2. An “ ‘[a]ssessment district’ means the district of land to be benefited by the improvement and to be specially assessed to pay the costs and expenses of the improvement and the damages caused by the improvement.” (Sts. & Hy.Code, § 10008.)

FN3. The 1994 special assessment is not at issue in this case.

#### B. The Creation of the 2001 Assessment District and the Passage of Proposition 218

In 2000, OSA determined that it needed additional annual funding to purchase open space. To raise these additional funds, OSA considered forming an additional assessment district. However, in 1996, California voters had passed Proposition 218 to “significantly tighten the kind of benefit assessments” an agency can levy on real property (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) argument in favor of Prop. 218, p. 76) and to “protect [ ] taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.” (Ballot Pamp., Gen. Elec., *supra*, text of Prop. 218, § 2, p. 108, reprinted in Historical Notes, 2A West's Ann. Const. (2008 supp.) foll. Cal. Const., art. XIIIIC, p. 85 (Historical Notes).)

To achieve these goals, Proposition 218 tightened assessment requirements and definitions, imposed stricter procedures on agencies, and shifted traditional presumptions that had favored assessment validity. (Art. XIIIID, §§ 2, subd. (i), 4.) Under Proposition 218's procedures, local agencies must give the record owners of all assessed parcels written notice of the proposed assessment, a voting ballot, and a statement disclosing that a majority protest will prevent the assessment's passage. (Art.

XIIID, § 4, subs. (c), (d).) The proposed assessment must be "supported by a detailed engineer's report." (Art. XIIID, § 4, subd. (b).) At a noticed public hearing, the agencies must consider all protests, and they "shall not impose an assessment **\*\*43** if there is a majority protest." (Art. XIIID, § 4, subd. (e).) Voting must be weighted "according to the proportional financial obligation of the affected property." (*Ibid.*)<sup>FN4</sup>

FN4. In 1997, the Legislature codified and detailed the notice, hearing, and protest procedures in the Proposition 218 Omnibus Implementation Act. (Gov.Code § 53750 et seq., added by Stats.1997, ch. 38, § 5.) These statutory provisions expressly supersede any others that apply to the levy of a new assessment. (Gov.Code § 53753, subd. (a).) These procedures are incorporated by reference into the LLA. (Sts. & Hy.Code, § 22588.)

**\*\*\*319 \*439** OSA explored the possibility of creating a second assessment district that would comply with the new provisions of Proposition 218. As a first step, the OSA Board of Directors (OSA Board) authorized a poll of Santa Clara County property owners to determine whether they would support an assessment to fund the purchase of additional open space. The poll showed that approximately 55 percent of property owners would likely support up to a \$20 per year property tax increase for acquiring and maintaining open space lands.

The OSA Board hired Shilts Consultants, Inc. (SCI) to prepare the engineer's report. That report stated that the assessment would fund the "[a]cquisition, installation, maintenance and servicing" of open space lands for recreation, conservation, watersheds, easements, and similar purposes. Although the SCI report identified areas OSA was considering for potential acquisition and improvement and outlined general considerations OSA would use to identify and acquire open space lands, it identified no particular parcels to be acquired and no particular areas to be prioritized.

The proposed 2001 assessment district included all Santa Clara County lands that were in the 1994 assessment district. The proposed assessment district included approximately 314,000 parcels and over 800 square miles containing over 1,000,000 people. The SCI engineer's report identified the special benefits that would accrue to the assessed parcels, estimated the proportion of all the benefits that could be considered special, set the assessment for a single-family home at \$20 per year, and provided a formula for estimating the proportionate special benefit that other property on the tax rolls would receive. Using the \$20 property tax increase per single-family home, the SCI engineer's report calculated that the assessment would produce an approximately \$8 million increase in OSA's budget.

The OSA Board accepted and filed the engineer's preliminary report and authorized an assessment ballot proceeding. On September 1, 2001, OSA mailed an informational pamphlet to all of the approximately 314,000 property owners within the proposed district. The pamphlet described the assessment district and OSA's goal of raising about \$8 million annually to acquire open space lands within the county.

On September 14, 2001, OSA mailed a notice of the proposed assessment and an official ballot to all affected property owners. On October 25, 2001, OSA conducted an informational meeting, at which OSA's general manager **\*440** and special counsel and a representative from SCI responded to numerous questions from the public. The formal public hearing was held on November 8, 2001.

On December 13, 2001, OSA reported the results of the balloting at a public hearing. Of the approximately 314,000 official ballots mailed, OSA received only 48,100 responses, a return of approximately 15 percent. Of those responses, 32,127 (66.8 percent) voted in favor of the assessment, while the rest voted "no" (33.2 percent). The returned ballots were weighted in proportion to the amount each parcel was to be assessed, making the final tally 50.9 percent in favor and 49.1 percent

opposed. Plaintiff Silicon Valley Taxpayers Association (SVTA) objected to the results on procedural grounds no longer relevant to the issues raised here. The final engineer's\*\*\*320 report, which was before OSA at the December meeting, contained some changes from the draft report filed in September. In particular, the final report emphasized that the "overriding" and "most important" criterion for OSA to use in acquiring open space was that the acquired lands be distributed throughout OSA's jurisdiction. At the conclusion of the December hearing, the OSA Board approved the results,\*\*44 accepted the final engineer's report, and established the new assessment district.

A year and a half later, the OSA Board renewed the assessment for 2003-2004 and added a cost-of-living increase of \$0.34 per parcel.

### C. Procedural History

SVTA, Howard Jarvis Taxpayers Association, and several individual taxpayers (collectively plaintiffs) filed this action for a writ of mandate, declaratory relief, and an injunction, seeking to invalidate the 2001 assessment. Plaintiffs' second amended complaint contains two causes of action: the first alleges that OSA's notice and balloting procedures did not comport with Proposition 218 and the Government Code; the second challenges the substantive validity of the assessment under Proposition 218 and the Landscaping and Lighting Act.

The parties filed cross-motions for summary judgment or, in the alternative, summary adjudication. The court issued an order granting summary adjudication in favor of OSA on the second cause of action.

After the OSA Board renewed its assessment for the 2003-2004 fiscal year, plaintiffs filed a second lawsuit challenging that assessment. The new complaint contained allegations similar to those in the original lawsuit and added claims contesting the increase in the new assessment. The two cases were then consolidated. The court issued an order granting summary adjudication \*441 in

OSA's favor on the remaining causes of action. Based on that order and the previous order in the first lawsuit, the court entered judgment in favor of OSA.

In a two-to-one decision, the Court of Appeal affirmed the trial court's judgment. The majority held that Proposition 218 had altered the traditionally deferential standard of review by eliminating the presumption that an assessment was valid. Nevertheless, the majority held that courts should still accord the final legislative determination substantial deference, as long as the agency had followed Proposition 218's procedural requirements in levying the challenged assessment, and as long as substantial evidence in the administrative record supported the agency's finding that the benefits were special. Using this limited scope of review, the majority determined that the engineer's report supported OSA's determination of special benefits and proportionality.

In her dissent, Justice Bamattre-Manoukian disagreed with the majority regarding the standard of review. In her view, the drafters of Proposition 218 had specifically targeted the deferential standard of review for change. Because the validity of a post-Proposition-218 assessment is now a constitutional question, she asserted that courts should exercise independent judgment in determining whether an assessment complies with article XIID's procedural *and* substantive requirements. The dissent independently analyzed the engineer's findings concerning special benefits and proportionality and concluded that the identified benefits did not comply with Proposition 218's legal requirements.

We granted plaintiffs' petition for review.

### \*\*\*321 II. DISCUSSION

Plaintiffs contend that because state constitutional provisions now govern assessments, courts should apply an independent standard of judicial review to determine their validity. They claim that, in this case, the \$20 flat-rate levy is an invalid assessment because it fails to satisfy several provisions of

article XIID, section 4, and that the levy is in essence a "special tax." They argue further that, because OSA neither sought nor obtained the mandatory two-thirds voter approval for a special tax as required by Proposition 13, the \$20 flat-rate levy violates both Propositions 13 (Cal. Const., art. XIII A) and 218. In discussing these claims, we first discuss the nature of special assessments before the enactment of Proposition 218, their relationship to Proposition 13 taxes, and how Proposition 218 changed the law governing assessments. As explained below, we agree with plaintiffs' contentions.

[1] We explained the nature of a special assessment in *Knox v. City of Orland* (1992) 4 Cal.4th 132, 14 Cal.Rptr.2d 159, 841 P.2d 144, (*Knox*), a \*442 pre-Proposition 218 case. A \*\*45 special assessment is a " 'compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein...' " [Citation.] [Citation.] In this regard, a special assessment is 'levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.' [Citation.] 'The rationale of special assessment[s] is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public. [Citation.]' [Citation.]...

[2] "A tax, on the other hand, is very different. Unlike a special assessment, a tax can be levied 'without reference to peculiar benefits to particular individuals or property.' " [Citations.] Indeed, '[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.' [Citations.]...

"Therefore, while a special assessment may, like a special tax, be viewed in a sense as having

been levied for a specific purpose, a critical distinction between the two public financing mechanisms is that a special assessment must confer a special benefit upon the property assessed beyond that conferred generally." (*Knox, supra*, 4 Cal.4th at pp. 141-142, 14 Cal.Rptr.2d 159, 841 P.2d 144.)

We explained the history of Proposition 218 in *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 102 Cal.Rptr.2d 719, 14 P.3d 930 (*Apartment Assn.*): " 'Proposition 218 can best be understood against its historical background, which begins in 1978 with the adoption of Proposition 13. The purpose of Proposition 13 was to cut local property taxes. [Citation.]' [Citation.] Its principal provisions limited ad valorem property taxes to 1 percent of a property's assessed valuation and limited increases in the assessed valuation to 2 percent per year unless and until the property changed hands. (Cal. Const., art. XIII A, §§ 1, 2.)

" 'To prevent local governments from subverting its limitations, Proposition 13 also prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. \*\*\*322 (Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 6-7 [2 Cal.Rptr.2d 490, 820 P.2d 1000].) It has been held, however, that a special assessment is not a special tax within the meaning of Proposition 13. (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 141 [14 Cal.Rptr.2d 159, 841 P.2d 144], and cases cited.) Accordingly, a special assessment could be imposed without a two-thirds vote.

\*443 " 'In November 1996, in part to change this rule, the electorate adopted Proposition 218, which added articles XIIC and XIID to the California Constitution. Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge. (Cal. Const., art. XIID, § 3, subd. (a)(1)-(4); see also [*id.*], § 2, subd. (a).) It buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by

placing analogous restrictions on assessments, fees, and charges.’ (*Howard Jarvis [Taxpayers Assn. v. City of Riverside* (1999) ] 73 Cal.App.4th 679, 681-682, 86 Cal.Rptr.2d 592.)” (*Apartment Assn., supra*, 24 Cal.4th at pp. 836-837, 102 Cal.Rptr.2d 719, 14 P.3d 930.)

Proposition 218 restricts government's ability to impose assessments in several important ways. First, it tightens the definition of the two key findings necessary to support an assessment: special benefit and proportionality. An assessment can be imposed *only* for a “special benefit” conferred on a particular property. (Art. XIII D, §§ 2, subd. (b), 4, subd. (a).) A special benefit is “a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large.” (Art. XIII D, § 2, subd. (i).) The definition specifically provides that “[g]eneral enhancement of property value does not constitute ‘special benefit.’ ” (*Ibid.*) Further, an assessment on any given parcel \*\*46 must be in proportion to the special benefit conferred on that parcel: “No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.” (Art. XIII D, § 4, subd. (a).) “The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided.” (*Ibid.*) Because only special benefits are assessable, and public improvements often provide both general benefits to the community and special benefits to a particular property, the assessing agency must first “separate the general benefits from the special benefits conferred on a parcel” and impose the assessment only for the special benefits. (Art. XIII D, § 4, subd. (a).)

Second, as described above, Proposition 218 established strict procedural requirements for the imposition of a lawful assessment. (*Ante*, 79 Cal.Rptr.3d at 318-319, 187 P.3d at 42-43.)

#### A. Standard of Review

Before Proposition 218 was passed, courts reviewed quasi-legislative acts of local governmental agencies, such as the formation of an assessment district, under a deferential abuse of discretion standard. (*Knox, supra*, 4 Cal.4th at pp. 145-149, 14 Cal.Rptr.2d 159, 841 P.2d 144; \*444 *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 684-685, 129 Cal.Rptr. 97, 547 P.2d 1377 (*Dawson* ).) Because it was recognized that “the establishment of a special assessment district takes place as a result of a peculiarly legislative process grounded in the taxing power of the sovereign,” the scope of judicial review of such actions was \*\*\*323 “quite narrow.” (*Dawson, supra*, at pp. 683-684, 129 Cal.Rptr. 97, 547 P.2d 1377; *id.* at p. 684, 129 Cal.Rptr. 97, 547 P.2d 1377 [“ ‘The board of supervisors is the ultimate authority which is empowered to finally determine what lands are benefited and what amount of benefits shall be assessed against the several parcels benefited....’ ”].)

Accordingly, the standard of review was as follows: “A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before [the legislative] body, or from facts which may be judicially noticed, that the assessment as finally confirmed is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties.” (*Dawson, supra*, 16 Cal.3d at p. 685, 129 Cal.Rptr. 97, 547 P.2d 1377; see also *Knox, supra*, 4 Cal.4th at p. 146, 14 Cal.Rptr.2d 159, 841 P.2d 144.) Under the *Dawson/Knox* standard of review, courts presumed an assessment was valid, and a plaintiff challenging it had to show that the record before the legislative body “clearly” did not support the underlying determinations of benefit and proportionality. (See also *Lent v. Tillson* (1887) 72 Cal. 404, 429, 14 P. 71 [judicial interference is warranted only “when the courts *can* plainly see that the legislature has not really exercised this judgment at all, or that manifestly and certainly no such benefit can or

could reasonably have been expected to result”].)

The drafters of Proposition 218 specifically targeted this deferential standard of review for change. Article XIIIID, section 4, subdivision (f), provides: “In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.”

[3][4][5][6] In determining the effect of article XIIIID, section 4, subdivision (f), we apply the familiar principles of constitutional interpretation, the aim of which is to “determine and effectuate the intent of those who enacted the constitutional provision at issue.” (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418, 9 Cal.Rptr.3d 121, 83 P.3d 518.) “The principles of constitutional interpretation are similar to those governing statutory construction.” \*\*47(*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, 105 Cal.Rptr.2d 46, 18 P.3d 1198.) If the language is clear and unambiguous, the plain meaning governs. (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056, 6 Cal.Rptr.3d 432, 79 P.3d 548.) But if the language is \*445 ambiguous, we consider extrinsic evidence in determining voter intent, including the Legislative Analyst’s analysis and ballot arguments for and against the initiative. (*People v. Canty* (2004) 32 Cal.4th 1266, 1281, 14 Cal.Rptr.3d 1, 90 P.3d 1168; *People v. Rizo* (2000) 22 Cal.4th 681, 685, 94 Cal.Rptr.2d 375, 996 P.2d 27.)

Article XIIIID, section 4, subdivision (f), states that the agency has the burden of demonstrating special benefit and proportionality in any legal action contesting the validity of any assessment. Although it is clear that the voters intended to reverse the usual deference accorded governmental action and to reverse the presumption of validity by placing the “burden” on the agency, the provision does not specify the scope of that burden. Because the

language imposing a “burden” on the agency is somewhat imprecise, we look to the ballot\*\*\*324 materials as further indicia of voter intent.

The Legislative Analyst explained to the voters that Proposition 218 was designed to “constrain local governments’ ability to impose ... assessments ...” and to “place extensive requirements on local governments charging assessments.” (Ballot Pamp., Gen. Elec., *supra*, analysis of Prop. 218 by the Legis. Analyst, p. 73.) Addressing the burden of demonstration language of proposed article XIIIID, section 4, subdivision (f), the Legislative Analyst explained: “Currently, the courts allow local governments significant flexibility in determining fee and assessment amounts. In lawsuits challenging property fees and assessments, the taxpayer generally has the ‘burden of proof’ to show that they are not legal. This measure shifts the burden of proof in these lawsuits to local government. As a result, it would be easier for taxpayers to win lawsuits, resulting in reduced or repealed fees and assessments.” (Ballot Pamp., Gen. Elec., *supra*, at p. 74.) Or stated another way, Proposition 218 was intended to make it more difficult for an assessment to be validated in a court proceeding.

As the dissent below points out, a provision in Proposition 218 shifting the burden of demonstration was included in reaction to our opinion in *Knox*. The drafters of Proposition 218 were clearly aware of *Knox* and the deferential standard it applied based on *Dawson, supra*, 16 Cal.3d 676, 129 Cal.Rptr. 97, 547 P.2d 1377. The argument in favor of Proposition 218 referred to a “growing list of assessments imposed without voter approval” after Proposition 13 that are in fact special taxes. As one example of several named abuses of the assessment process, it specified that “[i]n Northern California, taxpayers 27 miles away from a park are assessed because their property supposedly benefits from that park.” (Ballot Pamp., Gen. Elec., *supra*, argument in favor of Prop. 218, p. 76.) The reference to 27 miles was based on the facts of *Knox*, which involved an assessment to raise funds to maintain five

existing parks serving four school districts. We upheld the assessment, deferring to the City of Orland's \*446 determination that the property owners were "uniquely benefited by the proximity of these facilities to their properties" (*Knox*, *supra* 4 Cal.4th at p. 149, 14 Cal.Rptr.2d 159, 841 P.2d 144), although the assessment district contained 42,300 acres of land and geographically consisted of the entire city and portions of outlying areas in Glenn County. (*Id.* at p. 137, fn. 5, 14 Cal.Rptr.2d 159, 841 P.2d 144.)

Also, in *Knox*, we declined a request to reevaluate the *Dawson* deferential standard of review for special assessments, finding "no basis" for requiring the assessing agency to bear the burden of proof "in the context of benefit assessments." (*Knox*, *supra*, 4 Cal.4th at p. 147, 14 Cal.Rptr.2d 159, 841 P.2d 144.) The *Knox* plaintiffs argued that, as in *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235, 211 Cal.Rptr. 567, the local agency should bear the burden of proof in establishing the validity of a special assessment, and we should reassess the traditional standard of review that we reaffirmed in *Dawson*. (*Knox*, *supra*, 4 Cal.4th at pp. 146-147, 14 Cal.Rptr.2d 159, 841 P.2d 144.) In rejecting the argument, we distinguished \*\*48 benefit assessments from the development fees in *Beaumont*, noted the different statutory contexts, and refused to change the deferential standard of review. (*Ibid.*) Thus, it appears that the inclusion of the burden of demonstration language was intended to supply the "basis" found lacking in *Knox*, and that the drafters of Proposition 218 particularly targeted *Knox*.

\*\*\*325 As further evidence that the voters sought to curtail local agency discretion in raising funds, Proposition 218's preamble includes an express statement of purpose: "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge

increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Ballot Pamp., *supra*, text of Prop. 218, § 2, p. 108; Historical Notes, *supra*, p. 85; *People v. Canty*, *supra*, 32 Cal.4th at p. 1280, 14 Cal.Rptr.3d 1, 90 P.3d 1168 ["In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration"].) In passing Proposition 218, the voters clearly sought to limit local government's ability to exact revenue under the rubric of special assessments.

The Court of Appeal majority below recognized that the voters intended to change the deferential standard of review: "[B]y placing the burden to demonstrate special benefit and proportionality on the agency the new law must now require that which *Lent* held was not necessary, i.e., that the record contain affirmative evidence of the two substantive bases for the assessment." \*447 Nevertheless, the majority maintained that courts should continue to give deference to the local agency's assessment decision (an act of a legislative body) for two reasons. First, "the constitutional separation of powers demands that we give it deference. (Cal. Const., art. III, § 3; [citations].)" Second, if the challenged assessment was levied according to Proposition 218's procedural requirements, courts will continue to accord the final legislative determination substantial deference. Otherwise, "invalidating an assessment that received the support of a majority of the property owners would frustrate the will of those property owners." The majority concluded that the scope of judicial review was "limited."

Accordingly, the majority stated the new standard of review as follows: "A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts so long as the local legislative body



ments; place extensive requirements on local governments charging assessments; shift the burden of demonstrating assessments' legality to local government; make it easier for taxpayers to win lawsuits; and limit the methods by which local governments exact revenue from taxpayers without their consent. Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted. We construe article XIII D, section 4, subdivision (f)-the "burden ... to demonstrate" provision-liberally in light of the proposition's other provisions, and conclude that courts should exercise their independent<sup>\*\*\*327</sup> judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Proposition 218. <sup>\*449</sup>(*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74, 89 Cal.Rptr.2d 10 [courts exercise independent judgment in matters involving constitutional interpretation]; see *People v. Cromer* (2001) 24 Cal.4th 889, 894, 103 Cal.Rptr.2d 23, 15 P.3d 243 [courts use independent, de novo review for mixed questions of fact and law that implicate constitutional rights].)

[14][15] Defendants argue that because a weighted majority of property owners approved the assessment, it furthers Proposition 218's emphasis on voter consent, and we should accord deference to those voting owners' wishes. However, voter consent cannot convert an unconstitutional legislative assessment into a constitutional one. Under Proposition<sup>\*\*50</sup> 218, all valid assessments must both clear the substantive hurdles in article XIII D, section 4, subdivision (a) and be approved by a weighted majority of owners under section 4, subdivisions (c), (d), and (e). Moreover, Proposition 218 was designed to prevent a local legislative body from imposing a special tax disguised as an assessment. (*Apartment Assn.*, *supra*, 24 Cal.4th at p. 839, 102 Cal.Rptr.2d 719, 14 P.3d 930 ["The bal-

lot arguments identify what was perhaps the drafter's main concern: tax increases disguised via euphemistic relabeling as 'fees,' 'charges,' or 'assessments' "].) <sup>FN5</sup> The judicial invalidation of an assessment does not thwart the objective of taxpayer consent; under Proposition 13, two-thirds of the voters must still approve the proposed revenue source (i.e., a special tax). (Cal. Const., art. XIII A, § 4; art. XIII D, § 3, subd. (a)(2).) Neither the separation of powers nor property owner consent justifies allowing a local legislative body or property owners (both bound by the state Constitution) to usurp the judicial function of interpreting and applying the constitutional provisions that now govern assessments.

FN5. The argument in favor of Proposition 218 stated: "After voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees'.... [¶] ... [¶] Proposition 218 will significantly tighten the kind of benefit assessments that can be levied." (Ballot Pamp., Gen. Elec., *supra*, argument in favor of Prop. 218, p. 76). It also declared that "Proposition 218 simply gives taxpayers the right to vote on taxes and stops politicians' end-runs around Proposition 13." (Ballot Pamp., Gen. Elec., *supra*, rebuttal to argument against Prop. 218, p. 77.)

Courts are familiar with the process of determining the constitutionality of the taxes, fees, and assessments that local governments impose. (See *Richmond v. Shasta Community Services Dist.*, *supra*, 32 Cal.4th at pp. 418-428, 9 Cal.Rptr.3d 121, 83 P.3d 518 [determination whether charge that water district imposed violated article XIII D restrictions required de novo review]; *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 647-650, 119 Cal.Rptr.2d 91 [court found in-lieu fee that city imposed was unconstitutional under article XIII D]; *Howard Jarvis*

*Taxpayers Assn. v. City of Riverside*, *supra*, 73 Cal.App.4th 679, 684-690, 86 Cal.Rptr.2d 592 [question whether existing streetlight assessment was subject to Proposition 218 limitations involved court's de novo interpretation of the constitution and voters' intent]; \*450 *Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1354-1359, 121 Cal.Rptr.2d 228 [court independently interprets constitutional amendments contained in article XIIIID to determine \*\*\*328 whether water fee was a property-related fee requiring property owners' vote]; *Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 429, 121 Cal.Rptr.2d 649 [question whether local ordinance violated constitutional provisions relating to tax increment financing was subject to de novo review].)

Accordingly, courts should exercise their independent judgment in reviewing whether assessments that local agencies impose violate article XIIIID.<sup>FN6</sup>

FN6. In *Not About Water Com. v. Board of Supervisors* (2002) 95 Cal.App.4th 982, 116 Cal.Rptr.2d 526), the Court of Appeal held that courts review the creation of a special assessment district under an abuse of discretion standard (*Id.* at pp. 994-995, 116 Cal.Rptr.2d 526), but at another point it references a substantial evidence standard (*Id.* at p. 986, 116 Cal.Rptr.2d 526). We disapprove *Not About Water Com. v. Board of Supervisors*, *supra*, 95 Cal.App.4th 982, 116 Cal.Rptr.2d 526, to the extent it is inconsistent with this opinion.

## B. The 2001 Special Assessment

We apply this standard of review to the special assessment in this case to determine whether OSA met its burden of demonstrating that the assessed properties received a special benefit and that the assessment is proportional to that special benefit.

### 1. Special Benefits

[16] "Under Proposition 218, only special be-

nefits are assessable. (Cal. Const., art. XIIIID, § 4, subd. (a).) Local governments may not impose assessments to pay for the cost of providing a general benefit to the community...." (*City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1223, 9 Cal.Rptr.3d 791.) If a proposed project will provide \*\*51 both general benefits to the community and special benefits to particular properties, the agency can impose an assessment based only on the special benefits. It must separate the general benefits from the special benefits and must secure other funding for the general benefits. (Art. XIIIID, § 4, subd. (a); *Hinz*, *supra*, 115 Cal.App.4th at p. 1223, 9 Cal.Rptr.3d 791.)

Both before and after Proposition 218 passed, special assessments were distinguished from special taxes through the concept of special benefits. (*Knox*, *supra*, 4 Cal.4th at p. 142, 14 Cal.Rptr.2d 159, 841 P.2d 144; *Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089, 1106, 104 Cal.Rptr.2d 53, 16 P.3d 717 (*Ventura Group Ventures* ).) In *Knox*, we referred to a special benefit as a benefit " 'over and above that received by the general public.' " (*Knox*, *supra*, 4 Cal.4th at p. 142, 14 Cal.Rptr.2d 159, 841 P.2d 144.) There, we presumed (in the absence of evidence to the \*451 contrary) that the presence of well-maintained open park land contributed to the district's attractiveness and thus was a special benefit because it enhanced the desirability of the residential properties in that district. (*Knox*, *supra*, 4 Cal.4th at p. 149, 14 Cal.Rptr.2d 159, 841 P.2d 144.)

[17] Proposition 218 made several changes to the definition of special benefits. First, Proposition 218 defines a special benefit as "a particular and distinct benefit over and above general benefits conferred on *real property located in the district* or to the public at large," with the additional italicized requirement. (Art. XIIIID, § 2, subd. (i), italics added.) Correspondingly, it emphasizes that "[g]eneral enhancement of property value does not constitute 'special benefit.' " (*Ibid.*) Since the "[g]eneral enhancement of property value" is a

“general benefit[ ] conferred on real property located in the district” (*ibid.*), Proposition 218 clearly mandates \*\*\*329 that a special benefit cannot be synonymous with general enhancement of property value. Thus, Proposition 218 tightened the definition of special benefits and broadened the definition of general benefits to include benefits conferred generally “on real property located in the district.” (Art. XIID, § 2, subd. (i).)<sup>FN7</sup>

FN7. OSA suggests that it can classify general benefits to parcels within the district as special benefits because benefit-to-property language is omitted from article XIID, section 4, subdivision (f). That subdivision requires the agency “to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the [special] benefits conferred on the property or properties in question.” (Art. XIID, § 4, subd. (f).) OSA disregards the fact that section 4, subdivision (f), requires OSA to prove a proportional “special benefit” to each property as that term is defined in section 2, subdivision (i), which includes the benefit-to-property component. The additional reference in section 4, subdivision (f), to the “public at large” is surplusage, because that language is already included in section 2, subdivision (i)'s definition of “special benefit.” (See *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 772-773, 35 Cal.Rptr.2d 814, 884 P.2d 645.)

Relying on *Harrison v. Bd. of Supervisors* (1975) 44 Cal.App.3d 852, 118 Cal.Rptr. 828 (*Harrison*), the Court of Appeal majority below commented that “[i]f there is a significant difference between the two definitions [of special benefits before and after Proposition 218], we do not detect

it.” *Harrison* simply held that an increase in property value *alone* did not amount to a special benefit. (*Harrison, supra*, 44 Cal.App.3d at pp. 858-859, 118 Cal.Rptr. 828.) This holding did not preclude a determination of special benefit based in part on the general enhancement of property value.

Moreover, while pre-Proposition 218 case law makes clear that assessments may not be levied for purposes of conferring purely general benefits, courts did not invalidate assessments simply because they provided general benefits to the public in addition to the requisite special benefits, and did not demand a strict separation of special and general benefits. (See e.g., \*452*Knox, supra*, 4 Cal.4th at pp. 137, 149, 14 Cal.Rptr.2d 159, 841 P.2d 144 [upheld validity of assessment for park maintenance despite fact city did not separate general benefits to people outside area and to community at large from special benefits to residential parcels]; *Allen v. City of Los Angeles* (1930) 210 Cal. 235, 238, 291 P. 393 [“It would be well within the \*\*52 power of the city council to make the cost of the entire proceeding rest upon the shoulders of the property owners of a given district especially benefited thereby”]; *Federal Construction Co. v. Ensign* (1922) 59 Cal.App. 200, 210, 210 P. 536 (*Ensign*) [“To invalidate the assessment the general public benefit must be the only result of the improvement”; 100 percent of cost of new sewage treatment plant fully assessable notwithstanding general benefits]; 51 Cal.Jur.3d (2003) Public Improvements, § 19, p. 900 [“For an assessment to be invalid because it confers a general public benefit, the general benefit must be the only result of the assessment”].)

[18][19][20] Consequently, the pre-Proposition 218 cases on which the Court of Appeal majority below and OSA relied are not instructive in determining whether a benefit is special under Proposition 218. Instead, under the plain language of article XIID, a special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real prop-

erty in general and the public at large do not share.  
FN8 (Art. XIID, § 2, subd. (i).)

FN8. OSA observes that Proposition 218's definition of "special benefit" presents a paradox when considered with its definition of "district." Section 2, subdivision (i) defines a "special benefit" as "a particular and distinct benefit *over and above general benefits conferred on real property located in the district* or to the public at large." (Art. XIID, § 2, subd. (i), italics added.) Section 2, subdivision (d) defines "district" as "an area determined by an agency to contain *all parcels which will receive a special benefit* from a proposed public improvement or property-related service." (Art. XIID, § 2, subd. (d), italics added.) In a well-drawn district limited to only parcels receiving special benefits from the improvement every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."

We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefitting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special. In that circumstance, the characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g., proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the im-

provement (e.g., general enhancement of the district's property values).

\*\*\*330 Our examination of the engineer's report supporting the assessments reveals that OSA has failed to meet its burden of demonstrating that the assessment is based only on the special benefits conferred on the particular parcel and is in proportion to those benefits. Various studies supported the listed benefits in the engineer's report. But, as discussed below, the report's \*453 designation of these listed benefits as "special" failed to satisfy the constitutional requirements for assessments that fund open space acquisitions.

The engineer's report enumerates seven "special benefits" that the assessment will confer on *all* residents and property owners in the district: (1) enhanced recreational activities and expanded access to recreational areas; (2) protection of views, scenery, and other resources; (3) increased economic activity; (4) expanded employment opportunity; (5) reduced costs of law enforcement, health care, fire prevention, and natural disaster response; (6) enhanced quality of life and desirability of the area; and (7) improved water quality, pollution reduction, and flood prevention.

[21] The report states that the benefit of "[e]nhanced recreational opportunities and expanded access to recreational areas" will be conferred on "all property owners, residents, employees and customers throughout the OSA" and that "[a]ll properties will benefit from the assessments..." It explains that residential properties will benefit because "[t]hese improved open space areas will be available to residents and guests of property owners within the OSA, thereby making these properties more valuable," and that nonresidential properties will benefit because additional recreation areas available to employees will "enhance an employer's ability to attract and keep quality employees." The "enhanced economic conditions benefit the [nonresidential] property by making it more valuable." The report therefore acknowledges\*\*53 that *all* people in OSA's territory will benefit broadly,

generally, and directly from the assessment, resulting in *all* properties receiving a derivative, indirect benefit.

Similarly, the report describes the second listed “special benefit” as benefiting everyone in the district generally (“[p]rotection of views, scenery and other resources values and environmental benefits enjoyed by residents, employees, customers and guests”). The report concludes \*\*\*331 that “[t]hese benefits ultimately accrue to properties because properties are more desirable in areas that offer environmental and economic benefits.” The report makes no attempt to tie this benefit to particular properties. Instead, it concludes that all properties throughout the district will receive this benefit equally.

[22] “Increased economic activity” and “[e]xpanded employment opportunity” are also listed in the report as “special benefits.” Again, the report states that increased economic activity and expanded employment opportunity will result from the acquisition of additional open space because increased recreational opportunities will likely attract more people to the county. These people, in turn, will patronize county services and businesses, thereby fostering economic growth and “additional employment opportunities for OSA residents.” The report broadly concludes that the increased economic \*454 activity in the area is “a benefit ultimately to residential, commercial, industrial and institutional property.” However, it simply assumes that the resultant increased economic activity will affect people and property throughout the county equally, but makes no direct connection to any particular properties.

[23] The remaining listed “special benefits” do not satisfy the constitutional requirements either. Relying on various studies, the report claims that because open space and parks promote good health and reduce crime and vandalism, the county can expect a reduction in health care and law enforcement costs. It reasons that “[s]uch cost reduction frees public funds for other services that benefit proper-

ties,” and “[a]ll of these factors ultimately benefit property by making the community more desirable and property, in turn, more valuable.” The report also asserts that, because open space helps protect water quality and reduce flooding, the costs of public utility services for properties in the district will decrease.

[24][25] Finally, the report emphasizes that open space areas will “enhance the overall quality of life and desirability of the area.” All the listed benefits are general benefits in this case, shared by everyone—all 1.2 million people—living within the district. The report does not even attempt to measure the benefits that accrue to particular parcels. Indeed, the report describes OSA’s mission, which is “[t]o preserve, protect and manage, *for the use and enjoyment of all people*, a well-balanced system of urban and non-urban areas of scenic recreational and agricultural importance.” (Italics added.) OSA is responsible, as the report explains, “for preserving and maintaining open space for approximately 1.2 million people residing within its boundaries, representing over two-thirds of the population within Santa Clara County.” Although it is reasonable to conclude that quality-of-life benefits to *people* living in, working in, and patronizing businesses in the district will, in turn, benefit property in the district, such derivative benefits are only “general benefits conferred on real property located in the district or to the public at large.” (Art. XIID, § 2, subd. (i).) Moreover, to the extent that the value of property located in a desirable community is enhanced, this is a “[g]eneral enhancement of property value,” and is thus, by definition *not* a special benefit. (*Ibid.*)

In addition, the report’s description of general benefits fails to comport with the Constitution. The engineer’s report acknowledges that the acquisition, maintenance and preservation of open spaces “provide a degree of general benefit to the public at large.” But it then asserts that the ratio of general to special benefit that will be derived from OSA’s open space acquisition program will be 10 percent

\*\*\*332 general benefit and 90 percent special benefit, based on its determination that general benefit is measured only as \*455 the benefit conferred on “individuals who are *not* residents, employees, customers or property owners” (italics added) in the assessment \*\*54 district. This distinction finds no support in the Constitution.

[26][27] Under article XIID, general benefits are not restricted to benefits conferred only on persons and property outside the assessment district, but can include benefits both “conferred on real property located *in the district* or to the public at large.” (Art. XIID, § 2, subd. (i), italics added.) “At large” means “[n]ot limited to any particular ... person” or “[f]ully; in detail; in an extended form.” (Black’s Law Dict. (8th ed.2004) p. 136.) By its plain language, section 2, subdivision (i), does not permit OSA to choose one segment of the “public at large” to measure general benefit. The “public at large” thus means *all* members of the public-including those who live, work, and shop within the district-and not simply transient visitors. The report assumes that people and property within the district-an area covering over 800 square miles, with a population of approximately 1.2 million people-will receive *no* general benefit at all, *only* special benefits, from OSA’s acquisition of open space. But under these circumstances, “[i]f everything is special, then nothing is special.” (*Ventura Group Ventures, supra*, 24 Cal.4th at p. 1107, 104 Cal.Rptr.2d 53, 16 P.3d 717.)

Further, we note the validity of this assessment would be questionable even under the pre-Proposition 218 cases on which OSA relies. (See e.g., *Knox, supra*, 4 Cal.4th 132, 14 Cal.Rptr.2d 159, 841 P.2d 144 [assessment valid for maintenance of five existing parks in four school districts in city]; *City of San Diego v. Holodnak* (1984) 157 Cal.App.3d 759, 203 Cal.Rptr. 797 [assessment valid to fund parks and other public facilities located in new development]; *Ensign, supra*, 59 Cal.App. 200, 210 P. 536 [assessment valid to fund new sewer system].) Unlike the assessment here, the assess-

ments in the pre-Proposition 218 cases involved specific, identified improvements that directly benefited each assessed property and whose costs could be determined or estimated and then allocated to the properties assessed. Also, in *Knox* and *Holodnak*, the properties assessed received special benefits from the particular park because of their proximity to park facilities. (*Knox, supra*, 4 Cal.4th at p. 149, 14 Cal.Rptr.2d 159, 841 P.2d 144; *Holodnak, supra*, 157 Cal.App.3d at p. 763, 203 Cal.Rptr. 797.)

Here, with a district of 314,000 parcels, OSA shows no distinct benefits to particular properties above those which the general public using and enjoying the open space receives. The special benefits, if any, that may arise would likely result from factors such as proximity, expanded or improved access to the open space, or views of the open space. (See *Ensign, supra*, 59 Cal.App. at p. 217, 210 P. 536 [property which is specially benefited is “real property adjoining, or near the locality of the improvement”].) But, because OSA has not identified any specific open space acquisition or planned acquisition, it cannot show any \*456 specific benefits to assessed parcels through their direct relationship to the “locality of the improvement.” The improvement is only to OSA’s budget for open space acquisitions.

Based on the undisputed facts in OSA’s record (the engineer’s report), OSA has failed to demonstrate that the properties in the assessment district receive a particular and distinct special benefit not shared by the district’s property in general or by the public at large within the meaning of Proposition 218.

### \*\*\*333 2. Proportionality

For an assessment to be valid, the properties must be assessed in proportion to the special benefits received: “No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.” (Art. XIID, § 4, subd. (a).) “The proportionate special benefit derived by each identified parcel

shall be determined in relationship to the entirety of the *capital cost of a public improvement*, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided.” (*Ibid.*, italics added.) Capital cost is defined as “the cost of acquisition, installation, construction, reconstruction, or replacement of a *permanent public improvement by an agency.*” (Art. XIID, § 2, subd. (c), italics added.)

**\*\*55** To satisfy the proportionality requirement, the engineer's report assigned all single-family homes in the district one single family equivalent (SFE) unit and assigned other types of property greater or lesser SFE's, depending on the estimated number of people using those properties. Condominiums received a lesser SFE because the average number of people per unit was estimated to be fewer than in an average single-family residence. Commercial properties received a higher SFE than single-family residences because greater numbers of people use them. Each SFE corresponded to an annual assessment of \$20, an amount a majority of property owners surveyed would be willing to pay.

Because all single-family homes were assessed the same \$20 amount, the engineer's report assumed that all single-family homes throughout the 800-square-mile district would receive an equal special benefit, regardless of their proximity to open space areas that might be acquired at some time in the future. The report contains no detailed analysis on how specific properties, blocks, school districts, or even cities would benefit from their proximity to open space. OSA contends that its assessment is nonetheless valid because it plans to acquire space equally throughout the district, and all properties will be equally close to and benefit from open space areas. The engineer's report **\*457** lists 30 priority acquisition areas and identifies a number of other “potential acquisition and improvement areas.” This, OSA claims, is sufficient to satisfy Proposition 218's proportionality requirement. We disagree.

[28][29] The report's proportionality analysis

fails to satisfy Proposition 218 largely because the special assessment is based on OSA's projected annual budget of \$8 million for its open space program rather than on a calculation or estimation of the cost of the particular public improvement to be financed by the assessment. The figure of \$8 million was derived from the additional \$20 per year in property taxes multiplied by the number of properties on the tax rolls in the district. The \$8 million collected for the assessment annually-with an automatic cost-of-living increase-provides a continuing source of revenue for OSA's budget. However, the purpose of an assessment is to require the properties which have received a special benefit from a “public improvement” “to pay the cost of that improvement,” and not to fund an agency's ongoing budget. (*Ventura Group Ventures, supra*, 24 Cal.4th at p. 1106, 104 Cal.Rptr.2d 53, 16 P.3d 717, italics added; *Knox, supra*, 4 Cal.4th at p. 142, 14 Cal.Rptr.2d 159, 841 P.2d 144)

The engineer's report generally describes a program to acquire various properties throughout the county, as well as to provide maintenance and servicing of these public areas. Such future acquisitions include, but are not limited to, “greenbelts, hillsides, viewsheds and watersheds, baylands, **\*\*334** riparian corridors, urban open space, parklands, agricultural lands, development rights on agricultural lands and other land-use types, conservation easements, other property rights, wetlands, utility right-of-ways, surplus school sites, [and] quarries.” OSA argues its goal is to acquire open space land that is evenly distributed throughout the district. Although the report lists 30 general priority acquisition areas, it further notes this list is not exclusive. The report identifies no particular parcels or specific areas within the district that OSA plans to acquire for open space or parks. Further, the engineer's report notes that OSA “should” complete at least one acquisition of open land every five years. Notably, OSA is *not* required to do so.

Thus, the report fails to identify with sufficient specificity the “permanent public improvement”

that the assessment will finance, fails to estimate or calculate the cost of any such improvement, and fails to directly connect any proportionate costs of and benefits received from the "permanent public improvement" to the specific assessed properties. As the dissent below observed, "an assessment calculation that works backward by starting with an amount taxpayers are likely to pay, and then determines an annual spending budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218."

As with its determination of special benefits, OSA has failed to demonstrate proportionality. Accordingly, we conclude that the \*\*56 assessment is invalid \*458 for failing to meet the requirements of Proposition 218. In light of this disposition, we need not reach the other arguments plaintiffs raise.

### III. DISPOSITION

We reverse the judgment of the Court of Appeal and remand the matter to that court for further proceedings consistent with our opinion.

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, WERDEGAR, MORENO, and CORRIGAN, JJ.

Cal., 2008.

Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority

44 Cal.4th 431, 187 P.3d 37, 79 Cal.Rptr.3d 312, 08 Cal. Daily Op. Serv. 8920, 2008 Daily Journal D.A.R. 10,675

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# EXHIBIT

## “33”

4837-0090-6752.2



COUNTY OF FRESNO, Plaintiff and Appellant,  
v.  
THE STATE OF CALIFORNIA et al., Defendants  
and Respondents.

No. S015637.

Supreme Court of California  
Apr 22, 1991.

#### SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under Cal. Const., art. XIII B, § 6 (state must provide subvention of funds to reimburse local governments for costs of state-mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under Gov. Code, § 17556, subd. (d), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that Gov. Code, § 17556, subd. (d), was facially constitutional under Cal. Const., art. XIII B, § 6. It held art. XIII B was not intended to reach beyond taxation, and § 6 was included in art. XIII B in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that art. XIII B, § 6 was designed to protect the tax revenues of local governments

from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that Gov. Code, § 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, Panelli, Kennard, JJ., and Best (Hollis G.), J., <sup>FN\*</sup> concurring. Separate concurring opinion by Arabian, J.)

FN\* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

#### HEADNOTES

Classified to California Digest of Official Reports  
(1) State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal. Const., art. XIII B, § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.), the trial court properly found that Gov. Code, § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. Gov. Code, § 17556, subd. (d), effect-

ively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov. Code, § 17556, subd. (d), is facially constitutional under Cal. Const., art. XIII B, § 6.

[See Cal.Jur.3d (Rev), Municipalities, § 361; 9 Witkin, Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

COUNSEL

Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. \*484

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

**MOSK, J.**

We granted review in this proceeding to decide whether section 17556, subdivision (d), of the Government Code (section 17556(d)) is facially valid under article XIII B, section 6, of the California Constitution (article XIII B, section 6).

Article XIII B, section 6, provides: “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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted

prior to January 1, 1975.”

The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov. Code, § 17500.) It created a “quasi-judicial body” (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to “hear and decide upon [any] claim” by a local government that the local government “is entitled to be reimbursed by the state for costs” as required by article XIII B, section 6. (Gov. Code, § 17551, subd. (a).) It defined “costs” as “costs mandated by the state”- “any increased costs” that the local government “is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program” within the meaning of article XIII B, section 6. (Gov. Code, § 17514.) Finally, in section 17556(d) it declared that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

For the reasons discussed below, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6. \*485

#### I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). (Health & Saf. Code, § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees.

Instead, it filed a so-called "test" or initial claim with the commission (Gov. Code, § 17521) seeking reimbursement from the State of California (State) under article XIII B, section 6. After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, section 17556(d) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that section 17556(d) is unconstitutional under article XIII B, section 6. While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a "program" under the rationale of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter alia, that mandate under Code of Civil Procedure section 1094.5 was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that section 17556(d) is constitutional under article XIII B, section 6. It did not address the question whether the Act constituted a "program" under *County of Los Angeles*. Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under *County of Los Angeles, supra*, 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6. \*486

(1) We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitu-

tional under article XIII B, section 6.

## II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following *Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979)*, argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id.*, § 2). (See *County of Placer v.*

*Corin, supra*, 113 Cal.App.3d at p. 446.) It defines the relevant “appropriations subject to limitation” as “any authorization to expend during a fiscal year the proceeds of taxes ....” (Cal. Const., art. XIII B, § 8, subd. (b).) It defines “proceeds of taxes” as including “all tax revenues and the proceeds to ... government from,” inter alia, “regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service ....” (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such “excess” proceeds from “licenses,” “charges,” and “fees” “are but \*487 taxes” for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 “would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.” (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [ 244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language

broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Considered within its context, the section effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.

The County argues to the contrary. It maintains that section 17556(d) in essence creates a new exception to the reimbursement requirement of \*488 article XIII B, section 6, for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting section 17556(d) the Legislature created a new exception to the reimbursement requirement of article XIII B, section 6. As explained, the Legislature effectively and properly construed the term “costs” as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, section 17556(d) is indeed inconsistent with article XIII B, section 6. Its contention is in substance as follows: the source of section 17556(d) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into article XIII B, section 6, but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in *Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent*: "the state may not arbitrarily declare that it is not going to comply with Section 6 ... if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume *arguendo* that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra*, 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [section 17556(d)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program." \*489

The County appears to be making one or both of the following arguments: (1) the commission applies section 17556(d) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of section 17556(d) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of section 17556(d).

### III. Conclusion

For the reasons set forth above, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J., <sup>FN\*</sup> concurred.

<sup>FN\*</sup> Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

ARABIAN, J.,  
Concurring.

I concur in the determination that Government Code section 17556, subdivision (d) <sup>FN1</sup> (section 17556(d)), does not offend article XIII B, section 6, of the California Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

<sup>FN1</sup> Unless otherwise indicated, all further statutory references are to the Government Code.

Article XIII B, section 6, unequivocally commands that “the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service” except as specified therein. Article XIII B does not define this reference to “costs.” (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of “costs mandated by the state” when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 (§ 17556, subs. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from \*490 former Revenue and Taxation Code section 2253.2. (§ 17556, subs. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that “the Legislature effectively-and properly-construed the term ‘costs’ as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach.” (Maj. opn., ante, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word “except” should not be necessary to construe the result for what it clearly is. In this circumstance, “I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck.” ( *In re Deborah C.* (1981) 30 Cal.3d 125, 141 [ 177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.).)

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. “[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand.” ( *Rose v. State of California* (1942) 19 Cal.2d 713, 723 [ 123 P.2d 505]; see also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [ 233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that “the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden ....” ( *People v. Coleman* (1854) 4 Cal. 46, 49.) “Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people’s right of initiative and referendum, is vested in the \*491 Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, ‘we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.’* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature’s plenary authority: ‘If there is any doubt as to the Legislature’s power to act in any given case, the doubt should be resolved in favor of the Legis-

lature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [ 97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [ 230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra*, 37 Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [ 57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [ 172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [ 170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [ 194 Cal.Rptr. 110]; *County of Placer v. Corin, supra*, 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [ 246 Cal.Rptr. 21] ["fees not exceeding the reasonable cost of

providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A] "); \*492 *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [ 223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [ 149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [ 211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v.*



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(Cite as: 53 Cal.3d 482)

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.<sup>FN3</sup> Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. \*495

FN3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [ 260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [ 182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [ 148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [ 131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [ 270 P.2d 481]; *Dean v. Kuchel, supra*, 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside, supra*, 31 Cal.2d 619.

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**EXHIBIT "34"**

59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal. Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255  
(Cite as: 59 Cal.App.4th 382)

**H**  
KATHLEEN CONNELL, as Controller, etc., et al.,  
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO  
COUNTY, Respondent; SANTA MARGARITA  
WATER DISTRICT et al., Real Parties in Interest.

No. C024295.

Court of Appeal, Third District, California.

Nov. 20, 1997.

#### SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amend-

ment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

#### HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment-- Necessity For Further Orders.

A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably avail-

able in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review §  
10--Jurisdiction--Appealable Judgment.

An appealable judgment or order is a jurisdictional prerequisite to an appeal.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14.]

(3) Appellate Review § 17--Decisions Appealable--Interlocutory Judgment.

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition §  
44--Mandamus--To Courts--Appeal--Scope of Review.

In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not

limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]

(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.

Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes §  
29--Construction--Language--Legislative Intent.

In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.

In litigation by several water districts against the State Controller to enforce a State Board of Control

decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

#### COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

#### SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); <sup>FN1</sup> Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting \*386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control

(the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. <sup>FN2</sup> Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207-was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

<sup>FN1</sup> Section 6 provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

#### Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, §§ 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313<sup>FN3</sup> of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. \*387

FN3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results

of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system—the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of \$17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313<sup>FN4</sup> increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. \*388

FN4 Section 60313 of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered ad-

equately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.

“(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample.”

On October 1, 1982, SMWD filed a “test claim”<sup>FN5</sup> with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231,<sup>FN6</sup> which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561<sup>FN7</sup>), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b)<sup>FN8</sup> defining “costs mandated by the state.” (See now Gov. Code, § 17514.<sup>FN9</sup>) The test claim also cited section 6 (fn. 1, ante). \*389

FN5 At the time in question, “test claim” meant “the first claim filed with the State Board of Control alleging that a particular

statute or executive order imposes a mandated cost on such local agency or school district.” (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) “Estimated claims” and “reimbursement claims” were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

A similar structure, distinguishing between “test claims” and various “reimbursement claims” or “entitlement claims” continues presently in Government Code sections 17521-17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: “(a) The state shall reimburse each local agency for all ‘costs mandated by the state,’ as defined in Section 2207....” (Stats. 1982, ch. 1586, § 3, p. 6264.)

FN7 Government Code section 17561 provides in part: “(a) The state shall reimburse each local agency and school district for all ‘costs mandated by the state,’ as defined in Section 17514....”

FN8 Former Revenue and Taxation Code section 2207 provided in part: “ ‘Costs mandated by the state’ means any increased costs which a local agency is required to incur as a result of the following: [¶] (a)

Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program ....” (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning “(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program.” (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 Government Code section 17514 provides: “ ‘Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 ....”

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use re-

claimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted “Parameters and Guidelines” establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, FN10 submitted to the Legislature a statewide cost estimate of \$14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

FN10 Former Revenue and Taxation Code section 2255 provided: “At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article.” (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in Government Code section 17600, which provides: “At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has

found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement.”

In 1985, the Legislature included an appropriation of almost \$14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including \$945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant “to pay the State's obligation to SMWD for its 'costs mandated by the state' ” and (2) the State Treasurer to pay the Controller's warrant. \*390

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of “program,” as that word had recently been defined in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to

find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining “costs mandated by the state.” (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to “final judgment” before the statutory repeal. The court said the Board's \*391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discern-

ible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. & Tax. Code, § 2253.2, subd. (b)(4);<sup>FN11</sup> Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556<sup>FN12</sup>) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

FN12 Government Code section 17556 provides in part: "The [Commission on

State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) \*392 the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

## Discussion

### I. Appealability

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without dis-

posing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget<sup>FN13</sup> (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. \*393

Appellants assert the judgment is final because

nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d 521-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as an administrative detail for a later

postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (\*394 *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs-which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

## II. Standard of Review

(4) In reviewing the trial court's ruling on a writ of

mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

## III. Collateral Estoppel

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. \*395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and

local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*)). On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The state was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable,

taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies..." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) \*396

The Supreme Court also rejected the argument that res judicata applied. "Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations in general under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. FN14 ) However, we are bound by Supreme Court authority applying the public interest exception in a

state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 \*397[20 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

FN14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 .... The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the require-

ments of Section 6 ...."

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

#### IV. Authority to Levy Fees

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

.....

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." FN15 (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) \*398

FN15 This case presents no issue concern-

ing any distinction between “service charges, fees or assessment,” as used in the statute. The parties on appeal frame the issue in terms of the authority to levy “fees.” We adopt their usage for the sake of simplicity.

The same provision is currently contained in Government Code section 17556.<sup>FN16</sup>

FN16 Government Code section 17556 provides in part: “The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service....”

The facial constitutionality of this provision was upheld in *County of Fresno v. State of California* (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. ( 53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), “effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound.” ( *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which provides: “Any district formed on or after July 30,

1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had \*399 “sufficient” authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it.<sup>FN17</sup>

FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants’ brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Wa-

ter Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge ...." The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority

to assess fees and charges, and then the critical \*400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [sic] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay ...."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is

whether the local agency has “authority” to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. ( *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) “If the language is clear \*401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature ....” ( *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has “authority” to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of “authority” includes the “Right to exercise powers; ...” (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of “authority” includes “the power or right to give commands [or] take action ....” (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the “authority” to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe “authority,” as used in the statute, as a practical ability in light of surrounding economic circum-

stances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used “reasonable ability” in the statute rather than “authority.”

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to “correspond to the cost and value of the service,” and the fees may be used “to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.” The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees “sufficient” to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD “could not” \*402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD “could not” increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to

collateral estoppel applies. ( *Sacramento II*, *supra*, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. \*403

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

#### Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998. \*404

Cal.App.3.Dist.

Connell v. Superior Court

59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal.

FOR EDUCATIONAL USE ONLY

59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal. Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255  
(Cite as: 59 Cal.App.4th 382)

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**California Regional Water Quality Control Board  
Los Angeles Region**

Received  
July 29, 2011  
commission on  
state mandates



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**Exhibit B**

July 29, 2011

**VIA E-FILE**

Drew Bohan, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Bohan:

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD'S RESPONSE TO  
*UPPER SANTA CLARA RIVER CHLORIDE REQUIREMENTS*, TEST CLAIM 10-TC-09

**I. INTRODUCTION**

The Santa Clara River is the largest river system in Southern California that remains in a relatively natural state. Extensive patches of high quality riparian habitat exist along the length of the river and its tributaries. The river also provides irrigation supply water for the agricultural industry, the largest industry in the watershed. Test Claim 10-TC-09, Upper Santa Clara River Chloride Requirements (Test Claim) concerns the serious environmental problem of chloride discharged from the Claimant's point sources into the Santa Clara River, as well as the efforts of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) to ameliorate the problem through the adoption and approval of several planning documents that set targets for chloride discharges within a multi-year implementation period.

The Los Angeles Water Board files this opposition to the Test Claim that was submitted by the Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD or Claimant). This Test Claim arises from Los Angeles Water Board Resolution No. R4-2008-0012, *Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt Site Specific Objectives and to Revise the Upper Santa Clara River Chloride TMDL* (2008 Resolution). The Claimant seeks reimbursement of over \$250 million in estimated costs of implementing provisions contained in the 2008 Resolution during fiscal years 2009 to 2011.

The *Water Quality Control Plan for the Los Angeles Region* (Basin Plan) contains water quality standards for waters of the United States in the Los Angeles region. The federal Clean Water Act<sup>1</sup> requires the states, and in this case the Los Angeles Water Board, to establish water quality standards for such waters. As part of the water quality standards required by the Clean Water Act, the board adopted water quality objectives for the Santa Clara River and established

<sup>1</sup> Federal Water Pollution Control Act (FWPCA; 33 U.S.C. § 1251 *et seq.*). The federal Act is referred to herein by its popular name, the Clean Water Act, and the code sections used are those for the Clean Water Act.

Drew Bohan, Executive Director

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a numeric target of 100 mg/L of chloride based on the most sensitive beneficial use of the Santa Clara River: agricultural use. These water quality standards apply to all persons who discharge pollutants to the Santa Clara River.

The 2008 Resolution amended the Basin Plan to, among other things, adopt site-specific objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara River, provided the Claimant implements the alternative water resources management (AWRM) program<sup>2</sup> that it requested the board to approve. The 2008 Resolution also amended the Basin Plan to modify the Santa Clara River Chloride total maximum daily load (TMDL)<sup>3</sup>, which allows the Claimant to carry out its chosen alternative. Thus, the Claimant chose how it would comply with its Clean Water Act requirements. Notably absent from the Test Claim is any discussion of the fact that the Los Angeles Water Board adopted the 2008 Resolution at the Claimant's own request.

Article XIII B, Section 6 of the California Constitution provides, "[w]henver 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 that local government for the costs of the program or increased level of service."

The 2008 Resolution does not require subvention for various reasons. First, as a threshold matter, it does not require a new program or higher level of service. The Los Angeles Water Board's adoption of water quality standards for chloride and a chloride TMDL was a nondiscretionary duty required by the federal Clean Water Act, and the challenged provisions are not unique to local entities. Second, the challenged provisions are required by the federal Clean Water Act, its implementing regulations, and federal agency guidance. Even if the 2008 Resolution was interpreted as going beyond federal law, any cost increases that result solely from additional state requirements are *de minimis*. Third, the challenged provisions are not subject to reimbursement because the Claimant has the ability to comply with these provisions through charges and fees, and is not required to raise taxes. Lastly, the Claimant requested that the board adopt the 2008 Resolution; the Claimant itself developed and promoted the very provisions of the regulation that it is now claiming to be an unfunded state mandate.

The 2008 Resolution resulted from an unprecedented multi-year collaborative process involving the Claimant, several water agencies and purveyors, the Los Angeles Water Board, and other stakeholders. That process entailed numerous meetings and discussions, often led by the Claimant. Despite the complexity of the issues involved, what emerged in the 2008 Resolution was enthusiastically supported by Claimants. Therefore, the costs are not subject to reimbursement because the Claimant themselves developed and proposed the very tasks challenged by the Test Claim.

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<sup>2</sup> See *infra* Section III.C. for a discussion of the AWRM program.

<sup>3</sup> See *infra* Section III.C. for a discussion of the Chloride TMDL.

## II. DESCRIPTION OF THE TEST CLAIM

The Claimant contends that the 2008 Resolution mandates the Claimant to establish and implement several new or modified programs and activities that are not required by federal law. The Claimant seeks a determination that these water quality objectives for chloride and related “implementation tasks” are unfunded state mandates for which it should receive reimbursement in the hundreds of millions of dollars.

The Claimant contends that the provisions of the 2008 Resolution are subject to reimbursement because they are not required by federal law and that the 2008 Resolution imposes new programs or existing programs that constitute a higher level of service. The Claimant also alleges that none of the exceptions in Government Code section 17556 that would bar recovery of costs apply. Finally, it claims that it lacks authority to assess service charges, fees, or assessments sufficient to pay for the mandated activities.

## III. BACKGROUND AND HISTORY

This section provides background and historical information on the chloride issues in the Upper Santa Clara River watershed.

### A. Environmental Setting

The Santa Clara River is the largest river system in Southern California that remains in a relatively natural state. The river originates in the San Gabriel Mountains in Los Angeles County, crosses Ventura County, and eventually flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Municipalities within the Santa Clara River watershed include Santa Clarita, Newhall, Fillmore, Santa Paula, and Ventura. The Santa Clara River is divided into several segments, called “reaches,” for regulatory purposes.

Extensive patches of high quality riparian habitat exist along the length of the river and its tributaries. The river and its tributaries are home to two types of endangered and rare aquatic species, the unarmored three-spine stickleback and the steelhead trout. One of the Santa Clara River's largest tributaries, Sespe Creek, is designated a wild trout stream by the State of California and a wild and scenic river by the United States Forest Service. In addition, the Santa Clara River drains to the Pacific Ocean through a lagoon that supports a large variety of wildlife.

The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Agriculture is the largest industry in the Santa Clara River watershed, with revenue from the agricultural industry estimated at over \$700 million annually.<sup>4</sup> Residential use

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<sup>4</sup> Final Staff Report, Upper Santa Clara River Chloride TMDL Reconsideration, and Conditional Site-Specific Objectives for Chloride, and Interim Wasteload Allocations for Sulfate and Total Dissolved Solids, California Regional Water Quality Control Board – Los Angeles Region (Jan. 2009), p. 12 (“2008 Staff Report”).

Drew Bohan, Executive Director

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is rapidly increasing both in the upper and lower watershed. The number of housing units in the watershed is estimated to increase by 187 percent from 1997 to 2025.<sup>5</sup>

In the 1960's, the Sanitation Districts of Los Angeles County (LACSD) built two wastewater treatment plants in the City of Santa Clarita to cope with the demand of urban development. The Valencia Water Reclamation Plant (Valencia WRP) and the Saugus Water Reclamation Plant (Saugus WRP) are both owned and operated by the Santa Clarita Valley Sanitation District, which is part of LACSD.<sup>6</sup> The Valencia and Saugus WRPs are two major point sources that discharge chloride to the Santa Clara River. The sources of the chloride are primarily contained in water imported from Northern California for the Santa Clarita Valley water supply and chloride added by domestic uses (such as water softeners) and treatment processes (such as the disinfection process). The Saugus and Valencia WRPs treat municipal sewage, but pass chlorides through their treatment systems so that the chloride discharges into the Upper Santa Clara River.<sup>7</sup> Chloride levels in the Upper Santa Clara River and in underlying groundwater basins have increased over the past three decades due to increased salt loadings from these sources. As Claimants state in their Test Claim, neither the Valencia WRP nor the Saugus WRP is designed to remove chloride during the treatment process.<sup>8</sup>

## B. Statutory and Regulatory Scheme

The "quality of our nation's water is governed by a 'complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities.'"<sup>9</sup> In order to understand the federal mandate that required the Los Angeles Water Board to adopt requirements concerning chloride in the Santa Clara River, some background of the statutory and regulatory scheme is necessary to place the facts here into context.<sup>10</sup>

### 1. Federal Law – The Clean Water Act

In 1972, in a "dramatic response to accelerating environmental degradation of rivers, lakes and streams in this country,"<sup>11</sup> Congress enacted amendments to the Federal Water Pollution

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<sup>5</sup> *Ibid.*

<sup>6</sup> The Santa Clarita Valley was historically served by the County Sanitation District Number 26 of Los Angeles County (Saugus WRP) and County Sanitation District Number 32 of Los Angeles County (Valencia WRP). Both of these Districts were collectively referred to as the County Sanitation Districts of Los Angeles County or CSDLAC in previous documents related to the Upper Santa Clara River Chloride TMDL. These two districts were merged into a single district, the Santa Clarita Valley Sanitation District of Los Angeles County or SCVSD, as of July 1, 2005.

<sup>7</sup> A map of the Upper Santa Clara River and location of the WRPs is included as an attachment for reference.

<sup>8</sup> Test Claim, p. 4.

<sup>9</sup> *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.

<sup>10</sup> The Commission has received a variety of test claims involving municipal stormwater permits. The laws and regulations pertaining to this Test Claim, however, are fundamentally different. Those laws and regulations involve federal requirements for point source discharges to comply with water quality standards and TMDLs. Those requirements are found in sections 301 and 303 of the federal Clean Water Act, and do not involve the "maximum extent practicable" standard pertaining to municipal stormwater permits.

<sup>11</sup> *Natural Resources Defense Council, Inc. v. Costle* (D.C. Cir. 1977) 568 F.2d 1369, 1371.

Control Act, which, as amended in 1977, is commonly known as the Clean Water Act.<sup>12</sup> Its stated goal is “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters” by eliminating the discharge of pollutants into navigable waters.<sup>13</sup>

The Clean Water Act requires each state to establish water quality standards for each waterbody within its jurisdiction and review them at least once every three years for appropriate modifications.<sup>14</sup> Water quality standards set the degree of water quality to attain or maintain.<sup>15</sup> States must set water quality standards for all waters within their boundaries “regardless of the sources of the pollution entering the waters.”<sup>16</sup> At a minimum, water quality standards must include designated uses (such as agricultural, recreation, navigation, or the protection and propagation of fish, shellfish and wildlife); water quality criteria that are established at levels sufficient to protect the designated uses; and an antidegradation policy to prevent degrading waters.<sup>17</sup> In designating uses of a water body and the appropriate criteria for those uses, the state shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.<sup>18</sup> Water quality criteria are expressed in numeric (a specific amount) or narrative form.

The Clean Water Act broadly segregates water pollution into two categories: point sources and nonpoint sources.<sup>19</sup> To control and ultimately eliminate the discharge of point source pollutants into waters, permits are issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program.<sup>20</sup> Under this approach, discharges from point sources are illegal unless issued an NPDES permit that includes technology-based controls and such other requirements to implement water quality standards.<sup>21</sup> Nonpoint sources are not regulated under the NPDES program. The United States Environmental Protection Agency (U.S. EPA) may allow states to adopt and administer NPDES permit programs. In California, the State Water Resources Control Board (State Water Board) and the nine regional water quality control boards (regional water board) are charged with implementing the federal NPDES program.<sup>22</sup>

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<sup>12</sup> See generally 33 U.S.C. § 1251 *et seq.*

<sup>13</sup> *Id.* at § 1251(a).

<sup>14</sup> *Id.* at § 1313(a), (c)(1); 40 C.F.R. § 131.4.

<sup>15</sup> See generally 33 U.S.C. § 1313.

<sup>16</sup> *Pronsolino v. Nastro* (9th Cir. 2002) 291 F.3d 1123, 1127.

<sup>17</sup> 40 C.F.R. §§ 131.6, 131.10-131.12.

<sup>18</sup> *Id.* at § 131.10(a).

<sup>19</sup> “Point source” means “any discernable, confined and discrete conveyance” such as pipe, ditch, channel, tunnel, or conduit. The Clean Water Act does not define nonpoint source pollution, but it has been generally described as discharges that do not qualify as point sources. (33 U.S.C. § 1362(14).)

<sup>20</sup> *Id.* at § 1342.

<sup>21</sup> *Id.* at § 1311(a)-(b)(1).

<sup>22</sup> See Wat. Code, § 13370; see also Memorandum of Agreement between the U.S. Environmental Protection Agency and the California State Water Resources Control Board (Sept. 29, 1989) (attached as Exhibit 2 to the Test Claim).

NPDES permits help ensure that the discharge of pollutants does not cause or contribute to an exceedance of water quality standards for a particular body of water. Waterbodies that do not meet water quality standards are considered impaired. Therefore, under Clean Water Act section 303(d), each state must identify and rank the waters within its boundaries that do not meet water quality standards.<sup>23</sup> These substandard waters are placed on the state's Clean Water Act section 303(d) List of Water Quality Limited Segments, also known as the "303(d) List" or "Impaired Waters List."<sup>24</sup> For each listed waterbody, the state is required to establish a TMDL for each pollutant impairing the water quality standards in that waterbody.<sup>25</sup> In California, TMDLs are generally developed and adopted by a regional water board. Regional water board-adopted TMDLs require approval by the State Water Board and the State of California Office of Administrative Law (OAL).<sup>26</sup> In addition, both the identification of impaired waters and TMDLs established for those waters must be submitted to U.S. EPA for approval.<sup>27</sup> If U.S. EPA disapproves a state's submitted TMDL, U.S. EPA must establish its own TMDL.<sup>28</sup>

A TMDL represents the maximum amount of a specific pollutant that can be discharged or "loaded" into a waterbody on a daily basis without violating water quality standards.<sup>29</sup> A TMDL considers both anthropogenic and natural background sources of the pollutant. To develop the TMDL, a state evaluates the cumulative impacts of all point and nonpoint sources of a specific pollutant, as well as natural background, and creates a "pollution budget" that allocates the loadings of the pollutant among the sources that discharge to the affected waterbody.<sup>30</sup> A TMDL assigns a wasteload allocation, a portion of the TMDL's total pollutant load, to each point source that requires an NPDES permit. A TMDL also assigns load allocations to all nonpoint sources. Thus, expressed as a calculation, a TMDL equals the sum of the individual wasteload allocations for point sources plus load allocations for nonpoint sources plus natural background levels.<sup>31</sup> A TMDL must "be established at a level necessary to implement the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety

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<sup>23</sup> 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b).

<sup>24</sup> Section 303(d) of the Clean Water Act is codified at 33 U.S.C. § 1313(d).

<sup>25</sup> *Id.* at § 1313(d)(1)(C). See also *Friends of the Earth, Inc. v. U.S. EPA* (D.C. Cir. 2006) 446 F.3d 140 (holding that the Clean Water Act unambiguously requires states to establish TMDLs for waters failing to achieve water quality standards).

<sup>26</sup> Gov. Code, § 11353, subd. (b).

<sup>27</sup> 33 U.S.C. § 1313(d)(2).

<sup>28</sup> *Ibid.*

<sup>29</sup> 40 C.F.R. §§ 130.2(f),(i), 130.7(c)(1).

<sup>30</sup> The Clean Water Act does not define "total maximum daily load." The U.S. EPA's regulations break it into a "wasteload allocation" for point sources and a "load allocation" for nonpoint sources. (*Id.* § 130.2(g)-(i).) If a water has only one point source discharger, the TMDL is the sum of that point source wasteload allocation plus the load allocations for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If best management practices or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs. (*Id.* § 130.2(i).)

<sup>31</sup> *Id.* § 130.2.

which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.”<sup>32</sup>

Under the Clean Water Act, TMDLs are not self-implementing, meaning that U.S. EPA cannot directly enforce implementation of a TMDL once it is established.<sup>33</sup> However, once a TMDL is approved by U.S. EPA, NPDES permits must be consistent with the wasteload allocations,<sup>34</sup> and states may take whatever additional permitting or cleanup actions under state law that are necessary, which can include further controls on both point and nonpoint pollution sources.<sup>35</sup> TMDLs established under Clean Water Act section 303(d) function primarily as informational tools and planning devices;<sup>36</sup> the TMDL provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions needed to restore and protect the beneficial uses of an individual waterbody.

## 2. State Law – The Porter-Cologne Water Quality Control Act

California’s Porter-Cologne Water Quality Control Act (“Porter-Cologne Act”), which was enacted in 1969, establishes a statewide policy and program for water protection.<sup>37</sup> Under the Porter-Cologne Act, nine regional water boards regulate the quality of waters within their regions under the purview of the State Water Board.<sup>38</sup> The Los Angeles Water Board protects ground and surface water quality in the Los Angeles region, including the coastal watersheds of Los Angeles and Ventura counties, along with very small portions of Kern and Santa Barbara counties.<sup>39</sup>

Each regional water board must adopt water quality control plans, commonly called “basin plans,” for all areas within their respective region.<sup>40</sup> Such plans are akin to a land use plan for waterbodies and must be periodically reviewed and may be revised when necessary.<sup>41</sup> Basin plans must designate the beneficial uses to be protected against water quality degradation, water quality objectives, and a program of implementation needed for achieving water quality

<sup>32</sup> 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1).

<sup>33</sup> See *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1414-1415 (“A TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls. A TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and water[]bodies.”)

<sup>34</sup> 40 C.F.R. § 122.44(d)(vii)(B).

<sup>35</sup> See, e.g., *Alaska Center for the Environment v. Reilly* (W.D. Wash. 1991) 762 F.Supp. 1422, 1424.

<sup>36</sup> See *Pronsolino, supra*, 291 F.3d at p. 1129. (“TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans.”) (Citing *Alaska Center for the Environment v. Browner* (9th Cir. 1994) 20 F.3d 981, 984-85.)

<sup>37</sup> See generally Wat. Code, § 13000 *et seq.*

<sup>38</sup> *Id.* at §§ 13000, 13100, 13200, 13241, 13242.

<sup>39</sup> *Id.* at § 13200, subd. (d).

<sup>40</sup> *Id.* at § 13240.

<sup>41</sup> *Ibid.* (requiring periodic review); 33 U.S.C. § 1313(c)(1) (requiring review every three years).

objectives.<sup>42</sup> “Beneficial uses” are equivalent to “designated uses” under the Clean Water Act; “water quality objectives” are also equivalent to “water quality criteria” under the Clean Water Act. Thus, for state waters subject to the federal Clean Water Act’s jurisdiction, a basin plan’s beneficial uses and water quality objectives serve as federal water quality standards. In regulating water quality in California, a regional water board has no discretion to set limitations that are less stringent than what the Clean Water Act demands.<sup>43</sup> Because basin plans implement the Clean Water Act, any water quality standards must protect the most sensitive of any designated beneficial uses.<sup>44</sup>

“Beneficial uses” of the waters of the state include: domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.<sup>45</sup> “Water quality objectives” are the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.<sup>46</sup> A program of implementation for achieving water quality objectives must include, at a minimum: (a) a description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any public or private entity; (b) a time schedule for the actions to be taken; and (c) a description of surveillance to be undertaken to determine compliance with objectives.<sup>47</sup> A TMDL is considered such a program of implementation, as they are programs to implement existing federal water quality standards.

Basin plans are foundational water quality documents, and recognizing their quasi-legislative nature, they are subject to special rulemaking provisions of the Administrative Procedure Act (APA).<sup>48</sup> When a regional water board designates beneficial uses, adopts or revises water quality objectives, or adopts programs of implementations (including TMDLs), it does so by amending its basin plan. After adoption by a regional water board, a basin plan and any amendments thereto must be approved by the State Water Board and OAL before becoming effective.<sup>49</sup> In addition, U.S. EPA must approve any basin plan amendments involving waters of the United States.<sup>50</sup> Like TMDLs, water quality objectives are not self-implementing. Once set and approved, the regional water boards implement water quality objectives through waste discharge permits and other programs.

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<sup>42</sup> Wat. Code, § 13050, subd. (j).

<sup>43</sup> *City of Burbank, supra*, 35 Cal.4th at p. 620; Wat. Code, §§ 13370, 13372.

<sup>44</sup> 40 C.F.R. § 131.11(a)(1).

<sup>45</sup> Wat. Code, § 13050, subd. (f).

<sup>46</sup> *Id.* at §§ 13050, subd. (h), 13241.

<sup>47</sup> *Id.* at § 13242.

<sup>48</sup> Gov. Code, § 11353.

<sup>49</sup> Wat. Code, §§ 13245, 13246; Gov. Code, § 11353, subd. (b)(5).

<sup>50</sup> 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c).

### C. Regulatory History of Chloride in the Upper Santa Clara River

In 1975, the Los Angeles Water Board adopted the *Water Quality Control Plan for the Santa Clara River Basin* and the *Water Quality Control Plan for the Los Angeles River Basin*. These two plans were superseded in 1994 by adoption of a single comprehensive *Water Quality Control Plan for the Los Angeles Region* (Basin Plan). Consistent with federal and state law, the Los Angeles Water Board has reviewed and amended the Basin Plan on a regular basis, making revisions where necessary.

Regulation of chloride in the Upper Santa Clara River watershed has a long and complex history. The Los Angeles Water Board first established water quality objectives for chloride in most of the region's waterbodies, including the Santa Clara River, in 1975. For the Santa Clara River watershed, the numeric water quality objectives for surface waters for chloride were 90 mg/L for Reach 5 and 80 mg/L for Reach 6.<sup>51</sup> At that time, the water quality objectives for chloride were based on background concentrations of chloride in accordance with the federal and state antidegradation policies.<sup>52</sup> When the water quality objectives for chloride were established, the Los Angeles Water Board assumed that chloride concentrations in the imported water supply<sup>53</sup> would remain relatively low. However, after 1975, chloride concentrations in the imported water supply into the Los Angeles Region increased. In 1978, the board modified the water quality objectives for chloride in the Upper Santa Clara River from 90 and 80 mg/L for Reaches 5 and 6, respectively, to 100 mg/L for both reaches.<sup>54</sup> A maximum concentration of 100 mg/L remains the water quality objective for Reaches 5 and 6 today.<sup>55</sup>

As noted above, chloride is a very serious problem in the Santa Clara River watershed. During the late 1980s, the effects of drought greatly increased the concentration of chloride in supply water imported from Northern California. In the Santa Clara River watershed, a significant amount of chloride loading also occurs from the use of water softeners by businesses and residents.<sup>56</sup> Because the Valencia and Saugus wastewater treatment plants are not designed

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<sup>51</sup> Los Angeles Water Board, *Water Quality Control Plan Report, Santa Clara River Basin (4A)* (March 1975), Table 4-1, p. I-4-10. The upper Santa Clara River includes Reaches 5 and 6, which are located upstream of the Blue Cut gauging station that lies west of the Los Angeles - Ventura County line between the Cities of Fillmore and Santa Clarita. The lower Santa Clara River includes Reach 4, which is near the City of Santa Paula.

<sup>52</sup> California's antidegradation policy is contained in State Water Board Resolution 68-16: *Statement of Policy with Respect to Maintaining High Quality Water in California*. The federal antidegradation policy is set forth in 40 C.F.R. § 131.12.

<sup>53</sup> Santa Clarita Valley's potable water supply consists of imported surface water from Northern California and local groundwater and surface water, which is blended together and distributed to local water retailers/purveyors. The "imported water supply" is brought into the Santa Clarita Valley through complex delivery systems such as the California State Water Project and the federal Central Valley Project.

<sup>54</sup> See 1978 Revisions to the Water Quality Control Plan for the Santa Clara River Basin (4A).

<sup>55</sup> Los Angeles Water Board, *Water Quality Control Plan for the Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (adopted June 13, 1994), Table 3-8, pp. 3-12 (attached as Exhibit 4 to the Test Claim).

<sup>56</sup> Water softeners are used to treat hard water, caused by an excess of minerals like calcium and magnesium. In the Santa Clarita River watershed, the supply water is considered hard, making water softeners a popular choice for residents and businesses. However, while water softeners remove minerals like calcium and magnesium, a byproduct of the water softening process is brine water, which is very high in chloride. This brine water eventually

to treat chloride in the wastewater, elevated levels of chloride continue to persist in the Upper Santa Clara River and affect water quality. Wastewater disinfection by chlorine injection at these two WRPs further increases chloride levels in effluent.

In 1990, the Los Angeles Water Board adopted Resolution 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region*. This resolution, commonly referred to as the Drought Policy, was intended to provide short-term and temporary relief to dischargers who were unable to comply with effluent limits for chloride in NPDES permits. For those dischargers who qualified for relief under the Drought Policy, the board temporarily allowed chloride concentrations in the discharger's effluent to be the lesser of: (1) 250 mg/L; or (2) the chloride concentration of supply water plus 85 mg/L.<sup>57</sup> This policy, however, did not modify any water quality objectives in the Basin Plan. The board renewed the Drought Policy in 1993 and again in 1995 because the chloride levels in supply waters remained higher than the chloride levels before the onset of the drought.

In 1997, the Los Angeles Water Board adopted Resolution No. 97-02: *Amendment to the Water Quality Control Plan to Incorporate a Policy for Addressing Levels of Chloride in Discharges of Wastewaters*. This resolution, known as the Chloride Policy, rescinded the Drought Policy and revised the chloride water quality objectives for the Los Angeles River, Rio Hondo, and San Gabriel River. However, the board did not revise the water quality objectives for chloride in the Santa Clara River watershed due to the potential for future adverse impacts to agricultural resources in Ventura County.<sup>58</sup> To address compliance problems with meeting effluent limitations for chloride, the board granted temporary variances to certain dischargers in the Santa Clara River watershed, including the Valencia and Saugus WRPs, by providing surface water interim effluent limits of 190 mg/L in the Santa Clara River.<sup>59</sup> These interim limits extended for three years following approval of the Chloride Policy.<sup>60</sup>

In 1998, Reaches 5 and 6 of the Upper Santa Clara River appeared for the first time on the state's federally required 303(d) List of impaired waterbodies for chloride.<sup>61</sup> Beneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired due to excessive chloride concentrations in the Upper Santa Clara River, which did not meet the 100 mg/L water quality objective for chloride.

In 2002, as required by section 303(d) of the Clean Water Act, the Los Angeles Water Board amended its Basin Plan to incorporate a TMDL for chloride in the Upper Santa Clara River

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gets flushed to the sewer, which goes to one of the WRPs, and then eventually is discharged to the Santa Clara River. As noted above, neither the Valencia nor Saugus WRP is designed to remove chloride.

<sup>57</sup> Los Angeles Water Board Resolution 90-04, p. 2 (attached as Exhibit 5 to the Test Claim).

<sup>58</sup> Los Angeles Water Board Resolution 97-02, p. 4, Provision No. 2.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> 1998 California 303(d) List and TMDL Priority Schedule (approved by U.S. EPA May 12, 1999), pp. 86-87. Reaches 5 and 6 were designated on the 1998 U.S. EPA 303(d) list as Reaches 7 and 8, respectively.

(Chloride TMDL).<sup>62</sup> At the time this TMDL was adopted, there were key scientific uncertainties regarding the sensitivity of crops to chloride and the complex interactions between surface water and groundwater in the Upper Santa Clara River watershed. However, the Chloride TMDL source analysis found that the chloride sources are primarily contained in the imported water supply from the State Water Project in Northern California and chloride added by domestic uses, including water softeners. These chloride sources are loaded into the Upper Santa Clara River in effluent from the Saugus and Valencia WRPs that serve residents and businesses in the Santa Clarita Valley. Approximately 70 percent of the total chloride loading was attributable to the WRPs.<sup>63</sup> The Chloride TMDL source analysis also showed that the water quality objectives could not be met with source control alone, and that some type of advanced treatment would be necessary to protect the beneficial uses.<sup>64</sup> Agricultural beneficial uses were noted as being the most sensitive beneficial use to be protected.<sup>65</sup>

The Chloride TMDL assigned final wasteload allocations to all point sources, including the Valencia and Saugus WRPs. The final wasteload allocations were equal to the chloride numeric water quality objective of 100 mg/L.<sup>66</sup> The Chloride TMDL established a multi-year implementation plan to attain the chloride water quality objectives.<sup>67</sup> Accordingly, the Los Angeles Water Board also assigned interim wasteload allocations to the Valencia and Saugus WRPs to provide the WRPs time to implement chloride source reduction, complete site-specific objective<sup>68</sup> studies, and make any necessary modifications or upgrades to the WRPs to meet the water quality objective for chloride. In order to provide the WRPs time to comply with the water quality objective, the Chloride TMDL established average monthly interim effluent limits of 200 mg/L and 187 mg/L, and maximum daily effluent limits of 218 mg/L and 196 mg/L for the Saugus and Valencia WRPs, respectively.<sup>69</sup> These monthly and daily interim effluent limits for chloride were set to expire two and a half years from the effective date of the TMDL, whereupon the existing water quality objective of 100 mg/L would continue in effect.<sup>70</sup> Lastly, the Chloride TMDL included a task for completion of planning, design, and construction of advanced treatment facilities to treat effluent from the WRPs to reduce the chloride load and to attain water quality standards.<sup>71</sup>

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<sup>62</sup> Los Angeles Water Board Resolution R02-018: *Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Chloride in the Upper Santa Clara River* (Oct. 24, 2002) (“Resolution R02-018”) (attached as Exhibit 12 to the Test Claim).

<sup>63</sup> Resolution R02-018, at Attachment 2, p. 5; 2008 Staff Report, p. 9.

<sup>64</sup> 2008 Staff Report, p. 9.

<sup>65</sup> Resolution R02-018, at Attachment 2, p. 5.

<sup>66</sup> Resolution R02-018, at Attachment 2, p. 6.

<sup>67</sup> *Id.* at pp. 8-10.

<sup>68</sup> If a water quality objective is inappropriate for a particular waterbody (i.e., it does not protect the beneficial uses or, based on site-specific conditions, a less stringent standard may be warranted), a water quality objective that differs from the applicable objective may be developed for the site. A regional water board may adopt site-specific objectives whenever it determines, in the exercise of its professional judgment, that it is appropriate to do so.

<sup>69</sup> Resolution R02-018, at Attachment 2, p. 6.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id.* at 9.

The Chloride TMDL has since been revised in 2003, 2004, 2006, 2007, and again in 2008 (with the last amendment serving as the basis for the Test Claim). The reasons and necessity for each Basin Plan amendment are summarized below.

### **The 2003 Amendment**

In February 2003, the State Water Board remanded the Chloride TMDL to the Los Angeles Water Board due to concerns about the implementation plan and duration of the interim effluent limits. The State Water Board directed the Los Angeles Water Board to consider a phased approach so that the Los Angeles Water Board and Claimant could complete their respective implementation tasks by specified dates and within 13 years from the effective date of the TMDL and to allow the Claimant to complete special studies prior to planning and construction of advanced treatment technologies.<sup>72</sup> The State Water Board also directed the Los Angeles Water Board to consider extending the interim effluent limits beyond the two and a half years so that those limits could remain in effect during the planning and construction of advanced treatment technologies.<sup>73</sup>

In July 2003, in response to the State Water Board's remand, the Los Angeles Water Board readopted the Chloride TMDL with a revised implementation plan. The revised implementation plan extended the interim wasteload allocations and final compliance deadline to achieve the final wasteload allocations to 13 years after the TMDL effective date.<sup>74</sup> It also included two additional special studies to address scientific uncertainty and several mandatory reconsiderations of the Chloride TMDL by the Los Angeles Water Board. The 13-year period included five years for special studies, feasibility analysis and water quality objective revisions, if warranted, followed by eight years for planning, design, and construction of the selected remedy.<sup>75</sup> The eight-year time schedule for planning, design, and construction was based on comments submitted by the Claimant in October 2002, with a supporting engineering study that eight years would be required to plan, design, and construct advanced treatment for chloride.<sup>76</sup>

### **The 2004 Amendment**

During the time that the State Water Board and Los Angeles Water Board were considering the Chloride TMDL, the Los Angeles Water Board was considering the renewal of NPDES permits

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<sup>72</sup> State Water Board Resolution 2003-0014, p. 1, Provision 2(a) (July 10, 2003) (attached as Exhibit 13 to the Test Claim).

<sup>73</sup> *Id.* at p. 2, Provision 2(b).

<sup>74</sup> Los Angeles Water Board Resolution R03-008: *Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Chloride in the Santa Clara River* (July 10, 2003), p. 3, Finding 11.

<sup>75</sup> *Id.* at Attachment A, pp. 4-6.

<sup>76</sup> See MWH, *Final Report: Cost Impacts for Compliance with a 100 mg/L Instantaneous Chloride Discharge Limit at the Santa Clara Valley Water Reclamation Plants* (October 2002), p. 42.

for the Valencia and Saugus WRPs. In 2003, Time Schedule Orders<sup>77</sup> adopted contemporaneously with the NPDES permits also included interim effluent limits for chloride, which differed from the interim wasteload allocations in the Chloride TMDL. Thus, in May 2004, the Los Angeles Water Board revised the interim wasteload allocations assigned to the Valencia and Saugus WRPs in the Chloride TMDL to conform to the interim effluent limits in the Time Schedule Orders.<sup>78</sup> The board also revised the implementation plan in the Chloride TMDL to require the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the Upper Santa Clara River, including impacts to downstream reaches and underlying groundwater basins. The board maintained the 13-year implementation schedule.<sup>79</sup> This revised implementation schedule superseded the implementation plan adopted in 2003.<sup>80</sup> This revised Chloride TMDL was approved by the State Water Board, OAL, and U.S. EPA, and became effective in May 2005.

### **The 2006 Amendment**

One of the first special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture (such as avocados, strawberries, and nursery plants) was completed in September 2005. This special study, entitled "Literature Review Evaluation (LRE)," found a guideline concentrations range for chloride sensitivity for avocado of 100 to 120 mg/L of chloride.<sup>81</sup> An independent technical advisory panel reviewed the LRE study and the majority opinion found a similar range of 100 to 120 mg/L of chloride.<sup>82</sup> Thus, the existing water quality objective of 100 mg/L was within the recommended range for the reasonable protection of salt-sensitive crops.

Another collaborative report entitled "Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan (Chloride Source Report)" was completed in November 2005. This report, which the Claimant prepared, identified sources of chloride in the Upper Santa Clara River as well as strategies for reducing those sources. The Chloride Source Report identified potable water supply as the largest source of chloride loading to the Upper

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<sup>77</sup> The Los Angeles Water Board issues time schedule orders pursuant to California Wat. Code, § 13300. The purpose of such an order is to put a permittee on a schedule towards compliance with existing requirements.

<sup>78</sup> Los Angeles Water Board Resolution 04-004: *Revision of interim waste load allocation and implementation plan for chloride in the Amendment to the Water Quality Control Plan for the Los Angeles Region to include a TMDL for Chloride in the Upper Santa Clara River, Resolution 03-008* (May 6, 2004), p. 2, Finding 9. For the Saugus WRP, the interim wasteload allocation for chloride was the sum of State Water Project treated water supply concentration plus 114 mg/L, as a 12 month rolling average. For the Valencia WRP, the interim wasteload allocation for chloride is the sum of State Water Project treated water supply concentration plus 134 mg/L, as a 12 month rolling average. For both the Saugus and Valencia WRPs, at no time shall the interim wasteload allocations exceed 230 mg/L. (*Id.* at Attachment A, p. 3.)

<sup>79</sup> *Id.* at Attachment A, p. 7.

<sup>80</sup> *Id.* at p. 3, Provision 1.

<sup>81</sup> CH2MHLL, *Final Report: Literature Review Evaluation* (Sept. 2005), Executive Summary, p. VI. This study noted that the avocado is known as one of the most sensitive species to chloride and that Ventura County produces the second largest avocado crop in California. *Id.* at III-IV.

<sup>82</sup> MIG, *Technical Advisory Panel: Critical Review Report* (Sept. 26, 2005), Ch. I: Introduction and Summary of Key Findings, p. 5.

Santa Clara River, and self-regenerating water softeners as the second largest source of chloride loading.<sup>83</sup>

In 2006, the Los Angeles Water Board revised the implementation plan for the Chloride TMDL. The revised TMDL accelerated the final compliance date from 13 years to 11 years from the effective date of the Chloride TMDL (or from 2018 to 2016) based on findings from the LRE study.<sup>84</sup> The board shortened the phase for the completion of special studies, but did not shorten the eight-year planning, design, and construction phase.<sup>85</sup>

At that time, stakeholders contemplated two options for implementation: (1) advanced treatment of effluent from the Valencia and Saugus WRPs and disposal of brine in the ocean through an ocean outfall; or (2) disposal of tertiary-treated effluent in the ocean through an ocean outfall. Both options entailed construction of a pipeline from the WRPs to the ocean and an ocean outfall.<sup>86</sup>

In 2007, the Claimant completed the "Groundwater/Surface Water Interaction (GSWI) Model" special study. Stakeholders and an independent technical advisory panel reviewed and approved the GSWI study as an appropriate and adequate modeling tool.<sup>87</sup> The GSWI study examined the feasibility of various implementation alternatives. Based on various modeling scenarios, the GSWI study predicted that none of the contemplated alternatives, including the two options mentioned above, would achieve compliance with the existing water quality chloride objective of 100 mg/L at all times and at all locations.<sup>88</sup> The GSWI study further indicated that beneficial uses can be protected through a combination of site-specific objectives for surface water and groundwater and reduction of chloride levels from the Valencia WRP effluent through advanced treatment.<sup>89</sup>

As a result of the GSWI study, and the anticipated costs of complying with the 100 mg/L chloride water quality objective, the Claimant developed an alternative water resources management (AWRM) approach that could achieve attainment of site-specific objectives for certain reaches of the Santa Clara River.<sup>90</sup> The Claimant first proposed the AWRM approach as part of the GSWI study to Los Angeles Water Board staff in 2007, and was further

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<sup>83</sup> Sanitation Districts of Los Angeles County, *Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan* (Nov. 2005), Executive Summary, pp. 1-1, 1-3.

<sup>84</sup> Los Angeles Water Board Resolution R4-2006-016: *Amendment to the Water Quality Control Plan for the Los Angeles Region through Revision of the Implementation Plan for the Upper Santa Clara River Chloride TMDL, Resolution 04-004* (Aug. 3, 2006), Attachment A, p. 6.

<sup>85</sup> *Id.* at p. 5, Finding 21.

<sup>86</sup> 2008 Resolution, p. 3, Finding 12.

<sup>87</sup> 2008 Staff Report, at p. 20.

<sup>88</sup> *Id.* at 20-21.

<sup>89</sup> *Id.* at 22.

<sup>90</sup> See Geomatrix, *Draft Task 2B-2 Report-Assessment of Alternatives for Compliance Options Using the Groundwater/Surface Water Interaction Model*, prepared for The Santa Clarita Valley Sanitation District of Los Angeles County (June 17, 2008), pp. 19-31 ("Task 2B-2 Report").

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developed and refined through a series of meetings with stakeholders and board staff. The Claimant participated extensively in, and often facilitated, weekly to bi-weekly meetings with board staff<sup>91</sup> and technical working groups with other stakeholders.<sup>92</sup> To gain support for the AWRM program it had developed, the Claimant gave numerous presentations on the AWRM to board staff, State Water Board members,<sup>93</sup> downstream water users, purveyors, and other stakeholders.<sup>94</sup> The AWRM program consisted of: the development of site-specific objectives for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP's effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with the Santa Clarita Valley.<sup>95</sup> The Claimant demonstrated to stakeholders that the AWRM program would address the chloride impairment in surface waters as well as the degradation of groundwater downstream at a much lower cost than other implementation scenarios that had been considered to achieve the original Chloride TMDL – approximately \$250 million versus \$500 million.<sup>96</sup>

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<sup>91</sup> See, e.g., Agenda and Meeting Summaries for meetings held on August 24, 2007 (whereby SCVSD staff asked its consultant to draft a white paper on the regulatory framework that the Los Angeles Water Board could potentially utilize to facilitate a potential alternative water management option), September 7, 2007 (whereby SCVSD's consultant presented "Regulatory Framework for Alternative Water Management/Maximum Benefit Approaches for the Upper Santa Clara Chloride TMDL"), October 5, 2007 (whereby SCVSD staff updated board staff on meetings with water purveyors and indicated that SCVSD would commit funding to alternative water resource management solution as long as it is cost effective solution and a "win-win" solution for all stakeholders); October 12, 2007 (whereby SCVSD staff presented a PowerPoint presentation on the potential alternative compliance options under consideration); April 11, 2008 (whereby SCVSD presented a written summary and PowerPoint on the "Alternative Water Resource Management" program), May 30, 2008 (whereby SCVSD notified board staff of a possible MOU with other stakeholders), and June 20, 2008 (whereby SCVSD indicated progress was continuing on development of a AWRM MOU with other stakeholders).

<sup>92</sup> See, e.g., Summary and Overviews of Technical Working Group (TWG) meetings held on November 27, 2007 (whereby SCVSD gave a presentation on potential alternative compliance options to the TWG), January 8, 2008 (whereby SCVSD gave a series of presentation on possible alternatives for water management in Ventura County and Los Angeles County, including the AWRM), February 19, 2008 (whereby SCVSD presented a PowerPoint on the progress of the AWRM program), and April 8, 2008 (whereby SCVSD gave a PowerPoint presentation on the AWRM progress).

<sup>93</sup> See, e.g., Agenda and Meeting Summary for meeting held on October 12, 2007 (whereby State Water Board member Frances Spivy-Weber was in attendance).

<sup>94</sup> See, e.g., Agenda and Meeting Summaries for meetings held on October 12, 2007 and April 11, 2008; see also Summary and Overviews of TWG meetings held on November 27, 2007, February 19, 2008, and April 8, 2008 (whereby SCVSD gave a PowerPoint presentation on the AWRM progress).

<sup>95</sup> Task 2B-2 Report, pp. 19-31.

<sup>96</sup> Santa Clarita Valley Sanitation District Proposed Sewer Service Charge Rate Increase, Frequently Asked Questions, pp. 4-5 <<http://www.lacsd.org/civica/filebank/blobload.asp?BlobID=5589>> (as of July 28, 2011). ("These relaxed limits would provide regulatory relief to reduce the cost of compliance from over \$500 million (for large scale advanced treatment to meet original standards) to \$250 million (for the Alternative Compliance Plan facilities to meet relaxed standards)"); 2008 Staff Report, pp. 37-38.

As a result, the AWRM program had broad stakeholder support and was seen as a cost-effective solution. The 2008 Resolution estimated an increase in sewer rates of \$17.00 month to fund the AWRM, which would have brought Santa Clarita in line with the statewide average sewer rate of \$34.00 per month.<sup>97</sup> Based on the Claimant's data, Santa Clarita residents currently pay \$16.58 per month for service charge rates.<sup>98</sup> For comparison, Los Angeles residents pay \$35.24 per month, Ventura residents pay \$25.00 per month, and Ojai, Santa Paula, and Fillmore residents pay \$52.07, \$77.21, and \$82.00 per month, respectively, for sewer charge rates.<sup>99</sup>

For the AWRM program to succeed, the Los Angeles Water Board first needed to adopt conditional site-specific objectives for chloride. Based on the significant water quality and water supply benefits in both Los Angeles and Ventura Counties and the broad stakeholder support, Board staff agreed to take the regulatory steps necessary to recommend conditional chloride site-specific objectives to the board.

### **The 2007 Amendment**

To initially support development of the AWRM compliance option, the Los Angeles Water Board amended its Basin Plan in November 2007 to divide Reach 4<sup>100</sup> of the Santa Clara River into two separate reaches (Reaches 4A and 4B).<sup>101</sup> The board found that this action would allow the development of more geographically precise site-specific objectives for chloride.<sup>102</sup> The Claimant supported this action,<sup>103</sup> stating that the "action to subdivide the reach will support continued development of this [AWRM] option, which represents a potential win-win situation for water resources and water quality management in Los Angeles and Ventura County."<sup>104</sup>

The Claimant, Ventura County Agricultural Water Quality Coalition, the United Water Conservation District, and Upper Basin Water Purveyors, consisting of the Castaic Lake Water Agency (CLWA), Valencia Water Company, Newhall County Water District, Santa Clarita Water Division of the CLWA, and the Los Angeles County Waterworks District No. 36 entered into a memorandum of understanding (MOU) to implement the AWRM program.<sup>105</sup> The MOU, which

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<sup>97</sup> 2008 Staff Report, p. 38 (costs are in 2007 dollars).

<sup>98</sup> LACSD website, Santa Clarita Valley Sanitation District Proposed Sewer Service Charge Rate Increase <[http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/proposed\\_sewer\\_service\\_charge\\_increase/default.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/proposed_sewer_service_charge_increase/default.asp)> (as of July 28, 2011).

<sup>99</sup> *Ibid.*

<sup>100</sup> Reach 4 of the Santa Clara River is located downstream from Reach 5 and extends to the City of Fillmore.

<sup>101</sup> Los Angeles Water Board Resolution 2007-018: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Subdivide Reach 4 of the Santa Clara River* (Nov. 1, 2007).

<sup>102</sup> 2008 Resolution, p. 4, Finding 16. Note that this action did not modify the water quality objective for chloride in either Reach 4A or Reach 4B, nor adopt a site-specific objective for chloride in Reach 4A or 4B.

<sup>103</sup> Los Angeles Water Board, Transcript of Proceedings, Nov. 1, 2007, p. 278 line 6 to p. 279 line 17.

<sup>104</sup> *Id.* at p. 279 lines 10-13.

<sup>105</sup> See generally Memorandum of Understandings for Implementation of an Alternative Water Resources Management Program among the Santa Clarita Valley Sanitation Districts of Los Angeles County, Upper Basin

became effective on October 23, 2008, specifies the agreed-upon responsibilities of the AWRM Stakeholders for the implementation of ultra-violet light disinfection and advanced treatment facilities (i.e., microfiltration-reverse osmosis and brine disposal), salt management facilities (i.e., extraction wells and water supply conveyance pipelines), supplemental water (i.e., water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. The Los Angeles Water Board was not a party to this MOU.

### **The 2008 Amendment**

On December 11, 2008, the Los Angeles Water Board adopted Resolution No. R4-2008-012: *Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt Site Specific Chloride Objectives and to Revise the Upper Santa Clara River Chloride TMDL* (the 2008 Resolution)<sup>106</sup> to fully support implementation of the Claimant's AWRM program. This is the resolution that is being challenged as an unfunded state mandate in this Test Claim.

The 2008 Resolution amended the Basin Plan to incorporate conditional site-specific objectives for chloride for Reaches 4B, 5, and 6 of the Santa Clara River and the groundwater basins underlying those reaches, and revised the Chloride TMDL. The Chloride TMDL's wasteload allocations and implementation plan were all based on the conditional site-specific objectives for chloride. The conditional site-specific objectives and conditional wasteload allocations are both equal to 150 mg/L in Reaches 5 and 6 and 117 mg/L in Reach 4B (this wasteload allocation goes up to 130 mg/L when the State Water Project supply has levels of chloride greater than 80 mg/L).<sup>107</sup> The Los Angeles Water Board determined that the conditional site-specific objectives and conditional wasteload allocations were protective of beneficial uses when the AWRM was implemented (such as providing supplemental water supply to growers in Reach 4B during drought conditions and exporting of chloride from the watershed such that the 10-year cumulative net chloride loading to Reach 4B above 117 mg/L be zero or less). The Chloride TMDL states that the conditional site-specific objectives for chloride shall only apply and supersede the Basin Plan water quality objectives when chloride load reductions and/or chloride export projects are in operation and are reducing chloride loading.<sup>108</sup> Chloride load reduction is based on operation of a reverse osmosis treatment plant treating 3 million gallons per day of effluent at the Valencia WRP with "chloride concentration of 50 mg/L [plus] water supply chloride."<sup>109</sup> Accordingly, the site-specific objectives are conditioned on the Claimant's full and ongoing implementation of the AWRM program. It is therefore important to note that, if the Claimant does not build and operate the AWRM system, the site-specific water quality objectives for chloride will revert back to the current levels in the Basin Plan, which are 100 mg/L.<sup>110</sup> Thus, the Claimant has a choice whether to implement the AWRM or not.

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Water Purveyors, United Water Conservation District, and Ventura County Agricultural Water Quality Coalition (Oct. 2008).

<sup>106</sup> Los Angeles Water Board Resolution R4-2008-012 (Dec. 11, 2008) (attached as Exhibit 1 to the Test Claim).

<sup>107</sup> *Id.* at Attachment A, pp. 2-3.

<sup>108</sup> *Id.* at Attachment B, p. 4.

<sup>109</sup> *Id.* at Attachment B, pp. 7-8.

<sup>110</sup> *Id.* at p. 5.

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The Los Angeles Water Board also revised the Chloride TMDL by shortening the implementation plan to 10 years from the effective date of the Chloride TMDL. Thus, the Claimant must attain compliance with the conditional site-specific objectives by May 2015.<sup>111</sup> In the interim, the Chloride TMDL provides interim wasteload allocations to the Claimant based on the chloride concentrations in source water and Saugus and Valencia WRPs' current performance.

At the December 2008 Board meeting, the Claimant, stakeholders, and Los Angeles Water Board staff expressed an unprecedented level of cooperation and support for the 2008 Resolution, especially given the Chloride TMDL's long and contentious history. Steve Maguin, the Claimant's Chief Engineer and General Manager, provided "unequivocal support" for adoption of the 2008 Resolution.<sup>112</sup> In his closing remarks, Mr. Maguin stated, "I think we [the Claimant] have developed something very, very good. You're going to hear a lot of people support it because it has a bright – a lot of very good ramifications."<sup>113</sup> Phil Friess, Technical Services Department Head for the Claimant, also expressed support for the board to adopt the 2008 Resolution.<sup>114</sup> In addition, when describing the Claimant's and other stakeholders commitments to the proposed AWRM program, Mr. Friess stated, "As the discharger seeking site-specific objectives, obviously the Santa Clarita Valley Sanitation District is going to fund the AWRM elements, including source control, the facility upgrades, the Ventura County salt management facilities, [and] purchase of supplemental water provision of alternative water supply to Camulos Ranch."<sup>115</sup>

The 2008 Resolution was approved by the State Water Board, the OAL, and U.S. EPA, and became effective on April 6, 2010.

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<sup>111</sup> *Id.* at p. 5 and Attachment B, p. 20.

<sup>112</sup> Los Angeles Water Board, Transcript of Proceedings, Dec. 11, 2008, p. 56 lines 24-25. See generally p. 56 line 15 to p. 70 line 11 for the comments provided by Mr. Maguin and Phil Friess, head of the Technical Services Department for the Claimant.

<sup>113</sup> *Id.* at p. 60 lines 22-25.

<sup>114</sup> *Id.* at p. 70 lines 4-6 ("We think it does the best overall job, and we hope you'll adopt site-specific objectives to support it."). Mr. Maguin and Mr. Friess also submitted a joint written comment letter on behalf of LACSD on the proposed 2008 Resolution prior to the December 2008 Board meeting. In that letter, the Claimant states, "The Sanitation District strongly supports the proposed amendment to the Basin Plan because it provides for the opportunity for the implementation of the Alternative Water Resources Management (AWRM) Program, an innovative watershed-wide and stakeholder-supported program to comply with the Upper Santa Clara River Chloride TMDL. Since November 1, 2007, various Los Angeles and Ventura County stakeholders within the Santa Clara River watershed, including the Sanitation District, have worked together to develop the AWRM Program as a viable alternative for Regional Board consideration." As evidence of its commitment, the Claimant attached a copy of the October 23, 2008 MOU to its comment letter. The Claimant also stated, "In closing, the Sanitation District would like to reiterate its strong support for the Regional Board staff's recommendation to adopt conditional site-specific objectives for chloride and urges the Regional Board to approve this important Basin Plan Amendment. The Sanitation District believes that the proposed amendment to the Basin Plan and the resultant chloride site-specific objectives necessary to implement the AWRM program, will provide an opportunity to implement a solution to the Chloride TMDL that provides the maximum benefit to the people of the State." (Letter from Stephen R. Maguin and Philip L. Friess to Tracy Egoscue, dated November 14, 2008.)

<sup>115</sup> *Id.* p. at 67 lines 10-15.

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Pursuant to the 2008 Resolution, the conditional wasteload allocations for the Saugus and Valencia WRPs will be implemented through effluent limits, receiving water limits, and monitoring requirements in NPDES permits. However, to date, the conditional wasteload allocations have not yet been incorporated into the most recent NPDES permits for the Saugus and Valencia WRPs, which were both renewed in 2009. The 2009 permits maintain final effluent limits for chloride in the amount of 100 mg/L.<sup>116</sup>

#### **D. Claimant's Proposed Rate Increases**

To date, the SCVSD Board of Directors<sup>117</sup> has refused to fund the AWRM program its own staff developed, promoted, and urged the Los Angeles Water Board to implement.

At the May 26, 2009 SCVSD Board of Directors public hearing, which was about six months after the Los Angeles Water Board adopted the 2008 Resolution, the SCVSD's Board of Directors considered a service charge rate increase that would raise rates from approximately \$15 per month per single-family home to \$47 per month by FY 2015-2016.<sup>118</sup> After a hearing on the matter, the SCVSD Board of Directors voted to defer adoption of the proposed rate increase to a future meeting.<sup>119</sup> SCVSD Board Member Laurene Weste stated that she did not believe all options have been explored yet and that she did not support the increase because it is an unreasonable impact on homeowners.<sup>120</sup> Chief Engineer and General Manager Steve Maguin noted prior to the hearing that 42 protest letters were submitted with one letter containing 12 signatures. He also stated that 150 emails of protests were also received as well as seven telephone calls in protest.<sup>121</sup>

The SCVSD Board of Directors again considered a rate increase at its July 27, 2010 public hearing. The proposal was a four-year rate increase that would raise rates from \$16.58 per

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<sup>116</sup> See generally Los Angeles Water Board Order No. R4-2009-0074 for Valencia WRP, pp. 18, 21, and Attachment K; Los Angeles Water Board Order No. R4-2009-0075 for Saugus WRP, p. 16, 20, and Attachment K. While the final wasteload allocations for chloride based on the 2004 and 2006 amendments are incorporated into the permits, those final wasteload allocations are not yet in effect. Thus, during the period of TMDL implementation, the WRPs are assigned interim effluent limits that cannot exceed 230 mg/L. The WRPs' 2009 NPDES permits also include the implementation tasks of the Chloride TMDL, as amended in 2008, in Attachment K.

<sup>117</sup> The SCVSD Board of Directors includes the mayor of Santa Clarita, a designated member of the Santa Clarita City Council, and the chairperson of the Los Angeles County Board of Supervisors.

<sup>118</sup> Minutes of the Adjourned Regular Meeting of the Board of Directors of the SCVSD, May 26, 2009, p. 2. The minutes indicate that "without the [AWRM program], based on what is known today, the current service charge rate projected out over the seven-year period would be about \$23 per month per single-family home. At that point in time (2015-16), the [AWRM] is projected to add approximately \$19 in capital needs and another \$5 per month for operation and maintenance of the new facilities for a total projected monthly service charge of approximately \$47 in 2015-16." Thus, \$24 was the proposed increased rate relating to compliance with the AWRM program.

<sup>119</sup> *Id.* at p. 5.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Id.* at p. 3.

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month per single family home to \$24.67 per month by FY 2013-2014.<sup>122</sup> Mr. Maguin noted that \$3.92 of the proposed \$8.09 monthly increase over four years was needed to support existing facilities.<sup>123</sup> He also stated a portion of the increase was to repay funds borrowed from the capital improvement fund over the last several years during which rates were below those recommended.<sup>124</sup> The other approximate half remaining was for planning and design efforts related to the facilities that are needed to comply with the chloride limits.<sup>125</sup> Prior to the hearing, the Claimant had received 7,732 written protests from property owners.<sup>126</sup> Following the public hearing, the SCVSD again rejected the proposed rate increases.<sup>127</sup> In letters to the Los Angeles Water Board, the SCVSD stated that the Board of Directors declined to approve the rate increases in 2009 and 2010 due to “very strong public opposition.”<sup>128</sup> However, in both the 2009 and 2010 hearings, while the opponents to the rate increases were likely vocal, there was not the necessary number of written protests to preclude SCVSD from passing rate increases under Proposition 218.<sup>129</sup> As of June 1, 2010, there were 68,897 parcels connected to the sewerage system in the SCVSD service area.<sup>130</sup> Thus, the Claimant needed to receive at least 34,449 written protests from parcel owners prior to each hearing. Despite the fact that there were insufficient numbers of written protests to preclude a rate increase under Proposition 218 prior to both the May 26, 2009 and July 27, 2010 hearings (203 written protests and 7,732 written protests, respectively), the SCVSD Board of Directors still rejected the proposed rates on both occasions.

On April 14, 2011, the SCVSD held another public hearing to consider a proposal to increase the sewer service charge rates over the next three years to provide, solely, for the continued

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<sup>122</sup> Santa Clarita Valley Sanitation District, Notice of Public Hearing Regarding a Proposed Sewer Service Charge Rate Increase (June 11, 2010), p. 2, at <<http://www.lacsd.org/civica/filebank/blobdload.asp?BlobID=5586>> (as of July 28, 2011) (“June 2009 Notice of Public Hearing”); Minutes of the Adjourned Regular Meeting of the Board of Directors of the SCVSD, July 27, 2010, p. 4 (June 2009 Minutes).

<sup>123</sup> June 2009 Minutes, p. 2.

<sup>124</sup> *Ibid.*

<sup>125</sup> June 2009 Notice of Public Hearing, p. 2.

<sup>126</sup> June 2009 Minutes, p. 2.

<sup>127</sup> *Id.* at p. 4.

<sup>128</sup> Letter from Stephen R. Maguin, County Sanitation Districts of Los Angeles County, to Samuel Unger (Oct. 14, 2010), at p. 1; Letter from Stephen R. Maguin, County Sanitation Districts of Los Angeles County, to Samuel Unger (Nov. 4, 201), at p. 1.

<sup>129</sup> Under Proposition 218, added in 1996, no local government may impose, extend, or increase any tax (e.g., sewer rate) unless and until that tax is submitted to the electorate and approved by a majority. A property owner subject to a proposed rate increase can protest the proposed rate increase. However, the protest must be in writing and must be received by the local governmental body prior to or at the public hearing. The local governmental body can take no action on the proposed rates if written protests are submitted by more than 50 percent of the affected property owners. If sufficient protests are not received, then the local governmental body can consider an increase during a public hearing. (Cal. Const., article XIII D, § 6, subd. (c)).

<sup>130</sup> Letter from Stephen R. Maguin, County Sanitation Districts of Los Angeles County, to Council members, *Responses to Comments Made during the May 25, 2010 City Council Meeting – Public Hearing on Proposed Rate Increases* (June 1, 2010), p. 12 (M-6), at <<http://www.lacsd.org/civica/filebank/blobdload.asp?BlobID=5563>> (as of July 28, 2011).

operation and maintenance of existing facilities and SCVSD Board-directed activities.<sup>131</sup> The proposed rate increase for existing facilities was \$1.34 for FY 2011-12, \$1.33 for FY 2012-13, and \$1.33 for FY 2013-2014, thus totaling a \$4 increase at the end of the three years.<sup>132</sup> The LACSD website explained that "Board-directed activities" included: "test claim for State reimbursement of unfunded mandates, legislative relief efforts, evaluation of the potential use of ultra-violet disinfection technology at the WRPs, studies of water supply options, and continued negotiations with State regulators to develop a workable solution for the Santa Clara community."<sup>133</sup> The website further states, "None of the proposed rate increase is being budgeted for the development of facilities to control chloride in the Santa Clara River. Any rate increases that may be necessary to support a chloride solution will not be proposed until an acceptable plan is developed."<sup>134</sup> A Proposition 218 notice was mailed to each affected property owner on February 25, 2011.<sup>135</sup> The SCVSD Board of Directors approved the proposed rate increase to fund existing facilities.<sup>136</sup>

#### IV. THIS TEST CLAIM DOES NOT QUALIFY FOR SUBVENTION

The Claimant contends that the provisions of the 2008 Resolution are subject to reimbursement because the Los Angeles Water Board's adoption of the chloride water quality objective of 100 mg/L, its establishment of conditional site-specific objectives, and its assignment of specific interim and final wasteload allocations are not federal mandates. The Claimant further asserts that these are new programs or existing programs that require a higher level of service, and that the Claimant has no fee authority sufficient to pay for the costs.

The Claimant's contention that the 2008 Resolution is an unfunded state mandate is flawed on various grounds, including its misinterpretation of the law regarding unfunded mandates. The 2008 Resolution does not require subvention for four principal reasons. First, the challenged provisions of the 2008 Resolution do not mandate a new program or higher level of service. Second, the Los Angeles Water Board's establishment of the chloride water quality objective in the Santa Clara River, its resulting establishment of the Chloride TMDL when that objective was not met, and its resulting assignment of wasteload allocations to the Claimant are all federal mandates required by the Clean Water Act and any cost increases that result solely from state law requirements are *de minimis*. Third, the Claimant not only proposed the AWRM program for which it now seeks subvention, but advocated and urged the Los Angeles Water Board to

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<sup>131</sup> Sanitation Districts of Los Angeles County, SCVSD Proposed Sewer Service Rate Charge Increase, at <[http://www.lacsd.org/info/industrial\\_waste/chloride\\_in\\_santa\\_clarita/proposed\\_sewer\\_service\\_charge\\_increase/default.asp](http://www.lacsd.org/info/industrial_waste/chloride_in_santa_clarita/proposed_sewer_service_charge_increase/default.asp)> (as of July 28, 2011).

<sup>132</sup> *Ibid.* The Claimant further explained on its website that, even with the proposed rate increases, the service charge rate in the SCVSD in the fourth year would be less than what other similar wastewater agencies are currently charging. The website included a table showing the service charge rate comparison for several communities in Los Angeles and Ventura counties.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.* A generic copy of the Proposition 18, as referenced on its website, is included as an attachment. This notice is also available at <<http://www.lacsd.org/civica/filebank/blobload.asp?BlobID=4352>> (as of July 28, 2011).

<sup>136</sup> Minutes of the Special Meeting of the Board of Directors of the SCVSD, Apr. 14, 2011, p. 3.

incorporate the AWRM program into the Basin Plan. Finally, the Claimant can avoid the expenditure of tax monies by raising service charges, fees, or assessments to pay for implementation of the provisions.

#### **A. The Challenged Provisions of the 2008 Resolution Do Not Mandate a New Program or Higher Level of Service on the Claimant**

Article XIII B, section 6(a) of the California Constitution provides, “[w]henver 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 that local government for the costs of the program or increased level of service.” In order to obtain reimbursement, the Claimant must therefore prove either that: (1) the program carries out the governmental function of providing services to the public; or (2) the laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>137</sup> Statutes implementing Article XIII B, section 6 clarify that no subvention of funds is required if: (1) the mandate imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation;<sup>138</sup> (2) the local agency proposed the mandate;<sup>139</sup> or (3) the local agency has the authority to levy service charges, fees, or assessments sufficient to pay.<sup>140</sup> For the reasons set forth below, not only has the Claimant failed to establish that the 2008 Resolution mandates a new program or higher level of service, but also each of the three exemptions apply.

##### **1. The Provisions of the Chloride TMDL Are Mandated by the Clean Water Act**

As noted above, the Clean Water Act requires the Los Angeles Water Board to establish water quality standards, which consist of designated uses and water quality criteria to protect the uses.<sup>141</sup> The federal Clean Water Act requires NDPEs permits for point sources to comply with the water quality standards.<sup>142</sup> Waterbodies that do not meet water quality standards are considered impaired. For each impaired waterbody, the Los Angeles Water Board is required by the Clean Water Act to establish a TMDL, or plan for the waterbody to achieve water quality standards. The Los Angeles Water Board first established water quality objectives for chloride in the Upper Santa Clara River in 1975. Despite the various revisions to the Chloride TMDL over the years, the water quality objective of 100 mg/L for chloride designated in 1978 remains the water quality objective today. Thus, absent the 2008 Resolution, the Claimant will have to achieve compliance with the 100 mg/L wasteload allocation by 2015 and absent the Chloride TMDL they would have to comply with the water quality standard.

<sup>137</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>138</sup> Govt. Code, § 17556, subd. c.

<sup>139</sup> *Id.* at § subd. (a).

<sup>140</sup> *Id.* at § subd. (d).

<sup>141</sup> As noted above, under the state’s Porter-Cologne Act nomenclature, designated uses are referred to as beneficial uses and water quality criteria are referred to as water quality objectives. The state and federal terms are used interchangeably.

<sup>142</sup> 33 U.S.C. § 1311(b)(1)(C); see also *City of Burbank, supra*, 35 Cal.4th at p. 626.

The Claimant argues that the Los Angeles Water Board's "modification and re-modification of the water quality objectives for chlorides, as well as the board's adoption of specific requirements [in the TMDL] for meeting these objectives" were discretionary decisions made outside of the Clean Water Act.<sup>143</sup> This is incorrect. The Los Angeles Water Board has no such discretion; section 303 of the Clean Water Act mandates the state to adopt water quality standards and TMDLs for waterbodies that fail to meet such standards.<sup>144</sup> Earlier in its Test Claim, the Claimant even acknowledges that the adoption of water quality standards and TMDLs are a federal mandate: "Section 303(d) of the [Clean Water Act] *requires* states to continually identify those waters of the United States within their boundaries that do not meet water quality standards . . . and prepare TMDLs for those waters that will ensure re-attainment of the standards through action by regulated dischargers."<sup>145</sup> The 2008 Resolution merely continues and refines previous planning goals and objectives that were set forth in prior versions of the Basin Plan and Chloride TMDL. The California Supreme Court has held that, "[f]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, *de minimus*—should be treated as part and parcel of the underlying federal mandate."<sup>146</sup>

The Claimant's insistence that the Los Angeles Water Board exercised discretion in this case fails as a matter of law. Pursuant to Clean Water Act section 303, in 1975, the Los Angeles Water Board adopted water quality standards for the Santa Clara River, which included water quality objectives for chloride. In 1998, Reaches 5 and 6 of the Santa Clara River appeared on the state's 303(d) List as impaired for chloride, because the waterbody did not meet the chloride water quality objectives. The Clean Water Act and the U.S. EPA's regulations make clear that a TMDL must be developed for impaired waterbodies, and that any TMDL must establish wasteload allocations for each discharger to the waterbody. The board therefore had no "true choice,"<sup>147</sup> it had to adopt a TMDL for chloride. True, the Chloride TMDL has been revised over time. However, just because the Los Angeles Water Board revised the implementation plan of its Chloride TMDL does not support the conclusion that the water quality objectives or the Chloride TMDL's provisions are unfunded state mandates. Water quality standards are adopted pursuant to the Clean Water Act, and *any* TMDL is required to attain and maintain the applicable water quality standards, no matter how many times these regulatory mechanisms are modified and amended.

Likewise, the fact that the Los Angeles Water Board decides how to allocate the pollutant loadings among the various dischargers, determine the program of implementation, and set

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<sup>143</sup> Test Claim, p.9.

<sup>144</sup> 33 U.S.C. § 1313.

<sup>145</sup> Test Claim, p.2 (emphasis added).

<sup>146</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 890.

<sup>147</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581-1582. ("The test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice,' that is, whether participation in the federal program 'is truly voluntary.'" (Citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.).

various milestones for achieving water quality standards does not mean that the TMDL's regulatory framework is an unfunded state mandate. The Claimant states that, “[w]hile the Clean Water Act requires TMDLs to be prepared, the Regional Water Board exercised its discretion when assigning [wasteload allocations] to the Saugus and Valencia WRPs . . . .”<sup>148</sup> The Claimant ignores the relevant law, however. Title 40, section 130.2(i) of the Code of Federal Regulations defines TMDL to mean “[t]he sum of the individual [wasteload allocations] for point sources and [load allocations] for nonpoint sources and natural background.” The very act of assigning allocations is what comprises the TMDL; a TMDL is not valid unless it contains wasteload and load allocations. Therefore, to protect beneficial uses, the Los Angeles Water Board had no choice but to assign wasteload allocations to each point source discharger, including the Claimant. This is especially true in light of the fact that the Claimant operates two WRPs that are the primary sources of chloride to the Santa Clara River.<sup>149</sup>

The Claimant further asserts that “acts to regulate water quality to protect downstream salt-sensitive crops” are not mandated by the Clean Water Act.<sup>150</sup> This ignores the law. When designating uses of a waterbody and the appropriate water quality criteria/objectives to protect those uses, states are required to ensure that water quality standards are adequate to protect downstream uses.<sup>151</sup> Moreover, any water quality standards must protect the most sensitive of any designated beneficial uses.<sup>152</sup>

The Claimant further argues that the Clean Water Act does not even require that agricultural uses be protected at all. This also ignores the law. Clean Water Act section 303(c)(2)(A) requires that water quality standards consist of the designated uses of the water and shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and *agricultural*, industrial, and other purposes . . . .<sup>153</sup> The Claimant contends that the inclusion of the word “consideration” somehow makes it a discretionary, rather than mandatory, designation. This erroneous interpretation would make even uses based on the protection of fish, wildlife, and recreation discretionary, which is contrary to the Clean Water Act’s stated goal that the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water be achieved by 1983.<sup>154</sup> Such an interpretation would also conflict with federal regulations, which require states to designate appropriate water uses to be achieved and protected.<sup>155</sup> Uses are categorized into

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<sup>148</sup> Test Claim, p.21.

<sup>149</sup> As further discussed below, even this argument gets the Claimant nowhere. The assignment of an allocation to the Claimant was no different than the allocation assigned other dischargers—regardless of the public nature of the discharge. All the wasteload allocations were set to implement the water quality standard of 100 mg/l of chloride and all dischargers were subject to the same wasteload allocation. In this sense, the TMDL, like the water quality standard, regulates with an even hand.

<sup>150</sup> Test Claim, p. 20.

<sup>151</sup> 40 C.F.R. § 131.10(b).

<sup>152</sup> *Id.* at § 131.11(a)(1).

<sup>153</sup> 33 U.S.C. § 1313(c)(2)(A) (emphasis added); See also 40 C.F.R. §§ 131.2, 131.10

<sup>154</sup> 33 U.S.C. § 1251(a)(2). Another stated goal of the Clean Water Act is for all discharges of pollutants into navigable waters be eliminated by 1985. (33 U.S.C. § 1251(a)(1).)

<sup>155</sup> 40 C.F.R. § 131.10

“existing uses” and “designated uses.” “Existing uses” are those uses actually attained in the waterbody, whether or not they are included in the water quality standards.”<sup>156</sup> “Designated uses” are those uses specific in water quality standards for each water body or segment whether or not they are being attained.”<sup>157</sup> Thus, if a use is an “existing” use for a waterbody (such as agriculture in the Santa Clara River), then the waterbody must have that use in its “designated” uses. As noted above, states must adopt water quality criteria that protect designated uses.<sup>158</sup> And for waters with multiple use designations, the water quality criteria must support the most sensitive use.<sup>159</sup> Therefore, the Los Angeles Water Board’s establishment of water quality objectives to protect salt-sensitive agricultural uses downstream of Reaches 5 and 6 of the Santa Clara River is federally mandated.

The Claimant also asserts that the Clean Water Act does not require the protection of so-called “off-stream agricultural uses” because the use must occur *in* the water itself.<sup>160</sup> The Claimant’s basis for this assertion is the definition of “existing uses.” This argument fails. Claimant’s construction would mean that protection of agricultural uses could only exist if someone is growing crops in the river itself. It would also mean that the protection of water supply uses could only exist if someone is actually drinking water in the river itself. Both results are not supported by the Clean Water Act, federal regulations, or U.S. EPA guidance. U.S. EPA regulations and guidance clearly require the protection of existing uses and the level of water quality necessary to protect those uses.<sup>161</sup>

The Los Angeles Water Board takes issue with the Claimant’s attempts to challenge the scientific validity of the underlying water quality objective of 100 mg/L for chloride in its Test Claim. That water quality objective was established in 1978. A test claim is not the proper forum to challenge the objective. In addition, the Claimant’s assertions regarding how other regional water boards or U.S. EPA have protected agricultural uses and the specific water quality standards that they have established for chloride for waterbodies in their jurisdictions are irrelevant to this Test Claim.<sup>162</sup> The Los Angeles Water Board’s establishment of water quality standards for a specific waterbody based on site-specific information does not make it a discretionary action. Neither the Clean Water Act nor its implementing regulations establish a

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<sup>156</sup> *Id.* at § 131.3(e).

<sup>157</sup> *Id.* at § 131.3(d).

<sup>158</sup> *Id.* at § 131.11(a).

<sup>159</sup> *Ibid.*

<sup>160</sup> Test Claim, pp. 20-21.

<sup>161</sup> 40 C.F.R. § 131.12(a)(1); U.S. EPA, *Water Quality Standards Handbook: Second Edition* (Aug. 1994), § 4.4, p. 4-3.

<sup>162</sup> For example, on page 21 of the Test Claim, Claimant points to certain numeric chloride limits that U.S. EPA has established for drinking water and the protection of aquatic life. It is true that these limits are significantly higher than the water quality objectives established by the Los Angeles Water Board. However, this is because humans and aquatic species can tolerate much higher chloride concentrations than salt-sensitive agricultural crops, such as avocados and strawberries. As noted above, the state is required to protect the most sensitive of any designated beneficial uses. In the Upper Santa Clara River, agriculture is the most sensitive use. Therefore, the levels U.S. EPA has established for state drinking water and aquatic life standards are irrelevant.

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one-size-fits-all approach in establishing water quality standards.<sup>163</sup> Water quality standards are specific to each individual waterbody, and often to individual segments of that waterbody, so that such water quality standards are appropriately established.

Lastly, the 2008 Resolution cannot be construed as requiring a new level of service, because the chloride water quality objective for the Santa Clara River was first established in 1975. The whole purpose of the 2008 Resolution was to incorporate less-stringent site-specific objectives in order to support the Claimant's AWRM program. Thus, if anything, the 2008 Resolution imposed a *lower level of service* in order to make it less expensive for the Claimant to implement the existing 100 mg/L chloride water quality objective. In addition, the Los Angeles Water Board did not impose this program on the Claimant. The AWRM is the Claimant's chosen method of complying with the Chloride TMDL and the water quality objectives.

Moreover, if U.S. EPA were to have adopted a Chloride TMDL for the Santa Clara River, it would have done so without an implementation plan, since U.S. EPA does not include implementation plans as part of their TMDLs.<sup>164</sup> This means that final wasteload allocations and load allocations would take effect immediately upon adoption of the TMDL<sup>165</sup> and dischargers would need to comply with effluent limits based on those wasteload allocations immediately upon incorporation into an NPDES permit. For the Chloride TMDL, the Los Angeles Water Board initially allowed up to 13 years for the Claimant to achieve its wasteload allocations. Based on the results of the various special studies, that schedule was eventually shortened to 10 years. However, the Claimant most likely would not have received any time schedule at all, had U.S. EPA adopted the Chloride TMDL.

## **2. The 2008 Resolution Does Not Impose Requirements Unique to Local Agencies and Is Not a Mandate Peculiar to Government**

In order to demonstrate that the 2008 Resolution imposes a new program or higher level of service, the Claimant has the burden of proving that the 2008 Resolution imposes requirements unique to the Claimant. However, the Claimant fails to meet this burden in its Test Claim. That is because the 2008 Resolution is a regulatory provision of general applicability and not a new program or higher level of service.

None of the challenged provisions are subject to reimbursement because the 2008 Resolution does not involve requirements imposed uniquely upon local government. Reimbursement to local agencies is required only for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that

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<sup>163</sup> *Natural Resources Defense Council, Inc. v. U.S. E.P.A.* (4th Cir. 1993) 16 F.3d 1395, 1400.

<sup>164</sup> See, e.g., *Pronsolino, supra*, 291 F.3d at p. 1140 (although, unlike the nonpoint source pollution subject to the TMDL in *Pronsolino*, this case involves a discharge subject to the NPDES program, and therefore, the independent federal obligations to comply with water quality standards and to implement wasteload allocations apply [33 U.S.C. § 1311(b)(1)(C) and 40 C.F.R. § 122.44(d)]).

<sup>165</sup> See, e.g., *In the Matter of Star-Kist Caribe, Inc.* (E.A.B. 1990) 3 E.A.D. 172, mod. den. 4 E.A.D. 33 (E.A.B 1992) (noting that U.S. EPA may only include compliance schedules authorizing delayed implementation of state water quality standards if the state water quality standards authorize the compliance schedules).

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apply generally to all state residents and entities. Laws of general application are not entitled to subvention.<sup>166</sup> The fact that a requirement may single out local governments is not dispositive; where local agencies are required to perform the same functions as private industry, no subvention is required.<sup>167</sup>

Water quality objectives apply to a waterbody as a whole, and all dischargers are subject to them.<sup>168</sup> Likewise, TMDLs must assign wasteload allocations and load allocations to all sources of the pollutant, both public agencies and private industry alike. Here, the water quality objectives for chloride apply throughout the entire affected portion of the Upper Santa Clara River. As required by the Clean Water Act, the Los Angeles Water Board established a Chloride TMDL designed to achieve water quality objectives. That regulatory mechanism analyzed all sources of chloride discharges and determined that the greatest load of chloride came from WRPs that the Claimant owns and operates. As such, the challenged provisions treat dischargers with an even hand, irrespective of status (any point or nonpoint source) and are not peculiar to local agencies such as the Claimant.

For the reasons stated above, the challenged provisions are not a new program or higher level of service, and thus the Los Angeles Water Board requests the Commission to reject the Claimant's arguments.

## **B. Subvention Is Not Required Because Exemptions in Government Code Section 17556 Apply**

Even if the Commission views the 2008 Resolution as a state mandate, the Claimant is not entitled to subvention because all three exemptions in Government Code section 17556 apply. The 2008 Resolution is a federal mandate and any additional costs beyond the federal mandate are *de minimis*, the Claimant actually proposed the AWRM program and requested the Los Angeles Water Board to incorporate it into the 2008 Resolution, and the Claimant has the authority to levy service charges, fees, or assessments sufficient to pay for any associated costs.

### **1. The Establishment of Water Quality Objectives and TMDLs Is Federally Mandated and Any Additional Costs Are *De Minimis***

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<sup>166</sup> *County of Los Angeles, supra*, 43 Cal.3d at 56-58.

<sup>167</sup> See *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197 (citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 56-57).

<sup>168</sup> See 40 C.F.R. § 130.3 ("A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting [objectives] necessary to protect the uses.").

The Claimant is not entitled to subvention because the exemption in Government Code section 17556, subdivision (c) applies.<sup>169</sup> As explained above in Sections III.B.1. and III.B.2., the Clean Water Act requires states to establish water quality standards (including the water quality objectives at issue in the Test Claim) and TMDLs. As such, the Claimant's obligations are federal mandates. Because Article XIII B, section 6 of the California Constitution only applies to state mandates, the Claimant's unfunded mandate claim must fail.

In addition, neither the chloride water quality objective nor the Chloride TMDL require the Claimant to incur any additional costs. While water quality standards and TMDLs are federally compelled, they themselves are not executive orders directly enforceable against a discharger or this Claimant. This is, as stated above, because water quality standards and TMDLs are not self-implementing under the Clean Water Act or the Porter-Cologne Act. More specifically, the site-specific objectives for chloride incorporated into the Basin Plan and the wasteload allocations and implementation tasks set forth in the Chloride TMDL do not, by themselves, require any actions or increases in the services that the Claimant provides to the public.<sup>170</sup> TMDLs established under section 303(d) of the Clean Water Act function primarily as informational tools and planning devices for the state or U.S. EPA to establish further pollution controls.<sup>171</sup> Water quality objectives and TMDLs form the framework for further administrative actions with respect to particularized pollutant discharges and waterbodies.<sup>172</sup>

Neither U.S. EPA nor the Los Angeles Water Board can directly enforce a TMDL or water quality objective against a discharger. In order to implement a TMDL or water quality objective, the applicable provisions of the TMDL or water quality objective must first be incorporated into an enforceable document. The most common administrative action to implement a water quality objective or TMDL is through the NPDES permitting process. The court in *City of Arcadia v. U.S. Environmental Protection Agency* explained that "each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls."<sup>173</sup> Federal law specifies how this should be accomplished: NPDES permits must contain effluent limitations that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA."<sup>174</sup> For point sources dischargers like the Claimant, the

<sup>169</sup> Gov. Code, § 17556, subd. (c).

<sup>170</sup> See *City of Arcadia v. U.S. Env'tl. Protection Agency* (N.D. Cal. 2003) 265 F.Supp.2d 1142, 1144-45.

<sup>171</sup> See, e.g., *City of Arcadia v. U.S. Environmental Protection Agency* (9th Cir. 2005) 411 F.3d 1103, 1105 (citing *Pronsolino, supra*, 291 F.3d at p. 1129 ("TMDLs are primarily informational tools that allow states to proceed [with additional planning] . . . TMDLs serve as a link in an implementation chain that includes . . . state or local plans for point and nonpoint source pollution reduction")); *Sierra Club v. Meiburg* (11 Cir. 2002) 296 F.3d 1021, 1025 ("Each TMDL serves as the goal for the level of that pollutant in the waterbody to which that TMDL applies. . . . The theory is that individual-discharge permits will be adjusted and other measures taken so that the sum of that pollutant in the waterbody is reduced to the level specified by the TMDL"); *Idaho Conservation League v. Thomas* (9th Cir. 1996) 91 F.3d 1345, 1347 (noting that a TMDL sets a goal for reducing pollutants); *Idaho Sportsmen's Coalition v. Browner* (W.D. Wash. 1996) 951 F.Supp. 962, 966 ("TMDL development in itself does not reduce pollution. . . . TMDLs inform the design and implementation of pollution control measures.").

<sup>172</sup> See, e.g., *City of Arcadia, supra*, 135 Cal.App.4th at 1414-15.

<sup>173</sup> *City of Arcadia, supra*, 265 F.Supp.2d at 1144.

<sup>174</sup> 40 C.F.R. § 122.44(d)(1)(vii)(B).

specific wasteload allocations and implementation tasks set forth in the TMDL do not become enforceable unless and until they are incorporated into the Claimant's NPDES permit. As such, neither the 100 mg/L chloride water quality objective nor the TMDL, by themselves, impose any mandatory requirements on the Claimant to incur costs to implement the goals.

Thus, as a threshold jurisdictional matter, the 2008 Resolution specifically challenged by the Claimant does not, by itself, impose any enforceable requirements. For this reason alone, the Claimant is not entitled to subvention based on the Test Claim.

## **2. The Claimant Proposed the AWRM Program and Requested the Board Incorporate it into the 2008 Resolution**

Next, the Claimant is not entitled to reimbursement because the exemption in Government Code section 17556, subdivision (a) applies.<sup>175</sup> In its Test Claim, the Claimant states that “the Regional Water Board decided to further modify water quality standards, resulting in the currently-imposed AWRM program. These layers of regulation were not mandated by federal law but instead reflect ever-changing State regulatory policy decisions.”<sup>176</sup> The Claimant ignores the fact that the Claimant itself developed and proposed the AWRM program and then requested the Los Angeles Water Board to adopt the AWRM as part of its 2008 Resolution.<sup>177</sup> Both prior to and during the December 2008 Los Angeles Water Board meeting to consider the 2008 Resolution, the Claimant strongly urged the board to adopt the 2008 Resolution.

In addition, the 2008 Resolution reduces the compliance costs the Claimant would otherwise incur. As detailed above, the 2008 Resolution was specifically adopted to incorporate relaxed site-specific objectives into the Basin Plan in order to implement the Claimant's proposed AWRM program. The Claimant correctly states that, “[i]f the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional site-specific objectives to the current [and more stringent] levels of 100 mg/L.”<sup>178</sup> The Los Angeles Water Board acceded to the Claimant's requests and included the AWRM in the Chloride TMDL. Therefore, subvention is not required because the Claimant specifically proposed the AWRM and requested that the board incorporate it into the 2008 Resolution.

## **3. The Claimant Has Authority to Levy Service Charges, Fees, or Assessments Sufficient to Pay**

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<sup>175</sup> Gov. Code, § 17556, subd. (a).

<sup>176</sup> Test Claim, p.21.

<sup>177</sup> See *supra* Section III.C.3. for a discussion of the AWRM program.

<sup>178</sup> Test Claim, p.8.

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Finally, subvention is not required because the Claimant possesses fee authority within the meaning of section 17556, subdivision (d), of the Government Code such that no reimbursement by the state is required. Subvention is only required if expenditure of tax monies is required, and not if the costs can be reallocated or paid for with fees.<sup>179</sup>

The Claimant is authorized to impose and increase fees and charges for wastewater management services under Health and Safety Code section 5471.<sup>180</sup> Thus, the Claimant can and does impose fees on its residents and businesses to fund its sewer program. Accordingly, the Claimant need not spend tax monies to comply with the 2008 Resolution, and the Claimant has failed to show that it must use tax monies to pay for these requirements.

The Claimant contends that its Board of Directors has not been authorized to levy increased fees under the Proposition 218 process. As noted above, the Claimant's Board of Directors has twice considered proposals to increase service charge rates in order to pay for implementation of the AWRM program, the first on May 26, 2009, and the second on July 27, 2010.<sup>181</sup> On both dates, the Claimant's Board of Directors chose not to approve the rate increases. The Claimant contends in its Test Claim that it "attempted to implement the Proposition 218 process, but the elected public officials could not [] support the proposed increase in the face of fierce public opposition."<sup>182</sup> Fees or charges for sewer, water, and refuse collection services are exempt from the Proposition 218 process and thus voter approval for new or increased fees and charges are not required.<sup>183</sup> However, assuming that Proposition 218 *does* apply to Claimant's proposals for rate increases, the Proposition 218 process did not prevent the Board of Directors from increasing rates. Even though the opponents to the rate increases were likely vocal at both the 2009 and 2010 hearings, the number of written protests necessary to preclude the Board of Directors from passing rate increases under Proposition 218 was noticeably lacking. The Claimant needed to receive at least 34,449 written protests from parcel owners prior to each hearing. That did not occur. The Claimant received only 203 written protests before the 2009 hearing and 7,732 written protests before the 2010 hearing. Thus, the Claimant was clearly not prevented from increasing rates under Proposition 218. Rather, the Claimant's Board of Directors simply chose not to increase rates because there was some public opposition. Choosing to not increase rates is very different from being constitutionally prohibited from increasing rates.

In addition, the Claimant contends that "the District's board declined to adopt the proposed rate increases based on the expectations that any substantive rate increase would be overturned by

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<sup>179</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.

<sup>180</sup> Health and Safety Code, § 5471. See Test Claim, p. 16 (where the Claimant admits that compliance project costs may be paid from service charges); see also Santa Clarita Valley Sanitation District of Los Angeles County, *Response to Questions from June 2, 2010 Board Meeting*, June 10, 2010, p. 6, at <<http://www.lacsd.org/civical/filebank/blobdload.asp?BlobID=5591>> (as of July 28, 2011).

<sup>181</sup> See *supra* Section III.C.D. for a discussion on the Claimant's proposed rate increases.

<sup>182</sup> Test Claim, p. 23.

<sup>183</sup> California Constitution, article XIII D, sec 6, subd. (c).

way of referendum due to fierce opposition from the District's ratepayer."<sup>184</sup> This is not a cognizable defense to the "fee increase exception" in Government Code section 17556, subdivision (d). The plain language of this exception is based on the Claimant's authority, not on the Claimant's practical ability in light of surrounding economic circumstances, to levy fees.<sup>185</sup> In *Connell v. Superior Court*, local water districts argued that they lacked "sufficient" fee authority because it was not economically feasible for them to levy fees that were sufficient to pay the mandated costs.<sup>186</sup> The Court of Appeal determined that "the plain language of the statute [Gov. Code, § 17556, subd. (d)] precludes reimbursement where the local agency has authority, i.e., the right or power, to levy fees sufficient to cover the costs of the state-mandated program." The Court further determined that the authority to levy fees sufficient to cover costs does not turn on economic feasibility.<sup>187</sup> Similar to the local water districts in *Connell*, the Claimant cannot contend that it lacks authority based on the undesirability of a possible referendum due to opposition by ratepayers. For the Claimant to truly establish that it lacks the right or power to levy fees, the Claimant would have had to actually adopt the rate increases at the 2009 or 2010 hearing, and then have those rate increases actually be overturned by referendum. The Claimant cannot rely on mere speculation as to what *could* happen as a defense to the fee increase exception.

Accordingly, the Claimant has fee authority to increase sewer rates to sufficiently pay for the AWRM program and Chloride TMDL. The Claimant has simply chosen not to exercise that authority.

## V. CONCLUSION

For all of the reasons set forth above, the Claimant fails to meet its burden of proof and the Test Claim must be dismissed. The Claimant has not established that the Test Claim provisions impose new programs or higher levels of service. The Clean Water Act required the Los Angeles Water Board to adopt water quality objectives for chloride in the Santa Clara River and a Chloride TMDL to ensure attainment of those objectives, and the provisions of the 2008 Resolution are not unique to the Claimant. Importantly, the chloride water quality objective and Chloride TMDL, including the challenged implementation tasks, reflect the federally mandated, federal minimum standard of developing an informational tool to attain and maintain water quality standards. Furthermore, the Claimant enthusiastically supported the inclusion of AWRM, a provision it now challenges, and the Claimant has authority to increase rates and fees to pay for costs associated with the requirements. Finally, to the extent that any portion of the claims would otherwise qualify for subvention, the associated costs are *de minimis* and therefore do not warrant subvention.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and complete to the best of my personal knowledge or information or

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<sup>184</sup> Test Claim, p. 23.

<sup>185</sup> *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401-402.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Id.* at 402.

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and complete to the best of my personal knowledge or information or belief. I further declare that all documents attached are true and correct copies of such documents as they exist in the Los Angeles Water Board's files, or were obtained from publicly available sources.

Sincerely,



Jennifer Fordyce  
Staff Counsel



Sarah Olinger  
Staff Counsel

Attachments

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# Federal Statutes



# **ATTACHMENT 1**



United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter I. Research and Related Programs (Refs & Annos)

33 U.S.C.A. § 1251

§ 1251. Congressional declaration of goals and policy

Currentness

**(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective**

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter--

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
- (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
- (5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;
- (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and
- (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

**(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States**

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

**(c) Congressional policy toward Presidential activities with foreign countries**

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in

international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

**(d) Administrator of Environmental Protection Agency to administer chapter**

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

**(e) Public participation in development, revision, and enforcement of any regulation, etc.**

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

**(f) Procedures utilized for implementing chapter**

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

**(g) Authority of States over water**

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

**Credits**

(June 30, 1948, c. 758, Title I, § 101, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 816, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575; Feb. 4, 1987, Pub.L. 100-4, Title III, § 316(b), 101 Stat. 60.)

**Editors' Notes**

**EXECUTIVE ORDERS**

**EXECUTIVE ORDER NO. 11548**

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, set out as a note under section 1321 of this title.

**EXECUTIVE ORDER NO. 11742**

<Oct. 23, 1973, 38 F.R. 29457>

**Delegation of Functions to Secretary of State Respecting Negotiation  
of International Agreements Relating to Enhancement of Environment**

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

Notes of Decisions (102)

Current through P.L. 112-23 approved 6-29-11

End of Document

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# **ATTACHMENT 2**



United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter III. Standards and Enforcement (Refs & Annos)

33 U.S.C.A. § 1311

§ 1311. Effluent limitations

Currentness

**(a) Illegality of pollutant discharges except in compliance with law**

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

**(b) Timetable for achievement of objectives**

In order to carry out the objective of this chapter there shall be achieved--

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub.L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987; compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

**(c) Modification of timetable**

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

**(d) Review and revision of effluent limitations**

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

**(e) All point discharge source application of effluent limitations**

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

**(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste**

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

**(g) Modifications for certain nonconventional pollutants**

**(1) General authority**

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

**(2) Requirements for granting modifications**

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that--

- (A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;
- (B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and
- (C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

**(3) Limitation on authority to apply for subsection (c) modification**

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

**(4) Procedures for listing additional pollutants**

**(A) General authority**

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

**(B) Requirements for listing**

**(i) Sufficient information**

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

**(ii) Toxic criteria determination**

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

**(iii) Listing as toxic pollutant**

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

**(iv) Nonconventional criteria determination**

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required

by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

**(C) Requirements for filing of petitions**

A petition for listing of a pollutant under this paragraph--

- (i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;
- (ii) may be filed before promulgation of such guideline; and
- (iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

**(D) Deadline for approval of petition**

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

**(E) Burden of proof**

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

**(5) Removal of pollutants**

The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

**(h) Modification of secondary treatment requirements**

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that--

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;
- (2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

**(i) Municipal time extensions**

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and--

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

**(j) Modification procedures**

(1) Any application filed under this section for a modification of the provisions of--

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than <sup>1</sup> the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable

risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

**(3) Compliance requirements under subsection (g)**

**(A) Effect of filing**

An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.

**(B) Effect of disapproval**

Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

**(4) Deadline for subsection (g) decision**

An application for a modification with respect to a pollutant filed under subsection (g) of this section must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

**(5) Extension of application deadline**

**(A) In general**

In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

**(B) Application**

An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will--

- (i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and
- (ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

**(C) Additional conditions**

The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

**(D) Preliminary decision deadline**

The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

**(k) Innovative technology**

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

**(l) Toxic pollutants**

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

**(m) Modification of effluent limitation requirements for point sources**

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that--

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractual<sup>2</sup> obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(1) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

**(n) Fundamentally different factors**

**(1) General rule**

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that--

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application--

(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

**(2) Time limit for applications**

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

**(3) Time limit for decision**

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

**(4) Submission of information**

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

**(5) Treatment of pending applications**

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

**(6) Effect of submission of application**

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

**(7) Effect of denial**

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

**(8) Reports**

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

**(o) Application fees**

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

**(p) Modified permit for coal remining operations**

**(1) In general**

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

**(2) Limitations**

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for

improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

**(3) Definitions**

For purposes of this subsection--

**(A) Coal remining operation**

The term "coal remining operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

**(B) Remined area**

The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

**(C) Pre-existing discharge**

The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

**(4) Applicability of strip mining laws**

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C.A. § 1201 et seq.] to any coal remining operation, including the application of such Act to suspended solids.

**Credits**

(June 30, 1948, c. 758, Title III, § 301, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 844, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582-1586, 1590; Dec. 29, 1981, Pub.L. 97-117, §§ 21, 22(a)-(d), 95 Stat. 1631, 1632; Jan. 8, 1983, Pub.L. 97-440, 96 Stat. 2289; Feb. 4, 1987, Pub.L. 100-4, Title III, §§ 301(a) to (e), 302(a) to (d), 303(a), (b)(1), (c) to (f), 304(a), 305, 306(a), (b), 307, 101 Stat. 29-37; Nov. 18, 1988, Pub.L. 100-688, Title III, § 3202(b), 102 Stat. 4154; Oct. 31, 1994, Pub.L. 103-431, § 2, 108 Stat. 4396; Dec. 21, 1995, Pub.L. 104-66, Title II, § 2021(b), 109 Stat. 727.)

Notes of Decisions (256)

Current through P.L. 112-23 approved 6-29-11

**Footnotes**

- 1 So in original. Probably should be "than".
- 2 So in original. Probably should be "contractual".

End of Document

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[Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.]

# **ATTACHMENT 3**



United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter III. Standards and Enforcement (Refs & Annos)

33 U.S.C.A. § 1313

§ 1313. Water quality standards and implementation plans

Effective: October 10, 2000

Currentness

**(a) Existing water quality standards**

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

**(b) Proposed regulations**

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if--

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

**(c) Review; revised standards; publication**

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

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

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved--

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

**(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision**

**(1)(A)** Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

**(B)** Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

**(C)** Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

**(D)** Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

**(2)** Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

**(3)** For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

**(4) Limitations on revision of certain effluent limitations**

**(A) Standard not attained**

For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load

or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

**(B) Standard attained**

For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

**(e) Continuing planning process**

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

**(f) Earlier compliance**

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

**(g) Heat standards**

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

**(h) Thermal water quality standards**

For the purposes of this chapter the term “water quality standards” includes thermal water quality standards.

**(i) Coastal recreation water quality criteria**

**(1) Adoption by States**

**(A) Initial criteria and standards**

Not later than 42 months after October 10, 2000, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 1314(a) of this title.

**(B) New or revised criteria and standards**

Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 1314(a)(9) of this title, each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

**(2) Failure of States to adopt**

**(A) In general**

If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

**(B) Exception**

If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B) of this section, the Administrator shall publish any revised or new standard under this subsection not later than 42 months after October 10, 2000.

**(3) Applicability**

Except as expressly provided by this subsection, the requirements and procedures of subsection (c) of this section apply to this subsection, including the requirement in subsection (c)(2)(A) of this section that the criteria protect public health and welfare.

**Credits**

(June 30, 1948, c. 758, Title III, § 303, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 846, and amended Feb. 4, 1987, Pub.L. 100-4, Title III, § 308(d), Title IV, § 404(b), 101 Stat. 39, 68; Oct. 10, 2000, Pub.L. 106-284, § 2, 114 Stat. 870.)

Notes of Decisions (108)

Current through P.L. 112-23 approved 6-29-11

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# **ATTACHMENT 4**



United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter IV. Permits and Licenses (Refs & Annos)

33 U.S.C.A. § 1342

§ 1342. National pollutant discharge elimination system

Effective: July 29, 2008

Currentness

**(a) Permits for discharge of pollutants**

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

**(b) State permit programs**

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State

law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice

shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

**(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator**

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

**(4) Limitations on partial permit program returns and withdrawals.**

A State may return to the Administrator administration,<sup>1</sup> and the Administrator may withdraw under paragraph (3) of this subsection approval, of--

(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

**(d) Notification of Administrator**

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State

does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

**(e) Waiver of notification requirement**

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

**(f) Point source categories**

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

**(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants**

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

**(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works**

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

**(i) Federal enforcement not limited**

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

**(j) Public information**

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

**(k) Compliance with permits**

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

**(l) Limitation on permit requirement**

**(1) Agricultural return flows**

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

**(2) Stormwater runoff from oil, gas, and mining operations**

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

**(m) Additional pretreatment of conventional pollutants not required**

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title; relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

**(n) Partial permit program**

**(1) State submission**

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

**(2) Minimum coverage**

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

**(3) Approval of major category partial permit programs**

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

**(4) Approval of major component partial permit programs**

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if--

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years

after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

**(o) Anti-backsliding**

**(1) General prohibition**

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

**(2) Exceptions**

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

**(3) Limitations**

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

**(p) Municipal and industrial stormwater discharges**

**(1) General rule**

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

**(2) Exceptions**

Paragraph (1) shall not apply with respect to the following stormwater discharges:

- (A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
- (B) A discharge associated with industrial activity.
- (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
- (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
- (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

**(3) Permit requirements**

**(A) Industrial discharges**

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

**(B) Municipal discharge**

Permits for discharges from municipal storm sewers--

- (i) may be issued on a system- or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

**(4) Permit application requirements**

**(A) Industrial and large municipal discharges**

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

**(B) Other municipal discharges**

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the

Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

**(5) Studies**

The Administrator, in consultation with the States, shall conduct a study for the purposes of--

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

**(6) Regulations**

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

**(q) Combined sewer overflows**

**(1) Requirement for permits, orders, and decrees**

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the "CSO control policy").

**(2) Water quality and designated use review guidance**

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

**(3) Report**

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

**(r) Discharges incidental to the normal operation of recreational vessels**

No permit shall be required under this chapter by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

**Credits**

(June 30, 1948, c. 758, Title IV, § 402, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 880, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, 91 Stat. 1577, 1588, 1591, 1599, 1600; Feb. 4, 1987, Pub.L. 100-4, Title IV, §§ 401 to 404(a), (c), formerly (d), 405, 101 Stat. 65 to 67, 69; Oct. 31, 1992, Pub.L. 102-580, Title III, § 364, 106 Stat. 4862;

§ 1342. National pollutant discharge elimination system, 33 USCA § 1342

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Dec. 21, 1995, Pub.L. 104-66, Title II, § 2021(e)(2), 109 Stat. 727; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(4) [Div. B, Title I, § 112(a)], 114 Stat. 2763, 2763A-224; July 29, 2008, Pub.L. 110-288, § 2, 122 Stat. 2650.)

Notes of Decisions (196)

Current through P.L. 112-23 approved 6-29-11

Footnotes

1 So in original.

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# **ATTACHMENT 5**



United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter V. General Provisions

33 U.S.C.A. § 1362

§ 1362. Definitions

Effective: July 29, 2008

Currentness

Except as otherwise specifically provided, when used in this chapter:

- (1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.
- (2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.
- (3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
- (4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.
- (5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
- (6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.
- (7) The term "navigable waters" means the waters of the United States, including the territorial seas.
- (8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.
- (9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term “ocean” means any portion of the high seas beyond the contiguous zone.

(11) The term “effluent limitation” means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term “discharge of a pollutant” and the term “discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term “toxic pollutant” means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(15) The term “biological monitoring” shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term “discharge” when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term “schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term “industrial user” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of “Division D--Manufacturing” and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term “pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(20) The term “medical waste” means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

**(21) Coastal recreation waters**

**(A) In general**

The term “coastal recreation waters” means--

(i) the Great Lakes; and

(ii) marine coastal waters (including coastal estuaries) that are designated under section 1313(c) of this title by a State for use for swimming, bathing, surfing, or similar water contact activities.

**(B) Exclusions**

The term "coastal recreation waters" does not include--

- (i) inland waters; or
- (ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

**(22) Floatable material**

**(A) In general**

The term "floatable material" means any foreign matter that may float or remain suspended in the water column.

**(B) Inclusions**

The term "floatable material" includes--

- (i) plastic;
- (ii) aluminum cans;
- (iii) wood products;
- (iv) bottles; and
- (v) paper products.

**(23) Pathogen indicator**

The term "pathogen indicator" means a substance that indicates the potential for human infectious disease.

**(24) Oil and gas exploration and production**

The term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

**(25) Recreational vessel**

**(A) In general**

The term "recreational vessel" means any vessel that is--

- (i) manufactured or used primarily for pleasure; or
- (ii) leased, rented, or chartered to a person for the pleasure of that person.

**(B) Exclusion**

The term "recreational vessel" does not include a vessel that is subject to Coast Guard inspection and that--

- (i) is engaged in commercial use; or
- (ii) carries paying passengers.

**Credits**

(June 30, 1948, c. 758, Title V, § 502, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 886, and amended Dec. 27, 1977, Pub.L. 95-217, § 33(b), 91 Stat. 1577; Feb. 4, 1987, Pub.L. 100-4, Title V, §§ 502(a), 503, 101 Stat. 75; Nov. 18, 1988, Pub.L. 100-688, Title III, § 3202(a), 102 Stat. 4154; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title III, § 325(c)(3), 110 Stat. 259; Oct. 10, 2000, Pub.L. 106-284, § 5, 114 Stat. 875; Aug. 8, 2005, Pub.L. 109-58, Title III, § 323, 119 Stat. 694; July 29, 2008, Pub.L. 110-288, § 3, 122 Stat. 2650.)

Notes of Decisions (190)

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# Federal Regulations



# **ATTACHMENT 6**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 122. EPA Administered Permit Programs: the National Pollutant Discharge Elimination System (Refs & Annos)  
Subpart C. Permit Conditions

40 C.F.R. § 122.44

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

Effective: April 11, 2007

Currentness

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

(a)(1) Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

(b)(1) Other effluent limitations and standards under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(2) Standards for sewage sludge use or disposal under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(3) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.

(c) Reopener clause: For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

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

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

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures

in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

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

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

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

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

- (5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;
  - (6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;
  - (7) Incorporate section 403(c) criteria under Part 125, Subpart M, for ocean discharges;
  - (8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125, Subpart D;
  - (9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 et seq. and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).
- (e) Technology-based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(b)(1)(i).
- (1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c) of this chapter; or
  - (2) The requirement that the limitations control the pollutants meeting the criteria of paragraphs (e)(1) of this section will be satisfied by:
    - (i) Limitations on those pollutants; or
    - (ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).
- (f) Notification level. A "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii), or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).
- (g) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- (h) Durations for permits, as set forth in § 122.46.
- (i) Monitoring requirements. In addition to § 122.48, the following monitoring requirements:
- (1) To assure compliance with permit limitations, requirements to monitor:
    - (i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
    - (ii) The volume of effluent discharged from each outfall;
    - (iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under

§ 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants or another method is required under 40 CFR subchapters N or O. In the case of pollutants for which there are no approved methods under 40 CFR Part 136 or otherwise required under 40 CFR subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants.

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(l) (1), (4), (5), and (6) at least annually.

(j) Pretreatment program for POTWs. Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.

(2)(i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(ii) Provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance.

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

(k) Best management practices (BMPs) to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Note to paragraph (k)(4): Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260-7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276-0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at <http://www.epa.gov/owm>. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

(l) Reissued permits.

(1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions--A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (1)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

(m) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermitee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) Grants. Any conditions imposed in grants made by the Administrator to POWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) Sewage sludge. Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.59 of this chapter.

(r) Great Lakes. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(s) Qualifying State, Tribal, or local programs.

(1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

#### Credits

[49 FR 31842, Aug. 8, 1984; 49 FR 38049, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985; 54 FR 256, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 54 FR 23895, 23896, June 2, 1989; 57 FR 11413, April 2, 1992; 57 FR 33049, July 24, 1992; 58 FR 18016, April 7, 1993; 60 FR 15386, March 23, 1995; 64 FR 42469, Aug. 4, 1999; 64 FR 43426, Aug. 10, 1999; 64 FR 68847, Dec. 8, 1999; 65 FR 30908, May 15, 2000; 65 FR 43661, July 13, 2000; 66 FR 53048, Oct. 18, 2001; 66 FR 65337, Dec. 18, 2001; 68 FR 13608, March 19, 2003; 69 FR 41682, July 9, 2004; 70 FR 60191, Oct. 14, 2005; 71 FR 35040, June 16, 2006; 72 FR 11212, March 12, 2007]

SOURCE: 45 FR 33418, May 19, 1980, as amended at 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

AUTHORITY: The Clean Water Act, 33 U.S.C. 1251 et seq.

Notes of Decisions (139)

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# **ATTACHMENT 7**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 130. Water Quality Planning and Management (Refs & Annos)

40 C.F.R. § 130.2

§ 130.2 Definitions.

Currentness

- (a) The Act. The Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
- (b) Indian Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.
- (c) Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (d) Water quality standards (WQS). Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.
- (e) Load or Loading. An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).
- (f) Loading capacity. The greatest amount of loading that a water can receive without violating water quality standards.
- (g) Load allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.
- (h) Wasteload allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.
- (i) Total maximum daily load (TMDL). The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.
- (j) Water quality limited segment. Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.
- (k) Water quality management (WQM) plan. A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(l) **Areawide agency.** An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(m) **Best Management Practice (BMP).** Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

(n) **Designated management agency (DMA).** An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

**Credits**

[54 FR 14359, April 11, 1989; 65 FR 43662, July 13, 2000; 68 FR 13608, March 19, 2003]

SOURCE: 50 FR 1779, Jan. 11, 1985; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (1)

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# **ATTACHMENT 8**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 130. Water Quality Planning and Management (Refs & Annos)

40 C.F.R. § 130.3

§ 130.3 Water quality standards.

Currentness

A water quality standard (WQS) defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States and EPA adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (CWA). "Serve the purposes of Act" (as defined in sections 101(a)(2) and 303(c) of the Act) means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in and on the water, and agricultural, industrial and other purposes including navigation.

Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of water quality-based treatment controls and strategies beyond the technology-based level of treatment required by sections 301(b) and 306 of the Act. States shall review and revise WQS in accordance with applicable regulations and, as appropriate, update their Water Quality Management (WQM) plans to reflect such revisions. Specific WQS requirements are found in 40 CFR Part 131.

**Credits**

[65 FR 43662, July 13, 2000; 68 FR 13608, March 19, 2003]

SOURCE: 50 FR 1779, Jan. 11, 1985; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

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# **ATTACHMENT 9**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 130. Water Quality Planning and Management (Refs & Annos)

40 C.F.R. § 130.7

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

Currentness

(a) General. The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAs/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAs/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality-limited segments still requiring TMDLs.

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which:

(i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.

(2) Each State shall also identify on the same list developed under paragraph (b)(1) of this section those water quality-limited segments still requiring TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(3) For the purposes of listing waters under § 130.7(b), the term "water quality standard applicable to such waters" and "applicable water quality standards" refer to those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

(4) The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards. The priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years.

(5) Each State shall assemble and evaluate all existing and readily available water quality-related data and information to develop the list required by §§ 130.7(b)(1) and 130.7(b)(2). At a minimum "all existing and readily available water quality-related data and information" includes but is not limited to all of the existing and readily available data and information about the following categories of waters:

- (i) Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened";
- (ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards;
- (iii) Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data; and
- (iv) Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under section 319 of the CWA or in any updates of the assessment.
- (6) Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not to list its waters as required by §§ 130.7(b)(1) and 130.7(b)(2). This documentation shall be submitted to the Regional Administrator together with the list required by §§ 130.7(b)(1) and 130.7(b)(2) and shall include at a minimum:
- (i) A description of the methodology used to develop the list; and
- (ii) A description of the data and information used to identify waters, including a description of the data and information used by the State as required by § 130.7(b)(5); and
- (iii) A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in § 130.7(b)(5); and
- (iv) Any other reasonable information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges.
- (c) Development of TMDLs and individual water quality based effluent limitations.
- (1) Each State shall establish TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.
- (i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.
- (ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish TMDLs shall be subject to public review as defined in the State CPP.
- (2) Each State shall estimate for the water quality limited segments still requiring TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified

waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) Submission and EPA approval.

(1) Each State shall submit biennially to the Regional Administrator beginning in 1992 the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years as required under paragraph (b) of this section. For the 1992 biennial submission, these lists are due no later than October 22, 1992. Thereafter, each State shall submit to EPA lists required under paragraph (b) of this section on April 1 of every even-numbered year. For the year 2000 submission, a State must submit a list required under paragraph (b) of this section only if a court order or consent decree, or commitment in a settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. For the year 2002 submission, a State must submit a list required under paragraph (b) of this section by October 1, 2002, unless a court order, consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to that State's 2002 list prior to October 1, 2002, in which case, the State must submit a list by April 1, 2002. The list of waters may be submitted as part of the State's biennial water quality report required by § 130.8 of this part and section 305(b) of the CWA or submitted under separate cover. All TMDLs established under paragraph (c) for water quality limited segments shall continue to be submitted to EPA for review and approval. Schedules for submission of TMDLs shall be determined by the Regional Administrator and the State.

(2) The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. The Regional Administrator shall approve a list developed under § 130.7(b) that is submitted after the effective date of this rule only if it meets the requirements of § 130.7(b). If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the listing and loads to the State, which shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resources allow, each State shall identify all segments within its boundaries which it has not identified under paragraph (b) of this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife. However, there is no requirement for such loads to be submitted to EPA for approval, and establishing TMDLs for those waters identified in paragraph (b) of this section shall be given higher priority.

**Credits**

[57 FR 33049, July 24, 1992; 65 FR 17170, March 31, 2000; 65 FR 43663, July 13, 2000; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003]

SOURCE: 50 FR 1779, Jan. 11, 1985; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (5)

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[The following text is extremely faint and largely illegible. It appears to be a multi-paragraph document, possibly a report or a letter, discussing various topics related to state mandates. The text is too light to transcribe accurately.]

# **ATTACHMENT 10**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart A. General Provisions

40 C.F.R. § 131.2

§ 131.2 Purpose.

Currentness

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in Sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (3)

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*[Faint, illegible text, likely bleed-through from the reverse side of the page]*

# **ATTACHMENT 11**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart A. General Provisions

40 C.F.R. § 131.3

§ 131.3 Definitions.

Currentness

- (a) The Act means the Clean Water Act (Public Law 92-500, as amended, (33 U.S.C. 1251 et seq.)).
- (b) Criteria are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.
- (c) Section 304(a) criteria are developed by EPA under authority of Section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. This information is issued periodically to the States as guidance for use in developing criteria.
- (d) Toxic pollutants are those pollutants listed by the Administrator under Section 307(a) of the Act.
- (e) Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.
- (f) Designated uses are those uses specified in water quality standards for each water body or segment whether or not they are being attained.
- (g) Use Attainability Analysis is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).
- (h) Water quality limited segment means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Act.
- (i) Water quality standards are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.
- (j) States include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Indian Tribes that EPA determines to be eligible for purposes of a water quality standards program.
- (k) Federal Indian Reservation, Indian Reservation, or Reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.”

(l) Indian Tribe or Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

**Credits**

[56 FR 64893, Dec. 12, 1991; 59 FR 64344, Dec. 14, 1994]

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (27)

Current through July 21, 2011; 76 FR 43797

End of Document

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# **ATTACHMENT 12**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart A. General Provisions

40 C.F.R. § 131.4

§ 131.4 State authority.

Currentness

(a) States (as defined in § 131.3) are responsible for reviewing, establishing, and revising water quality standards. As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by this regulation. Consistent with section 101(g) and 518(a) of the Clean Water Act, water quality standards shall not be construed to supersede or abrogate rights to quantities of water.

(b) States (as defined in § 131.3) may issue certifications pursuant to the requirements of Clean Water Act section 401. Revisions adopted by States shall be applicable for use in issuing State certifications consistent with the provisions of § 131.21(c).

(c) Where EPA determines that a Tribe is eligible to the same extent as a State for purposes of water quality standards, the Tribe likewise is eligible to the same extent as a State for purposes of certifications conducted under Clean Water Act section 401.

**Credits**

[56 FR 64893, Dec. 12, 1991; 59 FR 64344, Dec. 14, 1994]

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (32)

Current through July 21, 2011; 76 FR 43797

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# **ATTACHMENT 13**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart A. General Provisions

40 C.F.R. § 131.6

§ 131.6 Minimum requirements for water quality standards submission.

Currentness

The following elements must be included in each State's water quality standards submitted to EPA for review:

- (a) Use designations consistent with the provisions of Sections 101(a)(2) and 303(c)(2) of the Act.
- (b) Methods used and analyses conducted to support water quality standards revisions.
- (c) Water quality criteria sufficient to protect the designated uses.
- (d) An antidegradation policy consistent with § 131.12.
- (e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.
- (f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in Section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (37)

Current through July 21, 2011; 76 FR 43797

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# **ATTACHMENT 14**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart B. Establishment of Water Quality Standards

40 C.F.R. § 131.10

§ 131.10 Designation of uses.

Currentness

- (a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.
- (b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.
- (c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.
- (d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under Sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.
- (e) Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.
- (f) States may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.
- (g) States may remove a designated use which is not an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:
- (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
  - (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
  - (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
  - (4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in Section 131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in Section 101(a)(2) of the Act or to adopt subcategories of uses specified in Section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this Regulation whenever designating uses which include those specified in Section 101(a)(2) of the Act.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (38)

Current through July 21, 2011; 76 FR 43797

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# **ATTACHMENT 15**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart B. Establishment of Water Quality Standards

40 C.F.R. § 131.11

§ 131.11 Criteria.

Currentness

(a) Inclusion of pollutants:

(1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

(2) Toxic Pollutants--States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR Part 35).

(b) Form of criteria: In establishing criteria, States should:

(1) Establish numerical values based on:

(i) 304(a) Guidance; or

(ii) 304(a) Guidance modified to reflect site-specific conditions; or

(iii) Other scientifically defensible methods;

(2) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (50)

Current through July 21, 2011; 76 FR 43797

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# **ATTACHMENT 16**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart B. Establishment of Water Quality Standards

40 C.F.R. § 131.12

§ 131.12 Antidegradation policy.

Currentness

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (80)

Current through July 21, 2011; 76 FR 43797

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# **ATTACHMENT 17**



Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter D. Water Programs  
Part 131. Water Quality Standards (Refs & Annos)  
Subpart C. Procedures for Review and Revision of Water Quality Standards

40 C.F.R. § 131.20

§ 131.20 State review and revision of water quality standards.

Currentness

(a) State Review: The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in Section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in Section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) Public Participation: The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6) ) and public participation regulation (40 CFR Part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) Submittal to EPA: The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (5)

Current through July 21, 2011; 76 FR 43797

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The Commission on State Mandates was established by the Legislature in 1982 to study and report on the impact of state mandates on local government finances. The Commission's report, "State Mandates: A Report to the Legislature," was published in 1983. The Commission has since conducted numerous studies and reports on various state mandates, including those related to education, health care, and social services. The Commission's findings have been used by the Legislature to make policy decisions and to allocate resources to address the impact of state mandates on local government finances.

# California Constitution



# **ATTACHMENT 18**

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

West's Annotated California Codes

Constitution of the State of California 1879 (Refs & Annos)

Article XIIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann. Cal. Const. Art. 13D, § 6

§ 6. New or existing increased fees and charges; procedures and requirements; voter approval

Currentness

Sec. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

**Credits**

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

**Notes of Decisions (21)**

Current with urgency legislation through Ch. 69 of 2011 Reg.Sess. and Ch. 7 of 2011-2012 1st Ex.Sess.

**End of Document**

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# California Statutes



# **ATTACHMENT 19**



West's Annotated California Codes

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 3. Executive Department (Refs & Annos)

Part 1. State Departments and Agencies (Refs & Annos)

Chapter 3.5. Administrative Regulations and Rulemaking (Refs & Annos)

Article 9. Special Procedures (Refs & Annos)

West's Ann.Cal.Gov.Code § 11353

§ 11353. State water quality control policies, plans, and guidelines; adoption  
or revision; application of chapter; review; procedures; requirements

Effective: January 1, 2001

Currentness

(a) Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(b)(1) Any policy, plan, or guideline, or any revision thereof, that the State Water Resources Control Board has adopted or that a court determines is subject to this part, after June 1, 1992, shall be submitted to the office.

(2) The State Water Resources Control Board shall include in its submittal to the office all of the following:

(A) A clear and concise summary of any regulatory provisions adopted or approved as part of that action, for publication in the California Code of Regulations.

(B) The administrative record for the proceeding. Proposed additions to a policy, plan, or guideline shall be indicated by underlined text and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(C) A summary of the necessity for the regulatory provision.

(D) A certification by the chief legal officer of the State Water Resources Control Board that the action was taken in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code.

(3) Paragraph (2) does not limit the authority of the office to review any regulatory provision which is part of the policy, plan, or guideline submitted by the State Water Resources Control Board.

(4) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the State Water Resources Control Board or the appropriate regional water quality control board to determine compliance with the public participation requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall restrict its review to the regulatory provisions and the administrative record of

the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(5) The policy, plan, guideline, or revision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the State Water Resources Control Board.

(7) Any proceedings before the State Water Resources Control Board or a California regional water quality control board to take any action subject to this subdivision shall be conducted in accordance with the procedural requirements of Division 7 (commencing with Section 13000) of the Water Code, together with any applicable requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements of this chapter, other than the requirement for review by the office in accordance with this subdivision, shall not apply.

(8) This subdivision shall not provide a basis for review by the office under this subdivision or Article 6 (commencing with Section 11349) of any such policy, plan, or guideline adopted or revised prior to June 1, 1992.

(c) Subdivision (a) does not apply to a provision of any policy, plan, guideline, or revision, as applied to any person who, as of June 1, 1992, was a party to a civil action challenging that provision on the grounds that it has not been adopted as a regulation pursuant to this chapter.

(d) Copies of the policies, plans, and guidelines to which subdivision (a) applies shall be maintained at central locations for inspection by the public. The State Water Resources Control Board shall maintain, at its headquarters in Sacramento, a current copy of each policy, plan, or guideline in effect. Each regional water quality control board shall maintain at its headquarters a current copy of each policy, plan, or guideline in effect in its respective region. Any revision of a policy, plan, or guideline shall be made available for inspection by the public within 30 days of its effective date.

#### Credits

(Added by Stats.1992, c. 1112 (A.B.3359), § 2. Amended by Stats.2000, c. 1060 (A.B.1822), § 37.)

#### Editors' Notes

### LAW REVISION COMMISSION COMMENTS

#### 2000 Amendment

Subdivision (b)(2)(B) of Section 11353 is amended to require that amendments and deletions be clearly indicated in material submitted to the Office of Administrative Law for review. For a similar provision, see Section 11354.1(d)(2)(B) (underscore and strike-through required to indicate changes in plans of San Francisco Bay Conservation and Development Commission). [29 Cal.L.Rev.Comm.Reports 459 (2000)].

Current with urgency legislation through Ch. 69 of 2011 Reg.Sess. and Ch. 7 of 2011-2012 1st Ex.Sess.

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# **ATTACHMENT 20**



West's Annotated California Codes

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 4. Fiscal Affairs (Refs & Annos)

Part 7. State-Mandated Local Costs (Refs & Annos)

Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)

Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

Currentness

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

- (a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.
- (b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.
- (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
- (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.
- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the

costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

**Credits**

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

**Editors' Notes**

**VALIDITY**

*A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.*

Notes of Decisions (8)

Current with urgency legislation through Ch. 69 of 2011 Reg.Sess. and Ch. 7 of 2011-2012 1st Ex.Sess.

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# **ATTACHMENT 21**



West's Annotated California Codes

Health and Safety Code (Refs & Annos)

Division 5. Sanitation

Part 3. Community Facilities (Refs & Annos)

Chapter 6. General Provisions with Respect to Sewers (Refs & Annos)

Article 4. Sanitation and Sewerage Systems (Refs & Annos)

West's Ann.Cal.Health & Safety Code § 5471

§ 5471. Power to prescribe and collect fees, tolls, rates, rentals or other charges;  
use of revenues; continuance of charges; new, increased, or extended assessments

Effective: January 1, 2008

Currentness

(a) In addition to the powers granted in the principal act, any entity shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.

(b) In addition to the powers granted in the principal act, any entity shall have power, pursuant to the notice, protest, and hearing procedures in Section 53753 of the Government Code, to prescribe, revise, and collect water, sewer, or water and sewer standby or immediate availability charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.

(c) The entity may provide that the charge for the service shall be collected with the rates, tolls, and charges for any other utility, and that any or all of these charges may be billed upon the same bill. Where the charge is to be collected with the charges for any other utility service furnished by a department or agency of the entity and over which its legislative body does not exercise control, the consent of the department or agency shall be obtained prior to collecting water, sanitation, storm drainage, or sewerage charges with the charges for any other utility. Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities, to repay principal and interest on bonds issued for the construction or reconstruction of these water systems and sanitary, storm drainage, or sewerage facilities and to repay federal or state loans or advances made to the entity for the construction or reconstruction of water systems and sanitary, storm drainage, or sewerage facilities. However, the revenue shall not be used for the acquisition or construction of new local street sewers or laterals as distinguished from main trunk, interceptor and outfall sewers.

(d) If the procedures set forth in this section as it read at the time a standby charge was established were followed, the entity may, by ordinance adopted by a two-thirds vote of the members of the legislative body thereof, continue the charge pursuant to this section in successive years at the same rate. If new, increased, or extended assessments are proposed, the entity shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

#### Credits

(Formerly § 5470 added by Stats.1945, c. 979, p. 1877, § 5. Amended by Stats.1949, c. 319, p. 608, § 1; Stats.1951, c. 719, p. 1984, § 1. Renumbered § 5471 and amended by Stats.1953, c. 862, p. 2206, § 1, eff. May 23, 1953. Amended by Stats.1973, c. 545, p. 1048, § 4; Stats.1988, c. 706, § 1; Stats.1991, c. 1110 (S.B.682), § 35; Stats.2007, c. 27 (S.B.444), § 11.)

Notes of Decisions (29)

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# **ATTACHMENT 22**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 1. Policy (Refs & Annos)

West's Ann.Cal.Water Code § 13000

§ 13000. Conservation, control, and utilization of water  
resources; quality; statewide program; regional administration

Currentness

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.

**Credits**

(Added by Stats.1969, c. 482, p. 1051, § 18, operative Jan. 1, 1970.)

Notes of Decisions (25)

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# **ATTACHMENT 23**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 2. Definitions (Refs & Annos)

West's Ann. Cal. Water Code § 13050

§ 13050. Definitions

Currentness

As used in this division:

- (a) "State board" means the State Water Resources Control Board.
- (b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.
- (c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.
- (d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.
- (e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.
- (f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.
- (g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.
- (h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.
- (i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.
- (j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:
  - (1) Beneficial uses to be protected.
  - (2) Water quality objectives.
  - (3) A program of implementation needed for achieving water quality objectives.
- (k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(1)(1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p)(1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q)(1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

**Credits**

(Added by Stats.1969, c. 482, p. 1052, § 18, operative Jan. 1, 1970. Amended by Stats.1969, c. 800, p. 1617, § 2.5, operative Jan. 1, 1970; Stats.1970, c. 202, § 1; Stats.1980, c. 877, p. 2751, § 1; Stats.1989, c. 642, § 2; Stats.1991, c. 187 (A.B.673), § 1; Stats.1992, c. 211 (A.B.3012), § 1; Stats.1995, c. 28 (A.B.1247), § 17; Stats.1995, c. 847 (S.B.206), § 2; Stats.1996, c. 1023 (S.B.1497), § 429, eff. Sept. 29, 1996.)

Notes of Decisions (37)

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# **ATTACHMENT 24**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

~~Chapter 3. State Water Quality Control (Refs & Annos)~~

Article 1. State Water Resources Control Board (Refs & Annos)

West's Ann. Cal. Water Code § 13100

§ 13100. Creation of state and regional boards; duties of state board

Currentness

There is in the California Environmental Protection Agency the State Water Resources Control Board and the California regional water quality control boards. The organization, membership, and some of the duties of the state board are provided for in Article 3 (commencing with Section 174) of Chapter 2 of Division 1 of this code.

**Credits**

(Added by Stats. 1969, c. 482, p. 1053, § 18, operative Jan. 1, 1970. Amended by Stats. 1976, c. 596, p. 1440, § 2; Gov. Reorg. Plan No. 1 of 1991, § 193, eff. July 17, 1991.)

Notes of Decisions (1)

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# **ATTACHMENT 25**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 1. Organization and Membership of Regional Boards (Refs & Annos)

West's Ann. Cal. Water Code § 13200

§ 13200. Regions

Currentness

The state is divided, for the purpose of this division, into nine regions:

- (a) North Coast region, which comprises all basins including Lower Klamath Lake and Lost River Basins draining into the Pacific Ocean from the California-Oregon state line southerly to the southerly boundary of the watershed of Estero de San Antonio and Stemple Creek in Marin and Sonoma Counties.
- (b) San Francisco Bay region, which comprises San Francisco Bay, Suisun Bay, from Sacramento River and San Joaquin River westerly from a line which passes between Collinsville and Montezuma Island and follows thence the boundary common to Sacramento and Solano Counties and that common to Sacramento and Contra Costa Counties to the westerly boundary of the watershed of Markley Canyon in Contra Costa County, all basins draining into the bays and rivers westerly from this line, and all basins draining into the Pacific Ocean between the southerly boundary of the north coastal region and the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties.
- (c) Central Coast region, which comprises all basins, including Carrizo Plain in San Luis Obispo and Kern Counties, draining into the Pacific Ocean from the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties to the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek.
- (d) Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages.
- (e) Santa Ana region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary of the Los Angeles region and a line which follows the drainage divide between Muddy and Moro Canyons from the ocean to the summit of San Joaquin Hills; thence along the divide between lands draining into Newport Bay and into Laguna Canyon to Niguel Road; thence along Niguel Road and Los Aliso Avenue to the divide between Newport Bay and Aliso Creek drainages; thence along that divide and the southeasterly boundary of the Santa Ana River drainage to the divide between Baldwin Lake and Mojave Desert drainages; thence along that divide to the divide between Pacific Ocean and Mojave Desert drainages.
- (f) San Diego region, which comprises all basins draining into the Pacific Ocean between the southern boundary of the Santa Ana region and the California-Mexico boundary.
- (g) Central Valley region, which comprises all basins including Goose Lake Basin draining into the Sacramento and San Joaquin Rivers to the easterly boundary of the San Francisco Bay region near Collinsville. The Central Valley region shall have section offices in the Sacramento Valley and the San Joaquin Valley.

(h) Lahontan region, which comprises all basins east of the Santa Ana, Los Angeles and Central Valley regions from the California-Oregon boundary to the southerly boundary located in Los Angeles and San Bernardino Counties of the watersheds draining into Antelope Valley, Mojave River Basin and Dry Lake Basin near Ivanpah.

(i) Colorado River Basin region, which comprises all basins east of the Santa Ana and San Diego regions draining into the Colorado River, Salton Sea and local sinks from the southerly boundary of the Lahontan region to the California-Mexico boundary.

The regions defined and described in this section shall be as precisely delineated on official maps of the department and include all of the areas within the boundaries of the state.

For purposes of this section the boundaries of the state extend three nautical miles into the Pacific Ocean from the line of mean lower low water marking the seaward limits of inland waters and three nautical miles from the line of mean lower low water on the mainland and each offshore island.

Nothing in this section shall limit the power conferred by this chapter to regulate the disposal of waste into ocean waters beyond the boundaries of the state.

**Credits**

(Added by Stats.1969, c. 482, p. 1057, § 18, operative Jan. 1, 1970.)

**Notes of Decisions (1)**

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# **ATTACHMENT 26**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann. Cal. Water Code § 13240

§ 13240. Adoption of plans; conformance with state policy

Currentness

Each regional board shall formulate and adopt water quality control plans for all areas within the region. Such plans shall conform to the policies set forth in Chapter 1 (commencing with Section 13000) of this division and any state policy for water quality control. During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies. Such plans shall be periodically reviewed and may be revised.

**Credits**

(Added by Stats.1969, c. 482, p. 1061, § 18, operative Jan. 1, 1970.)

Notes of Decisions (20)

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# **ATTACHMENT 27**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann.Cal.Water Code § 13241

§ 13241. Water quality objectives; beneficial uses; prevention of nuisances

Currentness

Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

**Credits**

(Added by Stats.1969, c. 482, p. 1061, § 18, operative Jan. 1, 1970. Amended by Stats.1979, c. 947, p. 3272, § 8; Stats.1991, c. 187 (A.B.673), § 2.)

Notes of Decisions (40)

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# **ATTACHMENT 28**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann. Cal. Water Code § 13242

§ 13242. Program to achieve objectives

Currentness

The program of implementation for achieving water quality objectives shall include, but not be limited to:

- (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.
- (b) A time schedule for the actions to be taken.
- (c) A description of surveillance to be undertaken to determine compliance with objectives.

**Credits**

(Added by Stats.1969, c. 482, p. 1062, § 18, operative Jan. 1, 1970.)

Notes of Decisions (1)

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# **ATTACHMENT 29**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann. Cal. Water Code § 13245

§ 13245. Effective date of plan; approval by state board

Currentness

A water quality control plan, or a revision thereof adopted by a regional board, shall not become effective unless and until it is approved by the state board. The state board may approve such plan, or return it to the regional board for further consideration and resubmission to the state board. Upon resubmission the state board may either approve or, after a public hearing in the affected region, revise and approve such plan.

**Credits**

(Added by Stats.1969, c. 482, p. 1062, § 18, operative Jan. 1, 1970. Amended by Stats.1971, c. 1288, p. 2524, § 7.)

Notes of Decisions (2)

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# **ATTACHMENT 30**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 4. Regional Water Quality Control (Refs & Annos)

Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann. Cal. Water Code § 13246

§ 13246. Action on plan by state board; timeline

Effective: April 8, 2002

Currentness

(a) The state board shall act upon any water quality control plan not later than 60 days from the date the regional board submitted the plan to the state board, or 90 days from the date of resubmission of the plan.

(b) When the state board is acting upon a water quality control plan that is being amended solely for an action related to a regional board's total maximum daily load submittal, not including submittals related to listing, the state board shall not exceed the 60-day timeline, inclusive of the time spent sending the submittal back to the regional board, unless one of the following circumstances exists:

(1) The proposed amendment is for an exceedingly complex total maximum daily load. In order to determine if a total maximum daily load is exceedingly complex, the state board may consider a number of factors including, but not limited to, the volume of the record, the number of pollutants included, the number of dischargers and land uses involved, and the size of the watershed. The reason or reasons that any total maximum daily load is determined to be exceedingly complex shall be provided by the state board to the regional board in writing.

(2) The submittal by the regional board is clearly incomplete.

**Credits**

(Added by Stats.1969, c. 482, p. 1062, § 18, operative Jan. 1, 1970. Amended by Stats.2002, c. 20 (S.B.469), § 2, eff. April 8, 2002.)

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# **ATTACHMENT 31**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 5. Enforcement and Implementation (Refs & Annos)

Article 1. Administrative Enforcement and Remedies (Refs & Annos)

West's Ann.Cal.Water Code § 13300

§ 13300. Submission of time schedule for compliance with requirements

Currentness

Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

**Credits**

(Added by Stats.1969, c. 482, p. 1065, § 18, operative Jan. 1, 1970. Amended by Stats.1970, c. 918, § 5.1; Stats.1971, c. 1288, p. 2525, § 9.)

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# **ATTACHMENT 32**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972  
(Refs & Annos)

West's Ann.Cal.Water Code § 13370

§ 13370. Legislative findings and declaration

Currentness

The Legislature finds and declares as follows:

- (a) The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.
- (b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.
- (c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program.

**Credits**

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972. Amended by Stats.1978, c. 746, p. 2343, § 1; Stats.1980, c. 676, p. 2028, § 319; Stats.1987, c. 1189, § 1.)

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# **ATTACHMENT 33**



West's Annotated California Codes

Water Code (Refs & Annos)

Division 7. Water Quality (Refs & Annos)

Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972  
(Refs & Annos)

West's Ann.Cal.Water Code § 13372

§ 13372. Construction and application of chapter

Effective: January 1, 2004

Currentness

(a) This chapter shall be construed to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions apply to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

(b) The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material.

**Credits**

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972. Amended by Stats.1987, c. 1189, § 3; Stats.2003, c. 683 (A.B.897), § 5.)

Notes of Decisions (1)

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# Federal Court Decisions

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# **ATTACHMENT 34**



762 F.Supp. 1422  
United States District Court,  
W.D. Washington,  
at Seattle.

ALASKA CENTER FOR THE ENVIRONMENT,  
Northern Alaska Environmental Center,  
Southeast Alaska Conservation Council,  
and Trustees for Alaska, Plaintiffs,

v.

William K. REILLY, Administrator, the U.S.  
Environmental Protection Agency, EPA Region  
X, and Dana A. Rasmussen, in her capacity  
as Regional Administrator, Defendants.

No. C90-595R. April 15, 1991.

Citizen suit was filed to compel Environmental Protection Agency (EPA) to perform alleged mandatory duty to implement "total maximum daily load" water quality protection measures under Clean Water Act. Plaintiffs filed motion for partial summary judgment. The District Court, Rothstein, Chief Judge, held that Act set out nondiscretionary duty on part of EPA for promulgation of "total maximum daily loads" in face of over a decade of inaction by State of Alaska.

Motion granted.

#### Attorneys and Law Firms

\*1423 Brian Faller, Seattle Law Enforcement, Utilities and Environmental Protection, Seattle, Wash., Michael Wenig, Anchorage, Alaska, for plaintiffs.

Susan L. Barnes, U.S. Attys. Office, Seattle, Wash., Christopher Scott Vaden, U.S. Dept. of Justice, Environment and Natural Resources Div., Washington, D.C., for defendants.

#### Opinion

#### ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

ROTHSTEIN, Chief Judge.

THIS MATTER comes before the court on plaintiffs' motion for partial summary judgment. Having reviewed the motion,

together with all documents filed in support and in opposition, having heard oral argument and being fully advised, the court finds and rules as follows:

Plaintiffs Alaska Center for the Environment, et al. (collectively "ACE"),<sup>1</sup> move for partial summary judgment against defendants U.S. Environmental Protection Agency, et al. (collectively "EPA"), on the issue of liability under the Clean Water Act. If the motion is granted, plaintiffs indicate they will file a motion to compel the EPA to perform its duties under § 303(d) of the Act pursuant to a schedule developed by the court.

- 1 Plaintiffs include Alaska Center for the Environment, Northern Alaska Environmental Center, Southeast Alaska Conservation Council, and Trustees for Alaska.

#### I. FACTUAL BACKGROUND

Plaintiffs have filed this citizen suit to compel the EPA to perform what plaintiffs \*1424 believe is a mandatory duty to implement certain water quality protection measures under the Clean Water Act ("CWA" or "the Act").

##### A. Water Pollution Regulation

Congress passed the Federal Water Pollution Control Act (commonly referred to as the CWA) in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Sec. 101(a), 33 U.S.C. § 1251. In order to achieve that objective, Congress declared as a "national goal" that "the discharge of pollutants into the navigable waters be eliminated by 1985." *Id.*, § 101(a)(1).

EPA's regulatory program for water protection focuses on two potential sources of pollution: point sources and nonpoint sources. Point source pollution was addressed in the 1972 amendments to the Act, where Congress prohibited the discharge of any pollutant from any point source into certain waters unless that discharge complies with the Act's specific requirements. Secs. 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12). Under this approach, compliance is focused on technology-based controls for limiting the discharge of pollutants through the National Pollution Discharge Elimination System ("NPDES") permit process.

When these requirements are found insufficient to clean up certain rivers, streams or smaller water segments, the Act requires use of a water-quality based approach. States are required to identify such waters and designate them as "water quality limited." The states are then to establish a

priority ranking for these waters, and in accordance with that ranking, to establish more stringent pollution limits called "total maximum daily loads" or "TMDLs." 33 U.S.C. §§ 1313(d)(1)(A), (C). TMDLs are the greatest amount of a pollutant the water body can receive daily without violating a state's water quality standard.

The TMDL calculations help ensure that the cumulative impacts of multiple point source discharges are accounted for, and are evaluated in conjunction with pollution from other nonpoint sources. States are then required to take whatever additional cleanup actions are necessary, which can include further controls on both point and nonpoint pollution sources. As a recent GAO report concluded, the TMDLs process:

provides a comprehensive approach to identifying and resolving water pollution problems regardless of the sources of pollution. If implemented, the TMDL process can provide EPA and the states with a complete listing of key water pollutants, the source of the pollutants, information on the amount of pollutants that need to be reduced, options between point and/or nonpoint approaches, costs to clean up, and situations where it may not be feasible to meet water quality standards.<sup>2</sup>

- 2 US Government Accounting Office, "Water Pollution—More EPA Action Needed to Improve the Quality of Heavily Polluted Waters," January 1989 (GAO/RCED-89-38) at 34-5, (see Plaintiffs' Ex. C.) (hereinafter referred to as "GAO report").

It is the TMDL regulatory process upon which this lawsuit focuses. The CWA sets out a very specific timetable and description of mandatory duties on the part of states and the EPA for the TMDL process. The court is being asked to clarify the scope of the EPA's duties under this section of the Act.

### **B. Duties of States and the EPA**

Under § 303(d), states are required to submit lists of water quality limited segments and TMDLs to the EPA at certain times; the first such submission was due by June 26, 1979.<sup>3</sup> Once such a submission is made, certain mandatory duties by EPA are triggered. *Within 30 days*, the EPA Administrator must review the state's submissions of the identified waters and the load allocations established under § 303(d)(1). Once approved by EPA, the identified waters and TMDLs are incorporated \*1425 by the state into its continuing planning process established under § 303(e)(3).

- 3 Since the EPA published its identification of suitable pollutants in December, 1978, states' first submissions were due 180 days later, or June, 1979. 33 U.S.C. § 1313(d)(2).

If EPA disapproves the identification and/or TMDL, the agency has 30 days after disapproval to make its own identification of waters and establish TMDLs necessary to implement the applicable water quality standards. § 303(d)(2). The Act is silent as to the nature of EPA's obligations if a state, such as Alaska here, fails to make any initial submission at all.

### **C. History of the TMDLs Process in Alaska**

As indicated, the first identification of "water quality limited" waters by the State of Alaska was required in 1979. Over ten years later, it is undisputed that the State has not submitted a single TMDL to the EPA. Moreover, the State and the EPA have failed to complete even the first stage of the TMDL process. Alaska's 1988 305(b) Report<sup>4</sup> categorized several hundred distinct waterbodies as either "impaired" or "threatened" by water pollution. *See* Plaintiffs' Ex. G. However, only *one* segment from all these waterbodies has been identified as "water quality limited." There is no evidence that the EPA ever approved or disapproved that submission within the 30 day deadline.

- 4 Under section 305(b) of the Act, states are required to provide the EPA with a biennial report on the status of the state's water quality management. It is commonly referred to as a "305(b) report."

The EPA directly commented on the State's failure again to include "water quality limited" segments in its 1990 305(b) report. *See* Plaintiffs' Ex. E, letter from Kriezenbeck. The EPA gave the State until June 30, 1990, to provide such a list. Shortly after this suit was filed in April 1990, the State submitted to the EPA a revised list of 48 "water quality limited" segments. To date, the EPA does not appear to have approved or disapproved this list. Plaintiffs contend there is little hope that the State will begin to take the next step and establish TMDLs in a timely fashion. The State's 1990 305(b) Report notes that TMDLs have "not been attempted" and makes no promise to "attempt" them.

In comparison to Alaska's lack of progress in developing TMDLs, other areas of the country have a mixed record of success. In 1989, EPA Region IV approved 163 TMDLs, Region V approved 74, Region I approved 50, Region VIII

approved 16, Region X approved 11. Regions II, III, and VII, however, approved no TMDLs. Pl.Ex. K.<sup>5</sup>

- 5 Within Region X, Washington and Idaho are also delinquent in not developing TMDLs. Oregon is in the process of establishing 40 TMDLs as part of a consent decree resulting from a lawsuit filed in December 1986.

Plaintiffs now ask the court to direct the EPA to establish TMDLs in lieu of any meaningful action on the part of the State. Defendants oppose the motion, arguing that the EPA does not have a mandatory duty to establish TMDLs in the absence of a submission by the states. Defendants argue that in the absence of a nondiscretionary duty, plaintiffs are unable to pursue a citizen suit under § 505(a) of the Act, and therefore this court lacks jurisdiction to hear the case.

## II. DISCUSSION

### A. Summary Judgment Standard

1 A grant of summary judgment is appropriate if it appears, after viewing the evidence in the light most favorable to the opposing party, that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Assoc.*, 809 F.2d 626, 630-31 (9th Cir.1987); *Lew v. Kona Hospital*, 754 F.2d 1420, 1423 (9th Cir.1985). Here, the parties agree that there are no material facts in dispute; rather, the questions before the court are legal in nature. Thus, the matter is ripe for summary judgment.

### B. Mandatory Duties of the EPA

Section 505(a) of the CWA authorizes citizens to bring suit in federal court against the EPA for failing to perform an \*1426 "act or duty" under the CWA which is not discretionary. 33 U.S.C. § 1365(a). Plaintiffs invoke this section in their attempt to protect the waters of Alaska from further degradation in light of State regulatory inaction.

In determining whether the EPA has a mandatory duty under sec. 303(d) to establish TMDLs at this time, the court looks to traditional principles of statutory construction. "Proper statutory construction requires more than linguistic examination and review of the rules of statutory construction. The interpretation should be reasonable, and where the result of one interpretation is unreasonable, while the result of another interpretation is logical, the latter should prevail." *Sierra Club v. Train*, 557 F.2d 485, 490 (5th Cir.1977); *Rosado v. Wyman*, 397 U.S. 397, 414-5, 90 S.Ct. 1207,

1218-19, 25 L.Ed.2d 442 (1970). "In interpreting statutes, a court's function is to construe the language so as to give effect to the intent of Congress." *Train*, 557 F.2d at 489.

The mandatory TMDLs process requires that states identify those waters that are below certain quality limits; establish a priority ranking for those waters; and establish TMDLs in accordance with the priority ranking. 33 U.S.C. § 1313(d)(1).

The exact statutory language at issue is as follows:

(2) Each State **shall** submit to the Administrator from time to time, with the first such submission not later than 180 days after the date of publication of the first identification of pollutants ... for his approval, the waters identified and the loads established ... **The Administrator shall either approve or disapprove such identification and load not later than 30 days after the date of submission.** If the Administrator approves such identification and load, such State shall incorporate them into its current plan ... **If the Administrator disapproves such identification and load, he shall not later than 30 days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and ... shall incorporate them into its current plan....** (emphasis added).

*Id.*

2 Plaintiffs' suit alleges that the State of Alaska's failure to submit proposed TMDLs over a decade amounts to a "constructive submission" of no TMDLs, thereby triggering a mandatory duty on EPA's part to promulgate those TMDLs. To this end, plaintiffs rely on the Seventh Circuit decision in *Scott v. City of Hammond, Ind.*, 741 F.2d 992 (7th Cir.1984). In this case directly on point, the court held that the EPA *did* have a duty to develop TMDLs when the appropriate states failed to comply with the statute.

The *Scott* case involved a citizen suit against the EPA Administrator for failure to prescribe TMDLs for pollutants discharged into Lake Michigan after Illinois and Indiana failed to do so. Given the lengthy delay from the State's submissions deadline in 1979, the Seventh Circuit had little difficulty in reversing the district court and concluding that the EPA *did* have an affirmative duty to treat the States' inaction as a "constructive" submission, warranting agency response. The court held,

We believe that, if a state fails over a long period of time to submit proposed TMDL's, this prolonged failure may

amount to the "constructive submission" by that state of no TMDL's. Our view of the case is quite simple, and tracks the statutory scheme set up by Congress ... The allegation of the complaint that no TMDL's are in place, coupled with the EPA's admission that the states have not made their submissions, raises the possibility that the states have determined that TMDL's for Lake Michigan are unnecessary ... (T)hen the EPA would be under a duty to either approve or disapprove the "submission."

741 F.2d at 996-7.

The *Scott* court went on to discount the EPA's argument that Congress did not intend to establish a statutory duty, saying,

None of the EPA's arguments against the existence of this statutory duty are \*1427 compelling. The EPA claims that Congress did not intend that the EPA establish TMDL's if the states chose not to act. We think it unlikely that an important aspect of the federal scheme of water pollution control could be frustrated by the refusal of states to act. This is especially true in light of the short time limits both on a state's action, and on the EPA's required reaction to the state's submission....

*Id.* The Seventh Circuit also noted that, based on its consideration of the importance of water pollution control, the Supreme Court has rejected a similar argument to the one EPA makes here respecting the states' role in pollution control. *E.I. Du Pont De Nemours & Co. v. Train*, 430 U.S. 112, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977). In construing the CWA to grant the EPA broad power, the Supreme Court wrote, "We do not believe that Congress would have failed so conspicuously to provide EPA with the authority needed to achieve the statutory goals." *Id.*

3 Congress' repeated use of the term "shall" in sec. 303(d) clearly places a mandatory duty upon the EPA to take affirmative action after disapproving a state's unacceptable submission. Read in light of common sense and the fact that Congress set out such short time lines in this section, it is strongly arguable that Congress intended that EPA's affirmative duties be triggered upon a state's failure to submit a list, or any TMDL at all. As the Seventh Circuit reasoned in *Scott*,

We cannot allow the states' refusal to act to defeat the intent of Congress that TMDLs be established promptly in accordance with the timetable provided in the statute. In addition, to construe the relevant statute (any other way)

would render it wholly ineffective. There is, of course, a strong presumption against such a construction.

741 F.2d at 998.

The Ninth Circuit has not had the opportunity to decide this exact issue. However, in a 1985 case, the Ninth Circuit recited, without questioning, the Seventh Circuit's holding in *Scott*, but held that the EPA's mandatory duties had not been triggered since there had been no claim that the waterbody at issue was water quality limited. *City of Las Vegas, Nev. v. Clark County, Nev.*, 755 F.2d 697, 703-4 (9th Cir.1985).

In *Environmental Defense Fund v. Costle*, 657 F.2d 275 (D.C.Cir.1981), plaintiff challenged the EPA's failure to develop TMDLs for salinity in the Colorado River, following inadequate submissions from the states. The court found that the EPA's duties had not yet been triggered since the State's deadline for submitting a TMDL had not yet passed. *Id.* at 295. However, the court was clear in its insistence that the EPA act promptly in administering the review and establishment of TMDLs, saying "we admonish EPA to approve or disapprove such identification, prioritization, and load limits within the requisite statutory framework and time limits ... We urge EPA to carefully heed the statutory deadlines in the future." *Id.*<sup>6</sup> The court's emphasis on timely federal review of state action supports an interpretation of the Act that mandates federal intervention when states fail to perform their statutory duties.

6 In *Costle*, the court's strong language regarding attention to deadlines arose in a suit filed over a delay in TMDL development of months. Surely the same admonishment is appropriate where the delay has stretched to over a decade.

The EPA's opposition to this motion is rooted in its conclusion that the *Scott* court went too far. While agreeing with the Seventh Circuit's conclusion that prolonged state inaction may be characterized as a determination that no TMDLs are necessary, the EPA faults the *Scott* court for going beyond the clear language of the statute and creating an enforcement remedy that was not intended by Congress. The EPA appears to argue that, before its mandatory duty to establish TMDLs is triggered, the agency has discretion (1) to determine *whether* a state's failure to submit a TMDL amounts to such a constructive \*1428 submission, and (2) to decide *when* to make that determination.

The EPA maintains that there is a clear distinction between a court determination that EPA has *discretionary* authority to

act in the absence of state submissions, and an "overreaching" decision that such authority is a *mandatory duty*. The EPA does not believe that its discretionary powers should be subject to citizen suit enforcement under section 505, and that it should retain the ability to decide not to enforce certain laws. Quoting the Supreme Court in *Heckler v. Chaney*, the EPA argues:

An agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and indeed, whether the agency has enough resources to undertake the action at all.

470 U.S. 821, 831, 105 S.Ct. 1649, 1655, 84 L.Ed.2d 714 (1985).

The EPA reassures the court that the purpose of the Act is not frustrated by the agency's narrower interpretation of its mandatory duties, because EPA retains discretionary authority to take action when states fail to. This reassurance is not particularly comforting in light of the fact that EPA Region X has failed to take action on this matter for over ten years.

4 EPA implies that, because of the states' supposed "primacy" in the field of pollution control, if states fail to perform their "primary" roles, Congress did not intend to shift the responsibilities to the EPA. On the contrary, the court finds it improbable, and unsupported by case law, that if the states default, Congress intended that their roles would remain unfulfilled. The court agrees with the Seventh Circuit that it is unlikely that Congress intended an important aspect of the federal water pollution control scheme to be frustrated by the failure of a state to act. 741 F.2d at 997.<sup>7</sup>

7 The court also finds the EPA's analogy to "prosecutorial discretion" inapplicable here. As the court found in *NRDC v. N.Y. Dept. of Environmental Conservation*, 700 F.Supp. 173 (S.D.N.Y.1988), statutory construction based on prosecutorial discretion is inappropriate to the disputed CWA section here, because neither prosecution nor sanctions is at issue. *Id.* at 179. Interpreting § 303(d) to require the Administrator to promulgate TMDLs in the absence of state action "does no more than require the Administrator to act to ensure compliance with dates specified in the statute." *Id.*

In support of their opposition, defendants point to the short deadlines written into this section of the Act. The EPA reasons that 30 days is too short a time for Congress to have contemplated the EPA being able to complete the entire TMDL process from scratch, in the absence of state data from which to work. There would be insufficient time for the appropriate comment and review typically available in administrative rulemaking. EPA's reasoning is based on the assumption that, when a state submits a defective TMDL, it nevertheless has performed all the preliminary work necessary to establish a correct TMDL.

5 While it may be true that the EPA could be faced with a dearth of data collection on the State's part, this fact does not warrant a conclusion that the agency is therefore devoid of responsibility for initiating the fact-finding process. Absence of data is not the determinative factor in this analysis. For example, a state could submit a TMDL based on a complete lack of credible data, or affirmatively refuse to establish any TMDL at all. The EPA concedes that in this situation, it would clearly have the mandatory duty to establish a TMDL, despite its not having any of the necessary underlying data provided to them by the State.

Finally, the EPA believes that since it is charged with administration of the CWA, its judgment as to the use of certain enforcement provisions is entitled to deference.

\*1429<sup>8</sup> *U.S. v. Homestake Mining Co.*, 595 F.2d 421, 429 (8th Cir.1979). If Congress has not addressed the precise question at issue, the Court may not simply impose its own construction on the statute; it must determine whether the agency's answer is based on a permissible construction of the statute. *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984).

8 In light of the agency's insistence on deference to its interpretation of the CWA, it is interesting to note that EPA Region X's Chief of the Office of Water Planning, Thomas Wilson, has included a statement in an October 1990 report that strongly suggests EPA views itself as having a duty to respond to state inaction on TMDLs. The report says,

... by statute, EPA is given only 30 days to identify and establish any TMDL needed because of State inaction. This short deadline, along with the margin of safety requirement discussed below, almost guarantees that any EPA-developed TMDL would be more stringent than a State-developed one ...

EPA Nonpoint Source News-Notes, October 1990, at 20, Plaintiffs' Ex. A. In this statement, Wilson extols

the *benefits* of aggressive use of the TMDLs program. In addressing concern about what happens if the State or EPA does not have enough data to establish a scientifically precise TMDL, Wilson notes that the statute builds in a margin of safety requirement to be used to account for any lack of knowledge.

In other words, Congress says ignorance is no excuse for inaction. Just add a margin of safety to compensate for the lack of knowledge and keep moving. No other program has such a strong statutory endorsement for action in the face of an incomplete database. *Id.*

The court finds here that Congress *has* addressed the question at issue. Section 303(d) expressly requires the EPA to step into the states' shoes if their TMDL submissions or lists of water quality limited segments are inadequate. It is consistent to conclude that the "inadequacy" of a submission includes deliberate, silent inaction.

There is clear legislative history and judicial support for strong enforcement of the CWA. Rather than construing EPA's mandatory duties in an overly narrow manner, traditional statutory interpretation directs that the court give life to the spirit of the Act. The EPA's interpretation of § 303(d) puts the TMDL process in "administrative purgatory", to use another court's phrase<sup>9</sup>, pending the agency's eventual review of the state's inaction. The court finds this unreasonable, illogical, and inconsistent with the

CWA's purpose. "State inaction amounting to a refusal to act should not stand in the way of successfully achieving the goals of federal anti-pollution policy." *Scott*, 741 F.2d at 998.

9 See *Citizens for a Better Environment v. Costle*, 515 F.Supp. 264, 274 (N.D.Ill.1981).

## CONCLUSION

NOW, THEREFORE, plaintiffs' motion for partial summary judgment is GRANTED. The court finds that § 303(d) of the CWA does set out a nondiscretionary duty on the part of the EPA for promulgation of TMDLs in the face of state inaction.

The court need not make a broad, generic determination of the point in time at which a state's inaction may be deemed a "constructive submission." However, there could hardly be a more compelling case for finding a "constructive submission" than under the facts of this specific case. The court therefore finds that the State of Alaska has effectively created a "constructive submission" of no TMDLs over the past eleven years. The EPA is required, therefore, to initiate its own process of promulgating TMDLs, including any and all necessary steps needed to effectively identify the appropriate waterbodies at issue. The details of this process will be worked out with the court at a future date.

## Parallel Citations

32 ERC 2110, 21 Env'tl. L. Rep. 21,305

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# **ATTACHMENT 35**



265 F.Supp.2d 1142  
United States District Court,  
N.D. California.

CITY OF ARCADIA, et al., Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al., Defendants,

and

Natural Resources Defense Council,  
et al., Defendants-Intervenors.

No. C 02-5244 SBA. May 16, 2003.

Cities brought action challenging Environmental Protection Agency's (EPA) promulgation of total maximum daily load (TMDL) for trash in river and subsequent approval of state's trash TMDLs. Environmental groups intervened as parties defendant. On EPA's motion to dismiss, the District Court, Armstrong, J., held that: (1) EPA had authority to approve state-submitted TMDLs, even after EPA had established its own TMDLs; (2) procedure used by EPA in approving state's TMDLs was not itself "final agency action;" and (3) cities' action was not ripe for review.

Motion granted.

#### Attorneys and Law Firms

\*1143 Noam I. Duzman, Richard Montevideo, Robert S. Bower, Rutan & Tucker LLP, Costa Mesa, CA, for plaintiffs. Charles M. O'Connor, AUSA & Chief, Environmental & Natural Resources, United States Attorney's Office, San Francisco, CA, S. Randall Humm, Pamela Tonglao, U.S. Department of Justice, Environmental & Natural Resources Div., Washington, DC, for defendants. David S. Beckman, Anjali I. Jaiswal for defendants-intervenors.

#### Opinion

### ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, DENYING AS MOOT PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, AND DISMISSING ACTION

ARMSTRONG, District Judge.

Plaintiffs City of Arcadia and other California cities (collectively, "Plaintiffs") bring this action against defendants United States Environmental Protection Agency ("EPA"), the EPA Administrator, and the EPA Region IX Administrator (collectively, "Defendants") for injunctive and declaratory relief. The Natural Resources Defense Council, Santa Monica BayKeeper, and Heal the Bay (collectively, "Intervenors") have intervened as defendants.

Now before the Court are Defendants' Motion to Dismiss Second Amended Complaint (the "Motion to Dismiss"), in which Intervenors join, and Plaintiffs' Motion for Summary Adjudication of Issues (the "Motion for Partial Summary Judgment"). Having read and considered the papers submitted and being fully informed, the Court GRANTS the Motion to Dismiss, DENIES AS MOOT the Motion for Partial Summary Judgment, and DISMISSES this action.<sup>1</sup>

- 1 These matters are suitable for disposition without a hearing. *See* Fed.R.Civ.P. 78; Civ. L.R. 7-1(b).

#### I. BACKGROUND<sup>2</sup>

- 2 Over the years the Court has had the pleasure and privilege of reading some excellent moving papers. Some of these submissions stand out as truly superlative. Defendants' opening and reply briefs for their Motion to Dismiss are shining examples of such superlative submissions. In these briefs Defendants discuss three areas of federal law generally regarded as highly complex-environmental regulation, administrative law, and justiciability-in direct, succinct, well-supported, and powerfully illuminating fashion. Whereas a poor presentation of the statutory and regulatory framework and Defendants' arguments might have required the Court to spend hours to apprehend their arguments, the high quality of Defendants' writing enabled the Court to grasp them in a matter of minutes. Defendants' briefs also thankfully avoid leveling the sorts of thinly veiled (or, at times, not-at-all-veiled) *ad hominem* attacks that unfortunately pervade too much legal writing nowadays. The Court thus commends Defendants' counsel for their outstanding writing and expresses its appreciation for it.

#### A. Statutory and Regulatory Background

##### 1. Water Pollution Control Under the Clean Water Act

The Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, utilizes two fundamental approaches to control water pollution: technology-based regulations and water quality standards. Technology-based <sup>\*1144</sup> regulations seek to reduce pollution by requiring a discharger to effectuate equipment or process changes, without reference to the effect on the receiving water; water quality standards fix the permissible level of pollution in a specific body of water regardless of the source of pollution.

The National Pollutant Discharge Elimination System ("NPDES") permit program is a key means of implementing both technology-based requirements and water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)(1); 40 C.F.R. § 122.44(a), (d)(1). An NPDES permit establishes specific limits of pollution for an individual discharger. A discharge of pollutants (other than dredged or fill material) from any "point source," which is defined as "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged," 33 U.S.C. § 1362(14), into the waters of the United States is prohibited unless that discharge complies with the discharge limits and other requirements of an NPDES permit. *Id.* §§ 1311(a), 1362(12). At present, 45 states, including California, are authorized to administer the NPDES permit program. State Program Status, at [http://cfpub.epa.gov/npdes/statestats.cfm?program\\_id=45&view=general](http://cfpub.epa.gov/npdes/statestats.cfm?program_id=45&view=general). In the remaining states, EPA issues the permits. 33 U.S.C. § 1342(a).

## 2. Total Maximum Daily Loads ("TMDLs")

Section 303(d) of the CWA and EPA's implementing regulations require states to identify and prioritize waterbodies where technology-based effluent limitations and other required controls are insufficiently stringent to attain water quality standards. *See* 33 U.S.C. § 1313(d); 40 C.F.R. § 130.7(b). States must develop a "total maximum daily load," or "TMDL," for each pollutant of concern in each waterbody so identified. A TMDL represents the maximum amount of pollutant "loading" that a waterbody can receive from all combined sources without exceeding applicable state water quality standards. Although the term "total maximum daily load" is not expressly defined in the CWA, EPA's regulations define a TMDL for a pollutant as the sum of: (1) the "wasteload allocations," which is the amount of pollutant that can be discharged to a waterbody from point sources, (2) the "load allocations," which represent the amount of a pollutant in a waterbody attributable to nonpoint sources or

natural background, and (3) a margin of safety. 40 C.F.R. §§ 130.2(g)-(i), 130.7(c)(1).

Under CWA Section 303(d)(2), EPA is required to review and approve or disapprove TMDLs established by states for impaired waters within thirty days of submission. 33 U.S.C. § 1313(d)(2). If EPA disapproves a state TMDL submission, EPA must issue its own TMDL for that waterbody within thirty days. *Id.*

## 3. Implementation of TMDLs

TMDLs established under Section 303(d)(1) of the CWA function primarily as planning devices and are not self-executing. *Pronsolino v. Nastro*, 291 F.3d 1123, 1129 (9th Cir.2002) ("TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans.") (citing *Alaska Ctr. for the Env't v. Browner*, 20 F.3d 981, 984-85 (9th Cir.1994)). A TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls. *See, e.g., Sierra Club v. Meiburg*, 296 F.3d 1021, 1025 (11th Cir.2002) ("Each TMDL serves as the goal for the level of that pollutant in the waterbody to which that TMDL applies.... The theory is that individual-discharge permits <sup>\*1145</sup> will be adjusted and other measures taken so that the sum of that pollutant in the waterbody is reduced to the level specified by the TMDL."); *Idaho Sportsmen's Coalition v. Browner*, 951 F.Supp. 962, 966 (W.D.Wash.1996) ("TMDL development in itself does not reduce pollution.... TMDLs inform the design and implementation of pollution control measures."); *Pronsolino*, 291 F.3d at 1129 ("TMDLs serve as a link in an implementation chain that includes ... state or local plans for point and nonpoint source pollution reduction ...."); *Idaho Conservation League v. Thomas*, 91 F.3d 1345, 1347 (9th Cir.1996) (noting that a TMDL sets a goal for reducing pollutants). Thus, a TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and waterbodies.

1 For point sources, limitations on pollutant loadings may be implemented through the NPDES permit system. 40 C.F.R. § 122.44(d)(1)(vii)(B). EPA regulations require that effluent limitations in NPDES permits be "consistent with the assumptions and requirements of any available wasteload allocation" in a TMDL. *Id.* For nonpoint sources,

limitations on loadings are not subject to a federal nonpoint source permitting program, and therefore any nonpoint source reductions can be enforced against those responsible for the pollution only to the extent that a state institutes such reductions as regulatory requirements pursuant to state authority. *Pronsolino v. Marcus*, 91 F.Supp.2d 1337, 1355-56 (N.D.Cal.2000), *aff'd sub nom. Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir.2002).

#### 4. California Water Quality Control Statutory and Regulatory Framework

California effectuates the foregoing requirements of the CWA primarily through institutions and procedures set out in certain provisions of the California Water Code (the "Water Code"), including those of the California Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code § 13000 *et seq.* These Water Code provisions established the State Water Resources Control Board (the "State Board") within the California Environmental Protection Agency to formulate and adopt state policy for water quality control. Cal. Water Code §§ 174-186, 13100, 13140. The State Board is designated as the state water pollution control agency for all purposes stated in the CWA and is the agency authorized to exercise powers delegated to it under the CWA. 33 U.S.C. § 1313; Cal. Water Code § 13160.

The Porter-Cologne Act established nine California Regional Water Quality Control Boards (individually, a "Regional Board"; collectively, the "Regional Boards"), Cal. Water Code §§ 13200, 13201, which operate under the purview of the State Board, *see id.* § 13225. Each Regional Board is comprised of nine members, *id.* § 13201, and is required to appoint an executive officer, *id.* § 13220(c), to whom the Regional Board may delegate all but some of its powers and duties, *id.* § 13223. Each Regional Board is required to formulate and adopt water quality control plans for all areas within the region. *Id.* § 13240. The State Board may approve such plan, or it may return it to the Regional Board for further submission and resubmission to the State Board. *Id.* § 13245. It must act on any water quality control plan within 60 days of a Regional Board's submission of such plan to the State Board, or 90 days after resubmission of such plan. *Id.* § 13246. A water quality control plan will not become effective unless and until it is approved by the State Board, followed by approval by the state's Office of Administrative Law ("OAL") in accordance with the appropriate procedures. \*1146 *Id.* § 13245; Cal. Gov't Code §§ 11340.2, 11349.3, 11353(b)(5).

The State Board is required to formulate, adopt, and revise general procedures for the formulation, adoption, and implementation of water quality control plans by the Regional Boards. Cal. Water Code § 13164. The State Board may adopt water quality control plans for purposes of the CWA that include the regional water quality control plans submitted by the Regional Boards. *See id.* § 13170. Such plans, when adopted by the State Board, supersede any regional water quality control plans for the same waters to the extent of any conflict. *Id.*

#### B. Factual Summary and Procedural History

##### 1. The Consent Decree

The events underlying the instant action were set in motion by the disposition of *Heal the Bay, Inc., et al. v. Browner, et al.*, No. C 98-4825 SBA ("*Heal the Bay*"), an action previously before this Court. In *Heal the Bay*, an individual and two environmental groups (which groups are now two of the three intervenors in the instant action) brought a civil action against EPA, the EPA Administrator, and the EPA Region IX Administrator. Their suit primarily concerned EPA's alleged failure to perform its alleged duty under the CWA either to approve or to disapprove TMDLs submitted to EPA by the state of California.

On March 23, 1999, the Court filed an Amended Consent Decree (the "Consent Decree")<sup>3</sup> in which "EPA agree[d] to ensure that a TMDL [would] be completed for each and every pairing of a [Water Quality Limited Segment, as defined in 40 C.F.R. 130.2(j),] and an associated pollutant in the Los Angeles Region" set forth in an attachment to the Consent Decree by specified deadlines. (Consent Decree ¶¶ 2a, 2b, 3, 3c.)<sup>4</sup> Pursuant to the Consent Decree, for each pairing EPA was required either to approve a TMDL submitted by California by a specified deadline or, if it did not approve a TMDL by the date specified, to establish a TMDL within one year of the deadline, unless California submitted and EPA approved a TMDL prior to EPA's establishing the TMDL within the one-year period. (*Id.* ¶ 3a.) By March 24, 2002, EPA was required either to have approved a state-submitted TMDL for trash in the Los Angeles River or to have established the TMDL itself. (*Id.* ¶¶ 2d, 3a; *id.* Att. 2, 3.)<sup>5</sup>

3 No original consent decree was entered. Rather, according to Defendants' representations in their opening brief, the Consent Decree incorporated amendments from an original proposal at the urging of proposed intervenors California Association of

Sanitation Agencies and California Alliance of POTWs.  
(See Mot. to Dismiss at 6.)

- 4 The Court takes judicial notice of the existence of the Consent Decree and the contents thereof. *See, e.g., Egan v. Teets*, 251 F.2d 571, 577 n. 10 (9th Cir.1957) (holding that district court was entitled to take judicial notice of prior proceedings involving same petitioner before same district court). The Consent Decree is filed as Docket No. 25 in *Heal the Bay*, No. C 98-4825 SBA.
- 5 Defendants contend that the relevant deadline was March 22, 2002, (Mot. to Dismiss at 6), and Plaintiffs echo this contention in their Second Amended Complaint, (Second Am. Compl. ¶ 25). Review of the terms of the Consent Decree, however, reveal that the deadline was a different date. The Consent Decree defines "effective date" as the date on which the Consent Decree is entered. (*Id.* ¶ 2d.) Although the Court signed the Consent Decree on March 22, 1999, (*id.* at 29), it was not entered on the docket until March 24, 1999. Under the terms of Attachments 2 and 3 of the Consent Decree, TMDLs for trash for all Water Quality Limited Segments the Los Angeles River were to be submitted by California within two years of the effective date-March 24, 2001. (*Id.* Atts. 2, 3.) Since EPA was required to ensure that a TMDL was in place within one year of California's deadline to submit a proposed TMDL, (*id.* ¶ 3a), the deadline for final approval or establishment of a TMDL was March 24, 2002.

Nevertheless, based on the evidence tendered by EPA, it is clear that EPA believed that the deadline was March 22, 2002. (See Decl. of David W. Smith in Supp. of EPA's Mot. to Dismiss, Ex. B at 2.) As is evident from the discussion below, this discrepancy is immaterial to the Court's analysis of the merits of the Motion to Dismiss.

### \*1147 2. EPA's Issuance of TMDLs and Approval of State-submitted TMDLs

One of the responsibilities of the Regional Board for the Los Angeles region (the "Los Angeles Regional Board") is to develop TMDLs under the CWA for waterbodies in Los Angeles and Ventura Counties. (Decl. of Dennis Dickerson in Supp. of EPA's Mot. to Dismiss (the "Dickerson Declaration") ¶ 2.) With few exceptions, TMDLs are developed as draft TMDLs by Los Angeles Regional Board staff and then submitted to the board to be adopted as amendments to the Los Angeles Regional Board's Water Quality Control Plan, which is known as the Basin Plan. (*Id.*) Basin Plan amendments are then submitted to the State

Board, and then subsequently to the OAL; after they have been approved by both of these agencies, they are submitted to EPA. (*Id.*)

On September 19, 2001, the Los Angeles Regional Board adopted TMDLs for trash for the Los Angeles River watershed. (*Id.* ¶ 3.) "Trash" was defined as man-made litter, as defined in California Government Code § 68055.1(g). (*Id.* Ex. A at 2). These TMDLs (the "State Trash TMDLs") were approved by the State Board on February 19, 2002, by OAL on July 16, 2002, and ultimately by EPA by letter dated August 1, 2002. (*Id.* ¶ 3, Ex. C; Second Am. Compl. for Injunctive & Declaratory Relief ("SAC") ¶¶ 27, 30.) Prior to its approval of the State Trash TMDLs, however, EPA issued its own TMDLs for trash for the Los Angeles River Basin (the "EPA Trash TMDLs") on March 19, 2002. (SAC ¶ 26; Decl. of David W. Smith in Supp. of EPA's Mot. to Dismiss (the "Smith Declaration") Ex. B.) The EPA's August 1, 2002, letter approving the State Trash TMDLs announced that they "supercede[d]" the EPA Trash TMDLs. (SAC ¶ 31; Smith Decl. ¶ 7, Ex. C.)

### 3. TMDLs Now in Effect and Implementation Provisions

Under the provisions of the TMDLs now in effect-the State Trash TMDLs-the numeric target is zero trash in the Los Angeles River. (Dickerson Decl. Ex. A at 16, 29.) Based on this target, California has determined that the wasteload allocations for trash in the Los Angeles River also must be zero. (*Id.*)

To achieve this goal, California has provided, along with the State Trash TMDLs, implementation provisions that specify a phasing-in of progressive reductions in municipal stormwater wasteload allocations over a ten-year period, following completion of a two-year initial baseline monitoring period. (*Id.* Ex. A at 21.) While the baseline monitoring program is taking place, cities will be deemed to be in compliance with the wasteload allocations provided that all of the trash that is collected during this period is disposed of in compliance with all applicable regulations. (*Id.* Ex. A at 27.) A baseline monitoring report is due to the Los Angeles Regional Board by February 15, 2004. (*Id.* ¶ 6.)<sup>6</sup>

6 Plaintiffs have filed Plaintiffs' Objections to Declarations of David W. Smith and Dennis Dickerson Offered by Defendants in Support of Defendants' Motion to Dismiss Second Amended Complaint ("Plaintiffs' Objections"). Plaintiffs' Objections challenge the admissibility of, *inter alia*, the statements in paragraph 6 of the Dickerson Declaration. The

Court considers and resolves the objections to these statements in note 20, *infra*. Although Plaintiffs have objected to all the statements in paragraph 6, careful review of the arguments advanced in these objections reveals that they are not in fact objecting to the statement in paragraph 6 that “[t]he baseline monitoring report is due to the [Los Angeles] Regional Board by February 15, 2004.” (Dickerson Decl. ¶ 6; see Pls.’ Objections at 3-4.) To the extent that Plaintiffs are in fact objecting to this statement, however, the Court **OVERRULES** their objections to this statement for the reasons set forth in note 20, *infra*.

**\*1148** The State Trash TMDLs and incremental wasteload allocations will be implemented through the Los Angeles stormwater permit, which the Los Angeles Regional Board will need to amend to incorporate specific, enforceable permit requirements. (*Id.* ¶ 8.)<sup>7</sup> The implementation provisions in the TMDLs allow permittees to “employ a variety of strategies to meet the progressive reductions in their Waste Load Allocations” and maintain that they “are free to implement trash reduction in any manner they choose.” (*Id.* Ex. A at 29.) The wasteload reduction strategies are broadly classified as either end-of-pipe full capture structural controls, partial capture control systems, and/or institutional controls. (*Id.*) The provisions state that permittees will be deemed to be in compliance with the final wasteload allocation for their associated drainage areas if they utilize “full capture systems” that are adequately sized and maintained and maintenance records are available for inspection by the Los Angeles Regional Board. (*Id.* Ex. A at 30.)

7 Under heading II.2 of Plaintiffs’ Objections, Plaintiffs object to the statements in paragraph 8 of the Dickerson Declaration relating to the Los Angeles Regional Board’s understanding of how the State Trash TMDLs will be implemented. (Pls.’ Objections at 4.) All of the grounds on which Plaintiffs object are meritless. First, Plaintiffs contend that the statements are objectionable as “extra-record evidence.” Such evidence, however, may be considered by the Court in connection with a motion to dismiss for lack of subject matter jurisdiction. See *Ass’n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778 (9th Cir.2000). Since Defendants contend that Plaintiffs’ challenges to the merits of EPA’s approval of the State Trash TMDLs are unripe, and since the Court considers how these TMDLs will be implemented at least in part for this purpose, this evidence is properly before the Court. Second, Plaintiffs contend that the statements constitute inadmissible hearsay. These statements, however, do not contain or even implicitly rely on any out-of-court statement by

one other than Mr. Dickerson for the truth of the matter stated.

Third, Plaintiffs claim that the statements lack foundation, although they do not explain what they mean by this. To the extent Plaintiffs are asserting that the declarant lacks personal knowledge of the Los Angeles Regional Board’s intentions, that assertion is refuted by the fact that Mr. Dickerson has been Executive Officer of the board since 1997. (Dickerson Decl. ¶ 1.) Fourth, Plaintiffs insist that “the statements are objectionable and inadmissible as the best evidence of the implementation requirements vis-à-vis the TMDLs, is set forth in the TMDLs themselves, as well as in the terms of other enforceable documents, documenting the actions taken by the [Los Angeles] Regional Board, such as the terms of the Municipal Storm Water Permit referenced in the declaration.” (Pls.’ Objections at 4.) This objection misunderstands the nature of the “best evidence” rule: that rule applies *only* where the witness attempts to testify as to the *contents of a writing, recording, or photograph*. See Fed.R.Evid. 1002. Such is not the case here. Moreover, this objection reflects a fundamental misunderstanding of the nature of TMDLs. TMDLs are *not* self-executing; they require the appropriate state to issue regulations implementing them. It is also not clear what Plaintiffs mean by their assertion that documents “documenting the actions taken by the Regional Board” constitute “enforceable documents.” Finally, Plaintiffs assail the statements at issue as “not competent.” (*Id.*) Plaintiffs do not explain what they mean by this objection. The Court thus disregards it. Accordingly, the Court **OVERRULES** the objections under Heading II.2 of Plaintiffs’ Objections.

**\*1149 4. The Instant Action**

Plaintiffs filed their initial complaint on June 28, 2002, in the United States District Court for the Central District of California. On August 30, 2002, they filed an amended complaint. On October 30, 2002, the case was transferred to this Court, the United States District Court for the Northern District of California. Pursuant to the parties’ stipulation and the Court’s Order thereon, Plaintiffs filed a Second Amended Complaint for Injunctive and Declaratory Relief (the “SAC” or “Complaint”) on December 12, 2002.

The SAC is the operative complaint for purposes of the Motion to Dismiss and the Motion for Partial Summary Judgment. The SAC purports to assert three claims for relief. The First Claim for Relief is ostensibly brought

pursuant to a provision of the Administrative Procedure Act (the "APA"), 5 U.S.C. § 706, (SAC at 34), although certain allegations thereunder also invoke the CWA, the Regulatory Flexibility Act (the "RFA"), and the Small Business Regulatory Enforcement Fairness Act of 1996 (the "SBREFA"), (*id.* ¶¶ 84-85).<sup>8</sup> The First Claim for Relief alleges several violations of the APA: (1) EPA acted without authority and acted arbitrarily and capriciously by establishing the EPA Trash TMDLs prior to receiving for review the State Trash TMDLs, (SAC ¶¶ 78-79); (2) EPA acted without authority and arbitrarily and capriciously by reviewing and approving the State Trash TMDLs because EPA had already established the EPA Trash TMDLs, (*id.* ¶¶ 80, 83); (3) EPA acted arbitrarily and capriciously and in excess of its jurisdiction with regard to the manner by which it established the EPA Trash TMDLs, (*id.* ¶¶ 81-82); (4) the collective actions of California and EPA relating to issuance of the EPA Trash TMDLs and subsequent approval of the State Trash TMDLs constitute a "*de facto* TMDL procedure" that is arbitrary, capricious, and contrary to law, (*id.* ¶¶ 84-86);<sup>9</sup> and (5) EPA acted arbitrarily and capriciously by approving the State Trash TMDLs because those TMDLs were "patently defective" and established not in accordance with the procedures of the CWA and California law, (*id.* ¶ 87).<sup>10</sup> The Second Claim for Relief challenges "1150 the validity of two alleged agency actions, the EPA Trash TMDLs and the "*de facto* TMDL procedure," under the APA, 5 U.S.C. § 551 *et seq.*; the RFA, 5 U.S.C. § 601 *et seq.*; and the SBREFA, 5 U.S.C. § 801 *et seq.* (SAC at 40; *id.* ¶¶ 89-99.) The violations alleged under the Second Claim for Relief, however, appear to relate mostly to procedural requirements under the RFA and the SBREFA. (*See id.* ¶¶ 91-93, 95-98 (invoking 5 U.S.C. §§ 601(5), 601(6), 603, 604(a), 604(b), 605(b), and 611).)<sup>11</sup> The Third Claim for Relief is derivative of the first two claims. It seeks a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as to which party's interpretation of the law is correct and a judicial determination of Plaintiffs' rights and duties. (*Id.* ¶¶ 100-105.)

8 With respect to the First Claim for Relief, the SAC comes perilously close to violating Federal Rule of Civil Procedure 8(a)'s mandate of providing "a *short and plain* statement of the claim showing that the pleader is entitled to relief ...." Fed.R.Civ.P. 8(a) (emphasis added). In particular, Plaintiffs' practice of indicating that the First Claim for Relief is based exclusively on the APA, (SAC at 34), yet at the same time claiming in the allegations thereunder that the actions at issue violate other statutes, (*id.* ¶¶ 84-85), is confusing. Aside from potentially misleading Defendants as to the nature of the

claims against them, it has required the Court to spend needless additional time and effort scrutinizing the allegations of the SAC because the Court cannot trust the accuracy of the headings of the SAC. The practice is especially reprehensible because the Court has already been forced to spend undue time and effort identifying and parsing out the five independent, discrete claims for relief that are set out in stream-of-consciousness fashion in the allegations underlying the "First Claim for Relief"-which heading necessarily suggests a *single* claim. *See infra.*

- 9 This alleged *de facto* TMDL procedure is also claimed to violate the CWA, the RFA, and the SBREFA. (*Id.* ¶¶ 84-85.)
- 10 Although not clearly stated, this last claim (claim (5)) within the First Claim for Relief appears to challenge the *merits* of EPA's approval of the State Trash TMDLs, as opposed to, for example, challenging EPA's authority to approve *any* state-submitted TMDLs after it issued the EPA Trash TMDLs, (*see id.* ¶¶ 80, 83). Presumably, this last claim encompasses challenges to, for example, EPA's approval of the State Trash TMDLs where these TMDLs covered "unlisted" waters. (*See id.* ¶¶ 42, 49, 62.) Defendants appear to have also construed this claim as challenging the merits of EPA's approval of the State Trash TMDLs, and they move to dismiss this claim as unripe. (*See Mot. to Dismiss* at 20-24.) Plaintiffs appear to concur in Defendants' construction of this claim. (*See Pls.' Opp. Br.* at 16-20.) Accordingly, the Court construes this last claim as challenging the merits of EPA's approval of the State Trash TMDLs.
- 11 This is yet another example of Plaintiffs' objectionable drafting of the SAC. In particular, the paragraph alleging improper agency action supposedly giving rise to the Second Claim for Relief, paragraph 96, identifies four bases on which the CWA, the APA, the RFA, and the SBREFA were violated. (*Id.* ¶ 96.) Of these four bases, however, only the first (denoted reason "(a)") appears to have anything to do with the APA; the remaining three ("(b)," "(c)," and "(d)") appear to relate solely to provisions of the RFA and SBREFA, at least based on the allegations of the previous paragraphs under the heading "Second Claim for Relief." (*Id.*; compare *id.* (e.g., alleging that EPA failed to perform an initial screening of the EPA Trash TMDLs to determine whether they would have a significant economic impact on a substantial number of small entities) with *id.* ¶¶ 91-93, 95 (e.g., alleging that RFA requires agencies to screen all proposed rules and identify whether such rules would have such an impact, (*id.* ¶ 92)):

The Court is thus left with the distinct impression that either Plaintiffs have been careless in drafting the Second Claim for Relief or they have invoked various statutes and inserted a number of allegations in scattershot fashion in the hope that something will slip by Defendants undetected and "stick." Aside from arguably violating Rule 8(a), this practice is unfair not only to Defendants, but also to the Court, because it makes the Court's resolution of Defendants' arguments considerably more difficult. (Nor is the Court interested in any supporting evidence or clarification from Plaintiffs' counsel regarding the nature of their claims that is not in the four corners of the SAC or incorporated therein by reference. The SAC speaks for itself on that score.) Based on its review of the SAC, the Court construes the allegations underlying the Second Claim for Relief as alleging violation of the APA, the RFA, and the SBREFA only with respect to EPA's alleged failure to provide Plaintiffs with notice and an opportunity for comment with regard to the *de facto* TMDL procedure, discussed *infra*, and the establishment of the EPA Trash TMDLs; the Court construes them to allege violation of the RFA and the SBREFA, but not the APA, with regard to the remaining allegations under the heading of "Second Claim for Relief." (See SAC ¶ 96.)

On January 13, 2003, Defendants and Intervenors filed answers to the SAC. On that same day, Defendants also filed the instant Motion to Dismiss, which seeks dismissal of the entire action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Intervenors filed Intervenors' Notice in Support of Defendants' Motion to Dismiss on February 3, 2003, indicating in brief fashion that they agreed with the arguments in the Motion to Dismiss and therefore supported the motion. On March 10, 2003, Plaintiffs filed their Motion for Partial Summary Judgment.

Most of the plaintiffs in the instant action are currently plaintiffs in a California state court action against the Los Angeles Regional Board and the State Board challenging the legality of the State Trash TMDLs. (*Id.* ¶ 33.) Three other lawsuits have similarly been filed challenging either \*1151 California's establishment of the State Trash TMDLs or EPA's approval of the same. (*Id.*)

## II. LEGAL STANDARD

### A. Rule 12(b)(1)

2 3 Federal Rule of Civil Procedure 12(b)(1) authorizes a party to seek dismissal of an action for lack of subject matter jurisdiction. "When subject matter jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 499 (9th Cir.2001). "A plaintiff suing in a federal court must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect be corrected by amendment." *Id.* (quoting *Smith v. McCullough*, 270 U.S. 456, 459, 46 S.Ct. 338, 70 L.Ed. 682 (1926)). In adjudicating such a motion, the court is not limited to the pleadings, and may properly consider extrinsic evidence. See *Ass'n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778 (9th Cir.2000). The court presumes lack of jurisdiction until the plaintiff proves otherwise. See *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir.1989).

### B. Rule 12(b)(6)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir.2001). A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); accord *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.1997). The complaint is construed in the light most favorable to the plaintiff, and all properly pleaded factual allegations are taken as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969); see also *Everest & Jennings, Inc. v. Am. Motorists Ins. Co.*, 23 F.3d 226, 228 (9th Cir.1994). "Dismissal is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Navarro*, 250 F.3d at 731. In adjudicating a motion to dismiss, the court need not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.1981).

When the complaint is dismissed for failure to state a claim, "leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib., Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401

(9th Cir.1986). Leave to amend is properly denied "where the amendment would be futile." *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir.1992).

### III. DISCUSSION

Defendants have filed a Motion to Dismiss; Plaintiffs have filed a Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment seeks adjudication of issues pertaining to Plaintiffs' challenge to the procedural legitimacy of the State Trash TMDLs. Because the Court grants the Motion to Dismiss (as discussed below), it does not reach the merits of the Motion for Partial Summary Judgment and therefore denies it as moot. Accordingly, the following discussion pertains \*1152 only to the Motion to Dismiss, except where noted.

At the outset, the Court notes that it need not analyze all the arguments presented in Defendants' opening brief because Plaintiffs concede that certain of their claims are moot. In particular, Defendants contend in their opening brief for the Motion to Dismiss that the EPA Trash TMDLs no longer have any force or effect because EPA has announced that the State Trash TMDLs "supercede" the EPA Trash TMDLs; consequently, Defendants maintain, Plaintiffs' claims that EPA lacked authority to establish the EPA Trash TMDLs, (SAC ¶ 78-79), and that the procedures by which EPA established them were unlawful, (*id.* ¶¶ 81-82, 90, 94, 96-97, 99), are moot. (Mot. to Dismiss at 12-15.) In their opposition brief, Plaintiffs express satisfaction with Defendants' assurances that the EPA Trash TMDLs are no longer (and can never be) in effect and therefore "withdraw their claims directly challenging the validity of EPA's TMDLs ...." (Pls.' Opp. Br. at 4 n. 6.) Defendants acknowledge this withdrawal in their reply brief. (Defs.' Reply Br. at 1.) As a result, the Court GRANTS the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) with regard to claims (1) and (3) (SAC ¶¶ 78-79 and SAC ¶¶ 81-82, respectively) within the First Claim for Relief of the SAC identified in Part I.B.4 of this Order, *supra*. The Court also GRANTS the Motion to Dismiss pursuant to Rule 12(b)(1) with regard to the Second Claim for Relief of the SAC to the extent it challenges the validity of the EPA Trash TMDLs. (See SAC ¶¶ 90, 94, 96-97, 99.) The Court now addresses the parties' arguments in relation to the remaining claims.

#### A. Challenge to EPA's Authority to Approve the State Trash TMDLs

Plaintiffs claim that EPA lacked authority to approve the State Trash TMDLs because it had already established the EPA Trash TMDLs. (SAC ¶¶ 80, 83.) Defendants move to dismiss this claim pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Mot. to Dismiss at 19-20.) Defendants contend that EPA in fact has a statutory *obligation* under 33 U.S.C. § 1313 to review any proposed TMDLs submitted by a state and either approve them or disapprove them. (*Id.*) Defendants assert that nothing in the CWA or otherwise divests EPA of jurisdiction to approve a state-submitted TMDL once EPA has issued its own TMDLs, and in fact, recognizing such a principle would thwart Congressional intent to vest states with the primary responsibility of implementing the CWA's provisions. (*Id.* at 20.) Plaintiffs counter (in less than straightforward fashion) that by allowing California to submit the State Trash TMDLs to EPA after EPA established the EPA Trash TMDLs, EPA effectively "remanded" a "TMDL submission" to California, and EPA lacked authority to "remand" this submission and subsequently approve California's "resubmission." (See Pls.' Opp. Br. at 15-16.)<sup>12</sup>

12 Plaintiffs also argue that EPA lacked authority to approve the State Trash TMDLs because these TMDLs cover "unlisted" waters; according to Plaintiffs, EPA has authority only to approve TMDLs for "listed" waters. (*Id.* at 14-15.) As Defendants correctly point out, this argument goes to the merits of EPA's approval of the State Trash TMDLs, not to the issue of whether EPA had any authority to approve any state-submitted TMDLs after issuing its own TMDLs—the issue raised by this claim. (Defs.' Reply Br. at 10 n. 9.) Plaintiffs' argument is relevant only to their own Motion for Partial Summary Judgment, not to the arguments raised in the Motion to Dismiss.

4 Plaintiffs' counterargument is meritless. No authority supports the conclusion that EPA lacks authority to approve \*1153 state-submitted TMDLs after EPA has established its own TMDLs, nor does this conclusion logically follow from the proposition that EPA is required to approve or disapprove a state-submitted TMDL within 30 days of submission. Moreover, as Defendants astutely note, recognizing such a principle "would lead to absurd results. Under this scenario, once EPA establishes a TMDL, the State could never update it or modify it based on changed circumstances." (Mot. to Dismiss at 20.) Finally, like Defendants, (*see* Defs.' Reply Br. at 10), the Court is at a loss to understand what Plaintiffs mean by their contention that EPA "remanded" the EPA Trash TMDLs to California for revision and resubmission.

Nothing in the allegations of the Complaint remotely suggest any sort of sending back of TMDLs to California for revision or additional development. And even if there were such a "remand," it does not follow that EPA lacked authority to approve the State Trash TMDLs.

For these reasons, the Court GRANTS the Motion to Dismiss with respect to claim (2) within the First Claim for Relief, (SAC ¶¶ 80, 83), *see supra* Part I.B.4. Additionally, it is evident that Plaintiffs cannot amend the SAC to allege facts sufficient to rehabilitate this claim because it is meritless as a matter of law. Accordingly, this claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE.

### B. The "De Facto TMDL Procedure"

Under claim (4) within their First Claim for Relief, *see supra* Part I.B.4, and the Second Claim for Relief, Plaintiffs challenge the "de facto TMDL procedure,"<sup>13</sup> which they consider to consist of:

- 13 Plaintiffs do not expressly use the phrase "de facto TMDL procedure" in the SAC. Instead, they refer to this procedure as the "TMDL Procedure" and contend that EPA has effected a "de facto adoption" of the "TMDL Procedure." (SAC ¶ 85.) For ease of reference, the Court will refer to what Plaintiffs call the "TMDL Procedure" as the "de facto TMDL procedure."

the establishment by the [Los Angeles] Regional Board of the TMDL, followed by the preparation and notice of the TMDL by USEPA, followed by the approval of the TMDL by the State Board, followed by the "establishment" by USEPA of the EPA TMDL, followed by the determination by USEPA to review and/or approve the subsequently submitted State TMDL, and to thereafter find the USEPA established TMDL is "superceded" ....

(SAC ¶ 85.) Plaintiffs assert that this procedure violates the APA, the RFA, and the SBREFA. (*Id.* ¶¶ 84-85, 96-98.) Plaintiffs allege not only that they have previously suffered from the effectuation of the *de facto* TMDL procedure, but also that they will suffer from the effectuation of the procedure in the future. (*See id.* ¶¶ 84-86.)

Defendants move to dismiss these claims by pointing out that the APA and the RFA, which was amended by the SBREFA, permit challenges *only* to "final agency action." (Mot. to Dismiss at 16-19.)<sup>14</sup> They explain that the APA defines "agency action" to include "the whole or a part of any agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." (*Id.* at 16) (quoting 5 U.S.C.

§ 551(13).) (They do not indicate whether this definition applies to the RFA and SBREFA as well.) Defendants assert that what Plaintiffs characterize as a *de facto* TMDL procedure is not an "agency action," much less a final agency action, but in fact a sequence of events; as such, they maintain, the procedure cannot give rise to a challenge under the APA or under the RFA, as amended by the SBREFA.

- 14 Defendants also contend that the RFA, as amended by the SBREFA, provides a narrow and exclusive means of judicial review that is not available here due to the nature of Plaintiffs' challenge to the *de facto* TMDL procedure. (*See id.* at 16.)

Plaintiffs respond to Defendants' arguments somewhat curiously. Despite vehemently asserting that Defendants' arguments are incorrect, they do not dispute that a challenge will lie only to final agency action. Instead, they contend that the *de facto* TMDL procedure "led up to and resulted in 'final agency action,'" (Pls.' Opp. Br. at 22), namely the August 1, 2002, approval of the State Trash TMDLs. Plaintiffs also argue at great length that their challenge to this procedure is not moot because it falls under the "capable of repetition, yet evading review" exception to the mootness doctrine. (*Id.* at 22-25.)

5 Defendants' arguments are persuasive, and Plaintiffs' responses are both unconvincing and nonresponsive. As Defendants correctly note, (*see* Defs.' Reply Br. at 4-5), Plaintiffs' suggestion that they are challenging EPA's approval of the State Trash TMDLs, as opposed to the so-called "TMDL procedure," is belied by the allegations of the SAC: by their plain language, the allegations of paragraphs 84 through 86 and paragraphs 96 through 98 challenge the "TMDL procedure," (SAC 84-86, 96-98); Plaintiffs' challenge to EPA's approval of the State Trash TMDLs is set out in paragraph 87, (*see id.* ¶ 87), the justiciability of which challenge is discussed in Part III.C of this Order, *infra*. Plaintiffs do not demonstrate how the "procedure" is "the whole or a part of any agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act" or falls within any other definition, statutory or otherwise, of final agency action.<sup>15</sup> Indeed, as Defendants also correctly note, (*see* Defs.' Reply Br. at 4-5), Plaintiffs' assertion that the TMDL procedure *consummated* in final agency action, namely EPA's approval of the State Trash TMDLs, is an implicit admission that the "procedure" itself is not final agency action. Nor do Plaintiffs make any effort to distinguish or refute any of the authorities cited by Defendants in support of their arguments. Finally, as Defendants yet again correctly

point out, Plaintiffs' mootness argument is nonresponsive because Defendants do not contend that this claim is moot. (*Id.* at 8.)<sup>16</sup>

15 Even though the Court has not been able to locate a statutory definition of "agency action" for purposes of the RFA and SBREFA, Plaintiffs have put forward no argument to suggest that it should be given a meaning substantially different than that provided in the APA. The Court sees no reason to conclude that "agency action" should be given a significantly more expansive definition than that provided for purposes of the APA.

16 Plaintiffs do not respond to Defendants' argument that judicial review is unavailable under the RFA, as amended by the SBREFA, for alleged violations of 5 U.S.C. § 603. (Mot. to Dismiss at 18.) The Court agrees with Defendants that the implication of this lack of response is that any opposition to this argument is waived. (*See* Defs.' Reply Br. at 3-4.) The Court disagrees with Defendants, however, that Plaintiffs have failed to respond to Defendants' arguments that the *de facto* TMDL procedure does not constitute "final agency action" under the RFA, as amended by the SBREFA; but the Court finds their response to this argument meritless for the reasons stated above.

In sum, it is apparent that the alleged *de facto* TMDL procedure, consisting of the various events identified in paragraph 85 of the SAC, is not subject to challenge under the APA, RFA, or SBREFA because it is not final agency action within the meaning of those statutes. *Cf. Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (rejecting challenge to alleged land withdrawal \*1155 review program on grounds that alleged program was not final agency action within meaning of APA). Accordingly, the Court GRANTS Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) with respect to claim (4) within the First Claim for Relief, (SAC ¶¶ 84-86). The Court also GRANTS Defendants' motion pursuant to Rule 12(b)(6) with regard to the Second Claim for Relief. Given that the Second Claim for Relief challenges the validity of the EPA Trash TMDLs and the alleged *de facto* TMDL procedure alone, and given that Plaintiffs have withdrawn their challenge to the validity of the EPA Trash TMDLs, the Second Claim for Relief is now dismissed in its entirety.

It is further evident that Plaintiffs cannot amend the SAC to allege facts sufficient to rehabilitate these claims because they are not actionable as a matter of law. Accordingly, both claim (4) within the First Claim for Relief and the Second Claim

for Relief are DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE.

### C. Ripeness of Plaintiffs' Challenge to EPA's Approval of State Trash TMDLs

Plaintiffs' remaining claim (aside from the Third Claim for Relief, which is dependent on the First and Second Claims for Relief) challenges the merits of EPA's approval of the State Trash TMDLs. (*See id.* ¶ 87.) Defendants move to dismiss this claim as unripe for judicial review. Specifically, Defendants contend that the issues are not yet sufficiently developed to be fit for judicial review under the APA because Plaintiffs' existing NPDES permit imposes no obligations on Plaintiffs in connection with the State Trash TMDLs and because the Los Angeles Regional Board intends to revisit these TMDLs at the end of the monitoring period. (Mot. to Dismiss at 21-23.) Defendants further contend that Plaintiffs will not suffer any immediate hardship if review is withheld because EPA's approval of the State Trash TMDLs imposes no present, affirmative duties on Plaintiffs and requires no immediate changes in Plaintiffs' conduct. (*Id.* at 23-24.)

Plaintiffs respond by arguing that they have suffered "injury in fact," both economic and non-economic. (Pls.' Opp. Br. at 16-17.) Citing to the text of the State Trash TMDLs, a copy of which is appended to the Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss (the "Montevideo Declaration") as Exhibit 3, Plaintiffs claim that they are impacted by these TMDLs:

[B]y the terms of the TMDL itself, most Plaintiffs are directly impacted by its terms and presently have express monitoring obligations to comply with, not to mention pending compliance dates requiring annual reductions in trash. Moreover, the TMDL calls out very specific and expensive implementation measures, including possible implementation through full capture vortex systems totaling \$109.3 million for all affected entities within the County [of Los Angeles] by the end of Year 1, and a total of \$2,053,100,000 for the first 12 years of implementation. Even the Trash TMDL itself concludes that "Trash abatement in the Los Angeles River system may be expensive."

(Pls.' Opp. Br. at 18 (citing Montevideo Decl., Ex. 3 (State Trash TMDLs)) (internal citations and emphasis omitted).) Similarly, Plaintiffs maintain that "to come into compliance by the Compliance Dates, [they] must begin employing strategies now to meet the progressive reductions in Waste

Load Allocations required by the State Trash TMDL[s].” (*Id.* at 19.) \*1156 Plaintiffs further allege that the NPDES permit that applies to all of Plaintiffs provides that the State Trash TMDLs are “effective and enforceable.” (*Id.* at 18 (citing Montevideo Decl., Ex. 5, at 10 ¶ 14).) Citing paragraph 36 of the SAC, they also contend that they have suffered from the TMDLs’ being in effect because they are exposed to “unwarranted enforcement action and third party citizen suits.” (*Id.*) Finally, Plaintiffs contend that they have suffered “procedural injuries,” to wit, their being “forced to submit comments to two different levels of government (the State of California and the EPA) on two sets of TMDL over a series of many months and several hearings.” (*Id.* at 20.)

Defendants dispute all of Plaintiffs’ arguments in their reply. Defendants note that “Plaintiffs point to no present effect of the TMDLs on their day-to-day conduct.” (Defs.’ Reply Br. at 12.) They point out that, contrary to Plaintiffs’ contention, Plaintiffs in fact have no monitoring obligations with which to comply because the Los Angeles County Department of Public Works has assumed that responsibility for all of Plaintiffs. (*Id.*) Defendants clarify that the first compliance date under the TMDLs is not until 2006, and the TMDLs identify several potential compliance options without mandating the use of any particular measure. (*Id.*) They further note that Plaintiffs fail to respond to the record evidence that the Los Angeles Regional Board will revisit the TMDLs at the conclusion of the monitoring period, that is, prior to the first compliance deadline, and that such reconsideration has been considered a rational basis for delaying judicial review. (*Id.* at 13 (citing *Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726, 735, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998), and *Municipality of Anchorage v. United States*, 980 F.2d 1320, 1323 (9th Cir.1992)).) Finally, Defendants assail Plaintiffs’ reliance on the aforementioned statement in Plaintiffs’ NPDES permit because this statement does not establish that the State Trash TMDLs are effective or enforceable against Plaintiffs. (*Id.*)

6 The “ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57 n. 18, 113 S.Ct. 2485, 125 L.Ed.2d 38 (1993). Unripe claims are subject to dismissal for lack of subject matter jurisdiction. *See Ass’n of Am. Med. Colleges v. United States*, 217 F.3d 770, 784 n. 9 (9th Cir.2000). In determining whether a case is ripe for review, a court must consider two main issues: “the fitness of the issues for judicial decision” and “the hardship to the parties of withholding court consideration.” *Abbott Labs. v. Gardner*,

387 U.S. 136, 149, 87 S.Ct. 1507 (1967). To address these issues in the context of a challenge to the lawfulness of administrative action, the Supreme Court has identified three factors to consider: “(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented.” *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 733, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998).

7 In light of these three factors, the Court finds this claim unripe for review. First, delayed review would cause, at most, minimal hardship to the parties. Indeed, Plaintiffs have not demonstrated that they will suffer *any* hardship if review is delayed. Despite their preoccupation with various official pronouncements that the State Trash TMDLs are “effective” and “enforceable,” Plaintiffs cannot point to a single future event or condition that is fairly certain to occur and will adversely \*1157 impact Plaintiffs themselves.<sup>17</sup> That is because the TMDLs do not presently impose any obligations on Plaintiffs and because they are subject to revision before such obligations will be imposed. Nor do Plaintiffs provide any evidence or explanation whatever of the “unwarranted enforcement action and third party citizen suits” to which they claim to be exposed.

17 The Court notes parenthetically that Plaintiffs’ invocation of “injury in fact” in their opposition brief, (Pls.’ Opp. Br. at 16-17), is inapposite. Injury-in-fact is a concept that relates to the issue of standing, not ripeness. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Plaintiffs appear to confuse Defendants’ arguments as relating to standing, not ripeness. (Pls.’ Opp. Br. at 20 (“Federal courts have long recognized procedural injuries, as well as actual injuries, as an alternative basis for standing.”).) Nevertheless, the Court construes Plaintiffs’ allegations of “injury in fact” as allegations of hardship.

Equally unsupported is Plaintiffs’ contention that they will bear economic costs in complying with the State Trash TMDLs. The sole evidentiary basis of this allegation, set out in paragraph 35 of the SAC and discussed more thoroughly in Plaintiffs’ Opposition, is the estimates provided in the text of the TMDLs themselves. (*See* SAC ¶ 35; Pls.’ Opp. Br. at 18.) But this matter is inadmissible hearsay because it is offered by an out-of-court declarant, *i.e.*, the Los Angeles Regional Board, for the truth of the matter stated, *i.e.*, that the TMDLs will in fact impose these costs.<sup>18</sup> Yet even if

this evidence were admissible, it would be insufficient to support Plaintiffs' contention that they will suffer economic injury: the cited portions of the State Trash TMDLs provide estimates of costs to be borne by "permittees"; there is no indication that these costs will be borne by Plaintiffs in particular. (See Montevideo Decl., Ex. 3, at 37, 40, cited in Pls.' Opp. Br. at 18.) Similarly, Plaintiffs provide no evidentiary support for the bald contention in their opposition brief that Plaintiffs must begin employing "strategies" now to meet the progressive reductions in wasteload allocations required by the State Trash TMDLs. (Pls.' Opp. Br. at 19.)

- 18 The author of the State Trash TMDLs appears to be the Los Angeles Regional Board. (See Montevideo Decl., Ex. 3.) Since the Los Angeles Regional Board is an entity created by state law and is subordinate to a state agency, the State Board, the text of the State Trash TMDLs is arguably ascribable to the State Board and the state of California as well.

But these statements cannot be attributed to EPA by virtue of its approval of the State Trash TMDLs. Plaintiffs have laid no legal or evidentiary foundation tending to show that EPA's mere approval of the TMDLs themselves implies that EPA further agreed with or endorsed as accurate California's estimates of the costs of compliance provided with those TMDLs.

Even if Plaintiffs will be forced to comply with obligations imposed by the State Trash TMDLs and will suffer costs therefrom, the first Compliance Point is not until Year 3 of the implementation period, which runs from October 1, 2005, to September 30, 2006. (See Montevideo Decl., Ex. 3, at 28.) Thus, as a practical matter, Plaintiffs have three years to reach the specified Compliance Point. They have "ample opportunity later to bring [their] legal challenge at a time when harm is more imminent and more certain." *Ohio Forestry Ass'n*, 523 U.S. at 734, 118 S.Ct. 1665. Accordingly, Plaintiffs cannot be heard to complain that they will suffer hardship if review is withheld at the present time.<sup>19</sup>

- 19 To the extent that Plaintiffs identify past events that are not alleged to recur in the future, such as Plaintiffs' allegedly having to submit comments to two levels of government, for the purpose of demonstrating hardship, those events are irrelevant because Plaintiffs are solely seeking prospective relief (aside from attorney's fees and costs of suit).

\*1158 Second, judicial intervention would likely interfere with further administrative action on the part of the state of California. Plaintiffs have not refuted Defendants' evidence that the Los Angeles Regional Board will be revisiting the

State Trash TMDLs at the end of the monitoring period.<sup>20</sup> It is thus possible that the compliance \*1159 dates or compliance points will be altered or abolished altogether. The State Board may submit new TMDLs to EPA for review and potential approval well before the compliance dates in the State Trash TMDLs. And even if the State Trash TMDLs remain mostly intact, it is certainly possible that the State Board will approve additional regulations that alleviate much of the burden on Plaintiffs. Again, Plaintiffs must bear in mind that it is the state of California, not the federal government, that is charged with implementing the State Trash TMDLs.

- 20 Plaintiffs' Objections challenge the admissibility of, *inter alia*, the portion of Defendants' evidence tending to show that the Los Angeles Regional Board will be revisiting the State Trash TMDLs at the end of the monitoring period, namely relevant statements in paragraphs 6 and 12 of the Dickerson Declaration. (The statements in paragraph 7 of the Dickerson Declaration and Exhibit C thereto also constitute such evidence, (see Mot. to Dismiss at 22), although Plaintiffs do not object to those statements.)

Plaintiffs challenge the statements in paragraph 6 of the Dickerson Declaration on five grounds. First, Plaintiffs contend that these statements are irrelevant "to the issue in question." (Pls.' Objections at 3.) The Court is unclear about what Plaintiffs mean by "the issue in question," but at any rate, the Court overrules this objection because these statements are indeed relevant to an important issue relating to ripeness: whether the Los Angeles Regional Board will revisit the State Trash TMDLs at the end of the monitoring period. Second, Plaintiffs assert that the statements are inadmissible hearsay because they seek "to introduce statements from parties other than the declarant, into evidence." (*Id.*) This argument fails because the statements are not offered for the truth of the matter stated by persons or parties other than Mr. Dickerson. That the Los Angeles Regional Board's *discussed* (i.e., verbally articulated) the possibility of reopening the TMDLs in the future does not implicate hearsay concerns, see *United States v. Ballis*, 28 F.3d 1399, 1405 (5th Cir.1994); and the board's orders to its staff are more akin to written or verbal acts.

Third, Plaintiffs assail the statements as "incompetent" because "the opinions and views of individual Regional Board members is [*sic*] not relevant or admissible evidence of the actions or positions of the entire Board." (Pls.' Objections at 3 (emphasis omitted).) But nowhere are the "opinions and views" of the individual Regional Board members set out in the statements in paragraph

6. Fourth, Plaintiffs claim that these statements are "not the best evidence of the position of the entire Regional Board, as the views and positions of an entire Board can only be discerned from the meeting minutes and resolutions which confirm the actions of the public body." (*Id.* (emphasis omitted).) But the "views and positions" of the board are not set out therein. Fifth, Plaintiffs argue that the statements should be excluded as "extra-record evidence." This objection is meritless because the statements are relevant to the ripeness of Plaintiffs' challenge to EPA's approval of the State Trash TMDLs, and the Court may appropriately look beyond the pleadings in evaluating a motion to dismiss pursuant to Rule 12(b)(1).

In sum, Plaintiffs appear to have construed the statements in paragraph 6 of the Dickerson Declaration as stating that the Los Angeles Regional Board intends to *revise* the State Trash TMDLs after completion of the monitoring period, and they have evidently made their objections with this understanding in mind. Careful review of these statements reveals, however, that these statements demonstrate only that board staff have been ordered to report on the TMDLs and make recommendations on whether or not to revise the TMDLs based on the result of the monitoring. Thus, the import of the statements in paragraph 6 is that *the board will be in a position to revisit, and potentially reconsider, the TMDLs at the end of the monitoring period*, not that they have actually decided to revise the TMDLs. Accordingly, and for the reasons stated above, the Court **OVERRULES** the objections under heading II.1 in Plaintiffs' Objections.

Although Plaintiffs have objected to the admissibility of the statements in paragraph 12 of the Dickerson Declaration, the Court does not rely on those statements in evaluating issues of ripeness. The Court finds that the statements in paragraphs 6 and 7 of the Dickerson Declaration are sufficient to support a conclusion that the Los Angeles Regional Board will be revisiting—which is not to be confused with an intent to revise—the State Trash TMDLs at the end of the monitoring period. Accordingly, the Court **OVERRULES AS MOOT** the objections under heading II.5 in Plaintiffs' Objections.

Finally, the Court has reviewed the remaining objections in Plaintiffs' Objections. The Court does not rely on any of the matter to which Plaintiffs have objected other than those under headings II.1 and II.2 in evaluating the Motion to Dismiss. Accordingly, the Court **OVERRULES AS MOOT** the remaining objections in Plaintiffs' Objections.

Finally, the Court would benefit from further factual development of the issues presented. For example, Plaintiffs allege that in approving the State Trash TMDLs, EPA failed "to use 'best science' and [failed] to carefully consider suggestions on how to structure the TMDL program to be more effective and flexible to ensure workable solutions, with such failure resulting in an inequitable share of the burden [of pollution reduction] being placed on municipalities, such as Plaintiffs herein, to attain water quality standards." (SAC ¶ 47.) Since TMDLs are not self-executing, but require issuance of state regulations for implementation, delaying review will enable the Court to determine more easily and accurately whether the TMDL program could in fact have been structured more flexibly and whether Plaintiffs are bearing an inequitable share of the burden of pollution reduction.

In light of the Court's evaluation of the foregoing three factors, the Court concludes that Plaintiffs' claim is unripe for judicial review. Accordingly, Plaintiffs' claim (5) within the First Claim for Relief, (*id.* ¶ 87), is **DISMISSED** pursuant to Rule 12(b)(1) due to the Court's lack of subject matter jurisdiction. Since the Court lacks jurisdiction over this claim, it lacks authority to grant Plaintiffs leave to amend the claim; accordingly, the claim is dismissed **WITHOUT LEAVE TO AMEND** in this action. Finally, because the Court necessarily does not reach the merits of the claim, the dismissal is **WITHOUT PREJUDICE**.

#### **D. Third Claim for Relief**

Plaintiffs' Third Claim for Relief is wholly predicated on their first two claims for relief. Because these two claims for relief are dismissed, the Third Claim for Relief is **DISMISSED** on the same bases, and to the same extent, as the two claims (and sub-claims thereunder) are dismissed.

#### **E. Motion for Partial Summary Judgment**

Plaintiffs' Motion for Partial Summary Judgment seeks summary judgment in Plaintiffs' favor on the issues of (1) whether Defendants had authority and jurisdiction to approve the State Trash TMDLs to the extent that they covered unlisted waters and (2) whether Defendants had authority and jurisdiction to approve the State Trash TMDLs given that they had previously established the EPA Trash TMDLs. For the reasons stated above, the Court grants the Motion to Dismiss. Accordingly, the Motion for Partial Summary Judgment is **DENIED AS MOOT**. For the same reason, the Court **OVERRULES AS MOOT** Intervenor's Evidentiary

Objections to Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss<sup>21</sup> and Plaintiffs' Objections to \*1160 Declaration of Anjali I. Jaiswal and Exhibits.

- 21 Although the Montevideo Declaration relates both to Plaintiffs' opposition to the Motion to Dismiss and to Plaintiffs' Motion for Partial Summary Judgment, Intervenor's objections to the Montevideo Declaration are made in connection with their opposition to the Motion for Partial Summary Judgment. Accordingly, the Court considers their objections solely for that purpose.

#### IV. CONCLUSION

Plaintiffs have no reason or right to be before this Court, at least at this time. All of their claims are moot, meritless, or unripe. Plaintiffs' challenges to the EPA Trash TMDLs were quite obviously mooted out the minute that EPA approved the State Trash TMDLs. Indeed, given that Plaintiffs readily withdrew these challenges based solely on Defendants' representations in their moving papers that the EPA Trash TMDLs are void, (Pls.' Opp. Br. at 4 n. 6), the Court wonders why Plaintiffs proceeded to file a lawsuit on this basis. Plaintiffs' challenge to EPA's authority to approve the State Trash TMDLs following its establishment of the EPA Trash TMDLs and their challenge to the "*de facto* TMDL procedure" are so patently meritless that the Court fails to understand why Plaintiffs decided to assert these claims in the first place. Finally, Plaintiffs' challenges to the "merits" of the State Trash TMDLs may very well be valid, but in the absence of any indication that they will suffer imminent hardship, these claims are premature.

The Court does not suggest by any means that Plaintiffs have acted in bad faith by continuing to prosecute this action after EPA approved the State Trash TMDLs. But after receiving Defendants' opening brief for their Motion to Dismiss, Plaintiffs should have recognized that their claims could not be maintained at present, if at all. The arguments in their opposition brief appear to reflect more of a "win at all costs" approach than considered judgment. And while the Court does not doubt that Plaintiffs would appreciate a judicial declaration as to the validity of the State Trash TMDLs, the Court lacks jurisdiction to grant such relief where Plaintiffs are not in jeopardy of imminent harm and future events could obviate the controversy.

Accordingly,

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss Second Amended Complaint [Docket No. 18] is GRANTED, such that:
  - a. The First Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED, as follows:
    - i. The claim that EPA acted without authority and acted arbitrarily and capriciously by establishing the EPA Trash TMDLs prior to receiving for review the State Trash TMDLs, (SAC ¶¶ 78-79), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;
    - ii. The claim that EPA acted without authority and arbitrarily and capriciously by reviewing and approving the State Trash TMDLs because EPA had already established the EPA Trash TMDLs, (SAC ¶¶ 80, 83), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;
    - iii. The claim that EPA acted arbitrarily and capriciously and in excess of its jurisdiction with regard to the manner by which it established the EPA Trash TMDLs, (SAC ¶¶ 81-82), is DISMISSED WITHOUT LEAVE TO AMEND and \*1161 WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;
    - iv. The claim that the collective actions of California and EPA relating to issuance of the EPA Trash TMDLs and subsequent approval of the State Trash TMDLs constitute a "*de facto* TMDL procedure" that is arbitrary, capricious, and contrary to law, (SAC ¶¶ 84-86), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;
    - v. The claim that EPA acted arbitrarily and capriciously by approving the State Trash TMDLs because those TMDLs were "patently defective" and established not in accordance with the procedures of the CWA and California law, (SAC ¶ 87), is DISMISSED WITHOUT LEAVE TO AMEND in this action and WITHOUT PREJUDICE as unripe and, thus, for lack of subject matter jurisdiction;

- b. The Second Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED, as follows:
- i. To the extent the Second Claim for Relief challenges the validity of the EPA Trash TMDLs, the claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;
  - ii. To the extent the Second Claim for Relief challenges the validity of the alleged *de facto* TMDL procedure, the claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;
  - c. The Third Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED on the same bases, and to the same extent, as the First and Second Claims for Relief are dismissed, given that the Third Claim for Relief is derivative of the first two claims.
2. Plaintiffs' Motion for Summary Adjudication of Issues [Docket No. 28] is DENIED AS MOOT.
3. Plaintiffs' Objections to Declarations of David W. Smith and Dennis Dickerson Offered by Defendants in Support of Defendants' Motion to Dismiss Second Amended Complaint [Docket No. 31] are OVERRULED on the merits with respect to the objections under headings II.1 and II.2 therein and OVERRULED AS MOOT with respect to all remaining objections.
4. Intervenor's Evidentiary Objections to Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss [Docket No. 43] are OVERRULED AS MOOT.
5. Plaintiffs' Objections to Declaration of Anjali I. Jaiswal and Exhibits [Docket No. 47] are OVERRULED AS MOOT.
- IT IS FURTHER ORDERED THAT this action is DISMISSED in its entirety. The Clerk shall enter judgment in favor of defendants accordingly. All deadlines and events presently calendared are VACATED. \*1162 The Clerk shall close the file and terminate any pending matters.
- IT IS SO ORDERED.

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# **ATTACHMENT 36**



411 F.3d 1103  
United States Court of Appeals,  
Ninth Circuit.

CITY OF ARCADIA; City of Baldwin Park; City of Bellflower; City of Cerritos; City of Commerce; City of Diamond Bar; City of Downey; City of Irwindale; City of Lawndale; City of Monrovia; City of Montebello; City of Monterey Park; City of Pico Rivera; City of Rosemead; City of San Gabriel; City of Sante Fe Springs; City of Sierra Madre; City of Signal Hill; City of South Pasadena; City of Vernon; City of West Covina; City of Whittier, a California Municipal Corporation, Plaintiffs-Appellants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; Christine Todd Whitman, USEPA Administrator; Wayne Nastri, USEPA Region IX Administrator, Defendants-Appellees, Natural Resources Defense Council, Inc.; Heal the Bay, Inc.; Santa Monica Baykeeper, Inc., Defendants-Intervenors-Appellees.

No. 03-16309. Argued and Submitted  
Feb. 10, 2005. Filed June 15, 2005.

### Synopsis

**Background:** California cities sought review of decision of Environmental Protection Agency (EPA) which established a total maximum daily load (TMDL) that limited amount of trash that could be discharged into Los Angeles River. The United States District Court for the Northern District of California, Sandra B. Armstrong, J., dismissed the claim. Cities appealed.

**Holding:** The Court of Appeals, Canby, Circuit Judge, held that EPA acted within the scope of its authority in approving California's TMDL.

Affirmed.

### Attorneys and Law Firms

\*1104 Richard Montevideo, Terence J. Gallagher, Rutan & Tucker, LLP, Costa Mesa, CA, for the plaintiffs-appellants. John A. Bryson, Department of Justice, Washington, DC, for the defendants-appellees.

David S. Beckman, Natural Resources Defense Council, Inc., Santa Monica, CA, for the defendants-intervenors-appellees.

Appeal from the United States District Court for the Northern District of California; Sandra B. Armstrong, District Judge, Presiding. D.C. No. CV-02-05244-SBA.

Before: PREGERSON, CANBY, JR., and TALLMAN, Circuit Judges.

### Opinion

\*1105 CANBY, Circuit Judge:

Several municipalities in the Los Angeles area ("Cities") challenge administrative actions taken by the Environmental Protection Agency ("EPA") pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). The EPA established a total maximum daily load ("TMDL") that limited the amount of trash that can be discharged into the Los Angeles River. The EPA subsequently approved the State of California's separately established TMDL, which was deemed to supersede the federal standard. The Cities challenge the EPA's authority to approve the State TMDL.<sup>1</sup> The district court dismissed this claim pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. We affirm because we conclude that the Clean Water Act permits the EPA's action.

1 We address the other issues raised on appeal in a separate, unpublished disposition filed contemporaneously with this opinion.

### I. Regulatory Background

In an effort "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Congress enacted the Clean Water Act with the stated "goal that the discharge of pollutants into the navigable waters be eliminated by 1985." 33 U.S.C. § 1251(a), (a)(1).

The Clean Water Act offers two approaches for controlling water pollution: technology-based regulations and water quality standards. Technology-based regulations reduce levels of pollution by requiring a discharger to make equipment or process changes, without reference to the effect on the receiving water. Water quality standards set the permissible level of pollution in a specific body of water without direct regulation of the individual sources of pollution.

The National Pollutant Discharge Elimination System ("NPDES") permit program governs implementation of both technology-based requirements and water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)(1); 40 C.F.R. § 122.44(a), (d)(1). An NPDES permit sets specific limits that apply to individual polluters. Discharges from any "point source" into the waters of the United States are prohibited unless that discharge complies with the limits and requirements of the NPDES permit. 33 U.S.C. §§ 1311(a), 1362(12), (14).

States are required to identify waters where technology-based effluent limitations and other required controls fail to achieve water quality standards. 33 U.S.C. § 1313(d); 40 C.F.R. § 130.7(b). This list of substandard waters is known as the "303(d) list" (section 303 of the Clean Water Act having been codified as section 1313). States are required to develop a TMDL for each pollutant of concern. A TMDL is not self-enforcing, but serves as an informational tool or goal for the establishment of further pollution controls. *See Pronsolino v. Nastri*, 291 F.3d 1123, 1128-29 (9th Cir.2002).

1 The EPA is required to approve or disapprove a State's TMDL within thirty days of its submission. 33 U.S.C. § 1313(d)(2). If the EPA disapproves a State TMDL submission, the EPA must issue its own within thirty days of the disapproval. *Id.* The EPA is also under a mandatory duty to establish a TMDL when a State fails over a long period of time to submit a TMDL; this "prolonged" failure can amount to the "constructive submission" of an inadequate TMDL, thus triggering the EPA's duty to issue its own. \*1106 *See San Francisco BayKeeper v. Whitman*, 297 F.3d 877, 880-84(9th Cir.2002).

## II. Procedural History

In 1997, several environmental groups (including Heal the Bay and Santa Monica BayKeeper) sued the EPA for failure to satisfy its mandatory duty to establish a TMDL for the Los Angeles region when California failed to do so. This litigation resulted in the entry of a consent decree, which required the establishment of TMDLs to account for all significant sources of water pollution, including storm water and urban runoff. The consent decree required EPA either to approve a State-submitted TMDL for trash in the Los Angeles River watershed by March 2001 or, if California failed to make a timely submission, to establish the EPA's own TMDL by March 2002.

California failed to submit a TMDL by March 2001, and the EPA subsequently established its own trash TMDL for the Los Angeles River in March 2002. Five months later, California submitted a trash TMDL, and the EPA subsequently approved it, causing it to supersede the EPA's TMDL. It is this approval of California's superseding TMDL that the Cities now challenge.<sup>2</sup>

- 2 The Cities originally challenged the EPA's TMDL, but that challenge was withdrawn as moot when it was made clear that California's TMDL superseded and nullified EPA's earlier TMDL.

The Cities brought this action in the United States District Court for the Northern District of California. The Cities claimed that the EPA lacked authority to approve the State TMDL after having established its own TMDL. The district court dismissed this challenge pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim.

## III. Discussion

2 We conclude that the EPA acted within the scope of its statutory and regulatory authority in approving the State TMDL.<sup>3</sup> Neither the Clean Water Act nor its implementing regulations specify or imply that the EPA is barred from approving a State submitted TMDL after the EPA has established its own. *See* 33 U.S.C. § 1313(d); 40 C.F.R. § 130.7. In fact, the States are authorized to submit waters identified and TMDLs "from time to time" and the EPA is *required* either to approve or disapprove a TMDL upon submission by a State. 33 U.S.C. § 1313(d)(2) ("The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission.").

- 3 We review de novo a dismissal for failure to state a claim pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure. *Decker v. Advantage Fund, Ltd.*, 362 F.3d 593, 595-96 (9th Cir.2004). Dismissal is proper when there is a "lack of a cognizable legal theory" to support a claim. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.1988).

This plain reading of section 1313 is consistent with the basic goals and policies that underlie the Clean Water Act—namely, that States remain at the front line in combating pollution. *See* 33 U.S.C. § 1251(b) ("It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution..."); 33 U.S.C. § 1370 (stating that "nothing in this

chapter shall [ ] preclude or deny the right of any State or political subdivision thereof ... to adopt or enforce [ ] any standard or limitation respecting discharges of pollutants" unless the standard is less stringent than an existing standard). Even if the language of the statute were not clear, we would uphold as reasonable the EPA's interpretation of the Clean Water Act to require approval or \*1107 disapproval of California's TMDL. See *Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517, 1525 (9th Cir.1995) ("A court should accept the 'reasonable' interpretation of a statute chosen by an administrative agency except when it is clearly contrary to the intent of Congress.") (citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-44, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).

The Cities' reliance on the "constructive submission" doctrine is misplaced. It is certainly correct that a State's failure to act may trigger the EPA's duty to establish a TMDL on its own accord. Nothing in the constructive submission cases, however, suggests that the establishment of a TMDL by the EPA divests a State of the ability subsequently to submit a TMDL on the same subject. See *San Francisco BayKeeper*, 297 F.3d at 881-83 (discussing the constructive submission doctrine). Nor does anything in section 1313 suggest that the EPA is powerless to approve such a submission. See 33 U.S.C. § 1313.

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The Cities also argue that the duplicative TMDL process violates public policy. There is no legal support for this argument. The potential for action on both the state and federal level inheres in the structure of the statutory scheme. So long as the State does not attempt to adopt more lenient pollution control measures than those already in place under the Act, the Clean Water Act does not prohibit state action. See 33 U.S.C. § 1370.

#### IV. Conclusion

The EPA acted within its authority in approving California's TMDL despite EPA's earlier promulgation of its own TMDL when California originally failed to make a timely submission. We therefore reject the Cities' challenge to this EPA action. By contemporaneous memorandum disposition, we have rejected the Cities' other claims against the EPA. We therefore affirm the judgment of the district court dismissing the Cities' action.

**AFFIRMED.**

#### Parallel Citations

60 ERC 1674, 35 Env'tl. L. Rep. 20,122, 05 Cal. Daily Op. Serv. 5144, 2005 Daily Journal D.A.R. 7066

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# **ATTACHMENT 37**

*[Faint, illegible text]*

446 F.3d 140  
United States Court of Appeals,  
District of Columbia Circuit.

FRIENDS OF THE EARTH, INC., Appellant

v.

ENVIRONMENTAL PROTECTION  
AGENCY, et al., Appellees.

No. 05-5015. Argued March 2,  
2006. Decided April 25, 2006.

### Synopsis

**Background:** Environmental group petitioned for review of decision of Environmental Protection Agency (EPA) to approve certain total maximum daily loads (TMDLs) for pollutants discharged into river, alleging that disputed TMDLs, which did not limit daily discharges, violated Clean Water Act (CWA) and implementing regulations. The Court of Appeals, 333 F.3d 184, dismissed petitions and transferred case. The United States District Court for the District of Columbia, 346 F.Supp.2d 182, granted EPA's motion for summary judgment. Environmental group appealed.

**Holdings:** The Court of Appeals, Tatel, Circuit Judge, held that:

- 1 CWA unambiguously required establishment of daily loads, and therefore EPA could not approve seasonal or annual loads;
- 2 EPA could not avoid literal interpretation of statutory term "daily" on grounds of absurdity;
- 3 purported tension between Combined Sewer Overflow Control (CSO) Policy and TMDLs did not provide basis for interpreting "daily" to mean timeframe other than daily; and
- 4 District of Columbia's recent revisions to water quality standards for river did not render action moot.

Reversed and remanded with instructions.

\*142 Appeal from the United States District Court for the District of Columbia (No. 04cv00092).

### Attorneys and Law Firms

Howard I. Fox argued the cause and filed the briefs for appellant.

John A. Bryson, Attorney, U.S. Department of Justice, argued the cause for federal appellees. With him on the brief were Greer S. Goldman, Attorney, and James H. Curtin and Stefania D. Shamet, Counsels, U.S. Environmental Protection Agency.

David E. Evans argued the cause for appellee District of Columbia Water and Sewer Authority. With him on the brief was Stewart T. Leeth.

F. Paul Calamita, John A. Sheehan, and Alexandra Dapolito Dunn were on the brief for amici curiae Combined Sewer Overflow Partnership and National Association of Clean Water Act Agencies in support of appellees.

Before: TATEL, BROWN, and GRIFFITH, Circuit Judges.

### Opinion

TATEL, Circuit Judge.

\*\*3 This case poses the question whether the word "daily," as used in the Clean Water Act, is sufficiently pliant to mean a measure of time other than daily. Specifically, the Environmental Protection Agency (EPA) takes the position that Congress, in requiring the establishment of "total maximum daily loads" to cap effluent discharges of "suitable" pollutants into highly polluted waters, left room for EPA to establish seasonal or annual loads for those same pollutants. The district court found EPA's contextual and policy arguments sufficiently persuasive to disregard the plain meaning of "daily," but we do not. Daily means daily, nothing else. If EPA believes using daily loads for certain types of pollutants has undesirable consequences, then it must either amend its regulation designating all pollutants as "suitable" for daily loads or take its concerns to Congress. We therefore reverse and remand with instructions to vacate the non-daily "daily" loads.

### I.

Flowing from Maryland through the northeast and southeast quadrants of Washington, D.C. and a stone's throw away from the site for the Washington Nationals' new stadium, the Anacostia River has "the dubious distinction of being one of the ten most polluted rivers in the country." *Kingman Park Civic Ass'n v. EPA*, 84 F.Supp.2d 1, 4 (D.D.C.1999). As such, it falls far short of meeting water quality standards set pursuant to the Clean Water Act (CWA) and designed to protect designated recreational uses like fishing and swimming. 33 U.S.C. § 1311(b)(1)(C) (mandating the

achievement of water quality standards); 47 D.C.Reg. 284, 284-85 (Jan. 21, 2000) (to be codified at D.C. Mun. Regs., tit. 21, § 1101.1) (establishing water quality standards \*\*4 \*143 based on uses including "primary contact recreation" and "consumption of fish & shellfish").

For bodies of water, like the Anacostia River, that fail to meet applicable water quality standards, the CWA requires states (defined by the Act to include the District of Columbia, 33 U.S.C. § 1362(3)) to establish a "total maximum daily load," or TMDL,

for those pollutants which the Administrator identifies ... as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

*Id.* § 1313(d)(1)(C). In 1978, EPA issued a regulation deeming "[a]ll pollutants ... suitable for the calculation of total maximum daily loads." Total Maximum Daily Loads Under Clean Water Act, 43 Fed.Reg. 60,662, 60,665 (Dec. 28, 1978) (emphasis added). This regulation remains unchanged today.

Once approved by EPA, TMDLs must be incorporated into permits allocating effluent discharges among all pollution sources, including point sources (like factories) and non-point sources (like storm-water run-off). See 33 U.S.C. § 1342(a)(1) (authorizing EPA to issue effluent discharge permits "upon condition that such discharge will meet ... [among other requirements] all applicable requirements under section [ ] 1311"); *id.* § 1311(b)(1)(C) (mandating the achievement of "any more stringent limitation, including those necessary to meet water quality standards"); see also 40 C.F.R. § 122.44(d)(1)(vii)(B) (requiring permitting authority to set effluent limits "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA"). If pollution loads stay below the applicable TMDLs for a given body of water, then in theory the body of water should achieve its water quality standards.

This case arises from the violation of two of the Anacostia's key water quality standards. First, because the river contains many biochemical pollutants that consume oxygen, its dissolved oxygen level has sunk below the applicable water quality standard, putting the river's aquatic life at risk of suffocation. Second, the river is murkier than the applicable

turbidity standard allows, stunting the growth of plants that rely on sunlight and impairing recreational use.

To remedy these violations, EPA approved one TMDL limiting the *annual* discharge of oxygen-depleting pollutants, and a second limiting the *seasonal* discharge of pollutants contributing to turbidity. See Letter from Rebecca Hammer, Dir., Water Prot. Div., EPA, to James R. Collier, Chief, Bureau of Env't. Quality (Dec. 14, 2001) (oxygen-depleting substances); EPA, Total Suspended Solids, Total Maximum Daily Loads for the Anacostia River, D.C. (Mar.2002) (total suspended solids). Neither TMDL limited daily discharges.

Appellant Friends of the Earth (FoE) petitioned this court for review of the TMDL approvals, arguing (among other things) that the CWA requires the establishment of "total maximum daily loads," not seasonal or annual loads. Concluding that we lacked subject matter jurisdiction, we transferred the case to the U.S. District Court, *Friends of the Earth v. EPA*, 333 F.3d 184 (D.C.Cir.2003), which granted EPA's motion for summary judgment, *Friends of the Earth v. EPA*, 346 F.Supp.2d 182 (D.D.C.2004). The court held that "the text of the CWA does not \*\*5 \*144 reveal a clear congressional intent to require EPA to calculate only daily TMDLs," *id.* at 189, found EPA's resolution of the resulting ambiguity reasonable, and concluded that the TMDL approvals were neither arbitrary nor capricious. This appeal followed.

## II.

1 2 Because Congress has charged EPA with the CWA's implementation, we review the agency's interpretation of the phrase "total maximum daily load" under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). See *Natural Res. Def. Council, Inc. v. EPA*, 859 F.2d 156, 202 (D.C.Cir.1988) (applying *Chevron* to EPA's interpretation of the CWA). Critically, if "Congress has directly spoken to the precise question at issue ..., that is the end of the matter." *Chevron*, 467 U.S. at 842-43, 104 S.Ct. 2778. So here.

3 We begin, as always, with the statute's language. For waters that fail to achieve water quality standards, see 33 U.S.C. § 1313(d)(1)(A), the CWA provides that "[e]ach state shall establish ... the total maximum *daily* load, for those pollutants which the Administrator identifies ... as suitable for such calculation," *id.* § 1313(d)(1)(C) (emphasis added). Because EPA has found "[a]ll pollutants ... suitable for the calculation of total maximum daily loads," 43 Fed.Reg. at 60,665, it follows that the CWA requires the District of

Columbia to establish a "total maximum daily load" for each pollutant that contributes to the Anacostia's violation of the dissolved oxygen and turbidity standards.

4 Nothing in this language even hints at the possibility that EPA can approve total maximum "seasonal" or "annual" loads. The law says "daily." We see nothing ambiguous about this command. "Daily" connotes "every day." See *Webster's Third New International Dictionary* 570 (1993) (defining "daily" to mean "occurring or being made, done, or acted upon every day"). Doctors making daily rounds would be of little use to their patients if they appeared seasonally or annually. And no one thinks of "[g]ive us this day our daily bread" as a prayer for sustenance on a seasonal or annual basis. *Matthew* 6:11 (King James).

When asked at oral argument how Congress could have spoken more clearly, EPA's counsel responded that "one way it could do that ... is to say that the ... total maximum daily load shall be expressed as a quantity per day or average per day or something like that." Tr. of Oral Arg. at 19. But a load expressed as a quantity per day is no different from a daily load, and we have never held that Congress must repeat itself or use extraneous words before we acknowledge its unambiguous intent. See *New York v. EPA*, 443 F.3d 880, 883 (D.C.Cir.2006) (refusing to require Congress "to use superfluous words"). If Congress wanted seasonal or annual loads, it could easily have authorized them by calling for "total maximum daily, seasonal, or annual loads." Or by providing for the establishment of "total maximum loads," Congress could have left a gap for EPA to fill. Instead, Congress specified "total maximum *daily* loads." We cannot imagine a clearer expression of intent.

EPA urges us to read the phrase in context, emphasizing that TMDLs must "be established at a level necessary to implement the applicable water quality standards." 33 U.S.C. § 1313(d)(1)(C). According to EPA, "[t]hat Congress took the step of elaborating on what a TMDL should be is a strong indication that it was not using the word 'daily' as the exclusive \*\*6 \*145 expression of its intent on the question of how a TMDL should be established." Fed. Appellees' Br. 26-27. This cannot be right. As written, the statute requires states to establish daily loads that *also* meet applicable water quality standards. The existence of two conditions does not authorize EPA to disregard one of them.

As additional context-albeit context appearing nowhere in the TMDL approvals themselves-EPA tells us that some pollutants are poorly suited to daily load regulation.

Discharges of such pollutants, EPA explains, might not immediately affect water quality, but could instead inflict environmental damage over a longer period. For example, oxygen-demanding pollutants could deplete dissolved oxygen quite slowly, perhaps over the course of an entire year. Similarly, turbidity-increasing pollutants could impede plant growth if they block sunlight over the course of a growing season. In EPA's view, bodies of water can therefore sometimes tolerate large one-day discharges of certain pollutants without violating water quality standards or causing undue environmental harm, so long as seasonal or annual discharges remain relatively low. According to EPA, the many ways in which pollutants damage the environment call for a more flexible understanding of "daily."

5 Even if we assume the validity of this argument, EPA must address it to Congress, which, by using the word "daily," settled the question of what period a "total maximum load" should cover. EPA may not "avoid the Congressional intent clearly expressed in the text simply by asserting that its preferred approach would be better policy." *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1089 (D.C.Cir.1996). The agency's claim might have more force if, for some class of pollutants, daily load limits conflicted with the requirement that TMDLs "implement the applicable water quality standards." 33 U.S.C. § 1313(d)(1)(C). But all water bodies can achieve water quality standards if their TMDLs are set low enough-if all else fails, they can be set to zero-and the two requirements therefore never conflict with each other.

6 Nor can we set aside a statute's plain language simply because the agency thinks it leads to undesirable consequences in some applications. We made this abundantly clear in *Sierra Club v. EPA*, 294 F.3d 155 (D.C.Cir.2002), where EPA took a strikingly similar position to the one it advances here. There, we considered a challenge to EPA's extension of the District of Columbia's attainment deadline for achieving the Clean Air Act's ozone standards. *Id.* at 158. Justifying the extension, EPA asserted that because the District's ozone pollution came entirely from upwind states, holding the District to a strict statutory deadline would be unnecessarily punitive and run counter to the Act's purposes. *Id.* at 160. "[A]s a matter of logic and statutory structure," EPA argued, "Congress almost surely could not have meant to require the Agency to treat the Washington Area as one of severe nonattainment merely because its attainment has been temporarily stalled due to transported pollution." *Id.* at 161 (internal quotation marks and citations omitted).

Roundly rejecting this argument, we explained:

The most reliable guide to congressional intent is the legislation the Congress enacted and, as we have seen, the Act itself reveals no intention to allow for an extension in circumstances like those affecting the Washington Area. Similarly, it is of no moment that the extension may be, as the Agency claims, "a reasonable accommodation of ... the statutory attainment date and interstate transport provisions"; it is not the accommodation the Congress made.

*Id.* (omission in original). Here, as in *Sierra Club*, EPA advances a reasonable policy justification for deviating from an environmental statute's plain language. Our answer is the same: "[t]he most reliable guide to congressional intent is the legislation the Congress enacted." *Id.* Just as EPA may not extend a deadline in contravention of a plain congressional mandate, the agency may not fulfill its obligation to establish daily loads by approving non-daily loads, whatever the wisdom of that "accommodation."

We have even less sympathy for EPA's argument given that the agency's predicament is largely of its own creation. The CWA requires the establishment of TMDLs only for "suitable" pollutants, 33 U.S.C. § 1313(d)(1)(C), and although a 1978 EPA regulation provides that "[a]ll pollutants ... are suitable for the calculation of total maximum daily loads," 43 Fed.Reg. at 60,665, EPA conceded at oral argument that nothing forecloses the agency from reconsidering that position. Given that EPA's entire justification for establishing non-daily loads is that certain pollutants are unsuitable for daily load limits, we are at a loss as to why it neglected this straightforward regulatory fix in favor of the tortured argument that "daily" means something other than daily. At any rate, EPA can change its regulation; we cannot rewrite the Clean Water Act.

7 8 As a fallback, EPA asks us to adopt the reasoning in *Natural Resources Defense Council, Inc. v. Muszynski*, 268 F.3d 91 (2d Cir.2001), in which the Second Circuit held that reading "daily" to mean daily would be "absurd, especially given that for some pollutants, effective regulation may best occur by some other periodic measure than a diurnal one." *Id.* at 99. In this circuit, however, agencies seeking to demonstrate absurdity have an exceptionally high burden: "for the EPA to avoid a literal interpretation ..., it must show either that, as a matter of historical fact, Congress did not mean what it appears to have said, or that, as a matter of logic and statutory structure, it almost surely could not have meant it." *Engine Mfrs. Ass'n*, 88 F.3d at 1089. Here, EPA has failed to make such a showing for a simple reason: as counsel

conceded at oral argument, establishing daily loads makes perfect sense for many pollutants. Given this concession, we see no way to conclude that "as a matter of logic and statutory structure, [Congress] almost surely could not have meant" to require daily loads.

9 We next consider the argument raised by intervenor District of Columbia Water and Sewer Authority (WASA), which operates sewers and wastewater treatment facilities in the District. As background, WASA explains that, as in many older municipalities, part of the District has a "combined sewer system" in which stormwater and sewage travel through the same pipes to the same treatment plants. While this system effectively minimizes pollution discharges most of the time, heavy storms cause it to overflow. When that happens, as it does with some regularity in the District, raw sewage spills from the overtaxed sewer system into nearby waters, including the Anacostia River.

Acknowledging that combined sewer systems pose delicate water quality problems, Congress amended the CWA in 2000 to provide that every permit issued "for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy [CSO Policy] signed by the Administrator on April 11, 1994." Consolidated Appropriations Act, 2001, Pub.L. No. 106-554, app. D § 112(a) (2000), 114 Stat. \*\*8 \*147 2763, 2763A-224 (codified at 33 U.S.C. § 1342(q)). The CSO Policy, in turn, represents EPA's effort to guide municipalities seeking to minimize effluent discharge from their existing sewage infrastructure. To that end, the CSO Policy requires municipalities with combined sewer systems to develop long-term control plans reflecting hard-nosed assessments of cost-effective ways to regulate overflow discharges. Combined Sewer Overflow (CSO) Control Policy, 59 Fed.Reg. 18,688, 18,691-94 (Apr. 19, 1994). The CSO Policy explicitly "recognizes the site-specific nature of [combined sewer overflows] and their impacts and provides the necessary flexibility to tailor controls to local situations. Major elements of the Policy ensure that CSO controls are cost effective and meet the objectives and requirements of the CWA." *Id.* at 18,688.

As WASA sees it, the tension between the CSO Policy's flexible approach and the rigid mandates imposed by daily loads forms part of the context within which we must interpret the word "daily." Indeed, WASA asserts, insisting on daily loads would require the "complete separation" of the sewer system—that is, the prohibitively expensive construction of independent stormwater and sewage pipes. WASA Br. 22

(emphasis omitted). It is for this reason that WASA, like EPA, urges us to interpret the word “daily” more flexibly than normally permitted in the English language.

10 WASA's argument suffers from at least three defects. First, we fail to see the relevance of the 106th Congress's opinion about what the 92nd Congress meant by “daily.” While we agree that we must read the phrase “total maximum daily load” in context, *see FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000), the context here is the Clean Water Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat. 816, not amendments enacted almost three decades later. “[P]ost-enactment legislative history,” after all, “is not only oxymoronic but inherently entitled to little weight.” *Cobell v. Norton*, 428 F.3d 1070, 1075 (D.C.Cir.2005); *see also United States v. Price*, 361 U.S. 304, 313, 80 S.Ct. 326, 4 L.Ed.2d 334 (1960) (holding that “the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one”). Second, the tension between the CSO Policy's flexibility and the perceived rigidity of daily loads exists only if daily loads must of necessity be set so low that any storm-event discharge would violate them—a premise unsupported anywhere in the record. And third, even if the record did support the premise, nothing in the CSO Policy validates interpreting “daily” to mean something other than daily. Quite to the contrary, the policy expressly states that following it must “ultimately result in compliance with the requirements of the CWA,” 59 Fed.Reg. at 18,691, and one of those requirements is establishing daily loads for waters failing to meet water quality standards.

11 12 We come next to EPA's last-ditch contention—raised only the day before oral argument—that the District of Columbia's recent revisions to the Anacostia's water quality standards moot this case. *See* 52 D.C.Reg. 9621, 9628-29 (Oct. 28, 2005) (to be codified at D.C. Mun. Regs., tit. 21, § 1104.8). Both WASA and FoE disagree, as do we. The TMDLs at issue here have never been repealed or superseded, and EPA regulations require discharge permits to incorporate effluent limitations “consistent with the assumptions and requirements of *any available wasteload allocation* for the discharge prepared by the State and approved by EPA” pursuant to its authority to approve TMDLs. 40 C.F.R. § 122.44(d)(1)(vii)(B) **\*\*9 \*148** (emphasis added). Because we assume agencies follow their own regulations, *see Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971) (agencies are “entitled to a presumption of regularity”), the case is hardly moot.

### III.

For the foregoing reasons, we remand to the district court with instructions to vacate EPA's approvals. *See* 5 U.S.C. § 706(2) (providing that “the reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”). In doing so, we recognize that neither FoE nor EPA wants the Anacostia River to go without dissolved oxygen and turbidity TMDLs. The district court retains some remedial discretion, however, and the parties may move to stay the district court's order on remand to give either the District of Columbia a reasonable opportunity to establish daily load limits or EPA a chance to amend its regulation declaring “all pollutants ... suitable” for daily loads. *See Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 872 (D.C.Cir.2001) (“Because this decision leaves EPA without standards regulating [hazardous waste conductor] emissions, EPA ... may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards.”); *Nat'l Treasury Employees Union v. Horner*, 854 F.2d 490, 501 (D.C.Cir.1988) (“Because we are not in the best position to determine the shortest reasonable timetable ..., we remand the case for [the] district court to establish, in consultation with the parties, an expedited schedule for further rulemaking proceedings consistent with this opinion.”); Kristina Daugirdas, Note, *Evaluating Remand Without Vacatur*, 80 N.Y.U. L.Rev. 278, 307 & n.141 (2005) (recommending as a remedial option “vacating the agency rules upon remand, but delaying issuance of the mandate for a limited period of time”). The merits of any such motion are of course the district court's to evaluate.

### IV.

To sum up, nothing in this record tempts us to substitute EPA's policy preference for the CWA's plain language. While Congress almost assuredly never considered combined sewer systems when enacting the CWA, it spoke unambiguously in requiring daily loads. If adherence to this mandate leads to unintended consequences for water quality or for municipal pocketbooks, interested parties should direct their concerns to EPA or to Congress, either of which can take steps to mitigate any fallout from the CWA's unambiguous directive. We, however, have no such authority.

*So ordered.*

Parallel Citations

62 ERC 1161, 371 U.S.App.D.C. 1, 36 Envil. L. Rep. 20,077,  
53 A.L.R. Fed. 2d 577

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# **ATTACHMENT 38**



91 F.3d 1345  
United States Court of Appeals,  
Ninth Circuit.

IDAHO CONSERVATION LEAGUE; and The  
Wilderness Society, Plaintiffs-Appellants,

v.

Jack Ward THOMAS, in his official capacity as  
Chief of the United States Forest Service; Dan  
Glickman, in his official capacity as Secretary of  
the U.S. Department of Agriculture; and United  
States Forest Service, an agency of the U.S.  
Department of Agriculture, Defendants-Appellees,  
and

Intermountain Forest Industry  
Association, Intervenor-Appellee.

No. 95-36293. Argued and Submitted  
May 10, 1996. Decided Aug. 6, 1996.

Environmental groups brought action pursuant to Emergency Supplemental Appropriations for Disaster Relief and Rescissions Act, challenging Forest Service's decision to proceed with timber salvage sale as component of wildfire recovery project. The United States District Court for the District of Idaho, Edward J. Lodge, Chief Judge, 917 F.Supp. 1458, granted summary judgment in favor of chief of Forest Service, and granted defense motion to strike documents. Environmental groups appealed. The Court of Appeals, Leavy, Circuit Judge, held that: (1) Forest Service did not act arbitrarily or capriciously in deciding to proceed with sale; (2) Rescissions Act does not require Secretary of Agriculture to personally authorize salvage timber sales; and (3) district court did not abuse its discretion in striking documents which were authored by agencies other than Forest Service and which were not sent or released to Service.

Affirmed.

#### Attorneys and Law Firms

\*1346 Kristen L. Boyles, Sierra Club Legal Defense Fund, Seattle, Washington, for the plaintiffs-appellants.  
Monica P. Medina, Environmental & Natural Resources Division, United States Department of Justice, Washington, D.C., for the defendants-appellees.  
Bruce M. Smith, Rosholt, Robertson & Tucker, Boise, Idaho, for the defendant-intervenor-appellee.

Appeal from the United States District Court for the District of Idaho, Edward J. Lodge, District Judge, Presiding. D.C. No. CV-95-00425-EJL.

Before: LAY, \* FERGUSON, and LEAVY, Circuit Judges.

\* The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

#### Opinion

LEAVY, Circuit Judge:

#### OVERVIEW

The Idaho Conservation League and The Wilderness Society (ICL) appeal from the district court's summary judgment in favor of Jack Ward Thomas, Chief of the United States Forest Service, in its action seeking a permanent injunction preventing the Forest Service from proceeding with the Thunderbolt timber salvage sale. We affirm the judgment of the district court.

#### \*1347 FACTS AND PRIOR PROCEEDINGS

The Thunderbolt timber salvage sale is located in the South Fork Salmon River (SFSR) drainage in the Boise and Payette National Forests in central Idaho. Historically, the river was the single largest producer of spring/summer chinook in the Columbia River Basin. However, since the 1950s, the drainage has suffered severe erosion and stream sedimentation caused by mining, grazing, logging, and associated road building. This degradation has been exacerbated by the geological formation underlying the drainage, the Idaho Batholith, which is characterized by steep, highly dissected topography and shallow soils. As a consequence, the spring/summer chinook population has suffered a drastic decline.

State and federal agencies took action to correct the problems in the SFSR. In the late 1980s, the Forest Service convened a group of scientists, timber industry officials, federal and state agencies, Indian tribes, and environmental organizations to develop a management plan for the SFSR. The group developed a set of management guidelines (South Fork Guidelines) which the Forest Service incorporated into the Payette and Boise National Forest Land Resource Management Plans (LRMPs) in 1988 and 1990, respectively.

The South Fork Guidelines established an interim fine sediment objective with a goal of fishable populations by 1997 and set forth an aggressive restoration and monitoring program. Under the guidelines, any new major land-disturbing actions are prohibited until restoration actions have improved in-river conditions. The guidelines also considered the effects of fire and the appropriate response:

Impacts from a fire, or other natural events may be unavoidable and stabilizing the source of natural disturbance is not always biologically desirable for aquatic ecosystems. More important is maintaining natural stream dynamics.

The SFSR was identified as a Stream Segment of Concern by the Idaho Division of Environmental Quality. This designation occurred because the beneficial uses of salmonid spawning and cold water biota were impaired by poor water quality. In a related action, the SFSR was designated as Water Quality Limited under § 303(d) of the Clean Water Act because it failed to meet water quality standards. In 1992 the Environmental Protection Agency (EPA) set Total Maximum Daily Loads (TMDLs), which limit sediment discharges into the South Fork Salmon River. The purpose of the TMDL is to improve spawning and rearing habitat by reducing sediment load caused by human activities. The TMDL sets a goal of 25% reduction in the sediment load attributable to human activities.

The Snake River spring/summer chinook salmon was listed under the Endangered Species Act as a threatened species in 1992, and subsequently listed to endangered in 1994. The South Fork Salmon River provides critical habitat, as designated by the National Marine Fisheries Service (NMFS), for the Snake River spring/summer chinook.

In 1994 wildfires burned over 150,000 acres in the SFSR drainage. In particular, the Thunderbolt wildfire burned 18,827 acres. According to the Forest Service, the magnitude and extent of the wildfires experienced in the summer of 1994 were significantly greater than what they had anticipated.

The Forest Service initiated an assessment of effects of the fires and possible responses, and proposed the Thunderbolt Wildfire Recovery Project, which includes the Thunderbolt timber salvage sale. The purpose of the Thunderbolt sale is:

to improve the long term fish habitat, rehabilitate existing sediment sources, improve hydrologic conditions of affected watershed, protect long term soil productivity, promote revegetation of trees on burned acres, and recover the

economic value of dead and imminently dead trees as a means of financing the ecosystem restoration and sediment reduction projects.

In March of 1995, the Forest Service issued its Draft Environmental Impact Statement (DEIS) and biological assessment for endangered species of fish and wildlife, as \*1348 required by<sup>1</sup> Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2). The response of other state and federal agencies to the proposed salvage was almost uniformly negative. As stated by the district court in its thorough memorandum decision and order:

- 1 The Rescissions Act, which superceded these laws for timber salvage sales, was not signed into law until July 25, 1995.

The Project's proposed alternative, particularly the component that proposed the Salvage Sale to finance recovery actions, drew harsh and substantial criticism from the other federal agencies having jurisdiction over the resource: the Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) and the Idaho Department of Fish and Game. In the unanimous opinion of these agencies, the environmental risks posed by using salvage logging to finance restoration projects were too great to render the Project acceptable.

The EPA recommended against the Project, noting that the proposed action was inconsistent with collective agency decisions and resource protection goals for the South Fork Salmon River watershed. The EPA concluded that the logging sale would further aggravate the already critically degraded habitat for threatened salmon. NMFS also strongly opposed the Project, concluding that the Recovery Project, and the logging activity in particular, will likely jeopardize the continued existence of the endangered salmon and will likely result in the destruction or adverse modification of their critical habitat. The USFWS similarly opposed the salvage sale on the ground that it would likely result in adverse impacts to fish and wildlife. The USFWS opined that the proposed salvage actions would generate additional sediment in the already-impacted watershed, negating or delaying the benefits from the restoration actions. The Idaho Department of Fish and Game also criticized the proposal to use logging to fund restoration projects.

*Idaho Conservation League v. Thomas*, 917 F.Supp. 1458, 1461-62 (D.Idaho 1995).

The Forest Service considered and responded to the concerns expressed by these agencies, particularly EPA and NMFS. In addition, the Forest Service convened a panel<sup>2</sup> of its own experts to "review the scientific merit of the material presented on sediment yield, sediment routing, and fisheries habitat" in the DEIS. While the panel concluded that the Forest Service used "the best analytical methods available for estimating erosion and sediment delivery," the panel was "unable to conclude that the analysis performed could support the conclusion of long term improvement in the spawning and rearing habitat of anadromous fish," and made recommendations for improving the analysis.

- 2 According to the district court, a federal interagency science panel met first to review the science applied in the soil and fisheries analysis. This panel could not reach a consensus. *Id.* at 1462 n. 4.

The Forest Service responded to the panel's recommendations and revised its DEIS (as reflected in the FEIS) to incorporate the additional data and analysis suggested. The panel reviewed the changes and, on September 1, 1995, concluded in a memorandum that the revisions in the FEIS responded to its major recommendations.

On September 12, 1995, the Forest Service released its FEIS. On October 5, 1995, the Forest Service issued its record of decision (ROD), stating that it planned to proceed with the Thunderbolt sale under a modified version of the recommended sale. On October 13, 1995, the Forest Service advertised the Thunderbolt sale. As required by § 2001(f)(1) of the Rescissions Act, Pub.L. No. 104-19, 1995 U.S.C.A.N. 109 Stat. 240, 241 (to be codified at 16 U.S.C. § 1611 Note), ICL filed its challenge to the Thunderbolt sale with the district court within 15 days of its initial advertisement. On December 11, 1995, within the 45 day time period mandated by § 2001(f)(5) of the Rescissions Act, the district court denied ICL's motion for summary judgment and injunctive relief, granted the Forest Service's motion for summary judgment and granted in part and denied in part the Forest Service's motion to strike \*1349 certain exhibits submitted by ICL. The district court reviewed the record under the arbitrary and capricious standard mandated by § 2001(f)(4) of the Rescissions Act and found that (1) "notwithstanding substantial interagency disagreement, the Forest Service was entitled to rely on the opinions and analysis of its own experts;" (2) the fires of 1994 caused a changed circumstance which justified the Forest Service's decision to alter its management of the South Forest Salmon

River; and (3) the sale, together with other funds, would raise enough money to fund restoration projects. The district court also ruled as a matter of law that Secretary Glickman did not have to personally authorize the Thunderbolt salvage sale, and the district court struck several exhibits that ICL argued should have been part of the record. ICL timely appealed.

## ANALYSIS

On appeal ICL makes two arguments: (1) the Forest Service acted arbitrarily and capriciously in deciding to proceed with the Thunderbolt sale because the sale was against overwhelming expert agency opposition, was in contradiction of long-standing Forest Service policy, and the purpose of the sale—to raise money for restoration projects—would not be met; and (2) the Forest Service violated Section 2001(c)(1)(A) of the Rescissions Act because the Secretary of Agriculture had no role in the decision to proceed with the sale. ICL also contends that the district court erred in striking the exhibits from consideration when it ruled on the motion for summary judgment.

### *I. Arbitrary and Capricious Review.*

- 1 While we review a grant of summary judgment de novo, *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.1995), in *Inland Empire Public Lands Council v. Glickman*, 88 F.3d 697 (9th Cir.1996) we set forth the applicable standard of review under the Rescissions Act:

The Rescissions Act provides for extremely limited judicial review.... Review of salvage timber sales is ... limited in that (1) review is based on the administrative record only; (2) the standard of review is arbitrary and capricious or otherwise not in accordance with applicable law; and (3) the sale is not subject to any federal environmental or natural resources laws. *Id.* at 701 (quotations and citations omitted).

- 2 Applying this standard of review, we conclude that the Forest Service did not act arbitrarily or capriciously when it decided to proceed with the Thunderbolt salvage sale. We agree with the district court's findings, that, first:

the Forest Service clearly was entitled to rely on the opinions and studies of its own experts. While it properly considered the commenting agency's opposing views, the Forest Service was free to disagree with those views and to rely on its own expertise. The expert analysis referenced in the ROD [Record of Decision] and relied on by the Forest Service provides the rational connection to the Forest Service's decision to

proceed, and convinces the court that the decision was not arbitrary and capricious[;]

second,

in deciding to go forward with the restoration projects and the salvage sale, the Forest Service explained that "[m]uch of the more than 150,000 acres that burned were contiguous areas adjacent to the river," and that the impacts from these fires "resulted in a changed condition to the South Fork Salmon River basin that was unforeseen in the Boise and Payette Forest Plans."

.....

Upon this record, the court has little difficulty deferring to the Forest Service's view that the 150,000 acres that burned in 1994 resulted in a changed condition not foreseen in the forest plans. Accordingly, the court cannot conclude that the Forest Service's decision to alter its management to adapt to that change was arbitrary and capricious[;]

and, third,

[t]he court has reviewed the financial information and calculations submitted by the parties, and the information contained \*1350 in the [Final Environmental Impact Statement], ROD, and the Forest Service's declarations and discovery responses in particular. Based on that review, the court is persuaded that using the anticipated revenues from the Salvage Sale, together with the financing identified in the ROD, the Forest Service will be able to fund the specific projects to which it committed in the ROD. Accordingly, the court finds that the Forest Service's decision to use the Salvage Sale to finance the restoration projects was not arbitrary and capricious.

*Idaho Conservation League v. Thomas*, 917 F.Supp. at 1464-67.

## 2. Role of Secretary of Agriculture.

End of Document

3 In *Inland Empire*, we held that § 2001(c)(1)(A) of the Rescissions Act does not require the Secretary of Agriculture, Dan Glickman, *personally* to authorize salvage timber sales. 88 F.3d 697, 702 (9th Cir.1996). Thus, ICL's second argument is without merit.

### 3. Exhibits.

4 ICL also argues that certain extra-record materials were improperly excluded from consideration by the district court. The district court granted, in part, a Forest Service motion to strike certain documents submitted by ICL in its motion for summary judgment on the ground that they were not part of the administrative record. The Forest Service contended that the documents were never sent to or received by the Forest Service. ICL maintained that the documents were in existence before the final decision and should be part of the record. The district court found that "documents which were authored by agencies other than the Forest Service and which were not sent or released to the Forest Service should be stricken as such writings were not before the decision maker at the time of the decision." *Idaho Conservation League*, 917 F.Supp. at 1469 (footnote omitted). On this basis, the district court excluded eleven exhibits and the declaration of ICL's expert Cindy Williams. The district court denied the motion to strike as to four other exhibits, finding that these were part of the record. The district court did not abuse its discretion in granting the motion to strike.

### CONCLUSION

The district court's grant of summary judgment in favor of Jack Ward Thomas, Chief of the United States Forest Service, is AFFIRMED.

#### Parallel Citations

26 Env'tl. L. Rep. 21,650, 96 Cal. Daily Op. Serv. 5822, 96 Daily Journal D.A.R. 9501

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# **ATTACHMENT 39**

2011

951 F.Supp. 962  
United States District Court,  
W.D. Washington,  
Seattle.

IDAHO SPORTSMEN'S  
COALITION, et al., Plaintiffs,

v.

Carol M. BROWNER, et al., Defendants.

No. C93-943WD. Sept. 26, 1996.

In citizen's suit brought under Clean Water Act (CWA) and Administrative Procedure Act (APA) for declaratory and injunctive relief compelling Environmental Protection Agency (EPA) to perform duties required by CWA as steps toward ridding Idaho's water bodies of pollution, EPA moved to dismiss and plaintiffs moved for order establishing total maximum daily load (TMDL) schedule. The District Court, Dwyer, J., held that: (1) proposed schedule for TMDL development violated CWA both in its extreme slowness and in its failure to provide for TMDL development for full list of water quality limited segments (WQLS) in Idaho, and (2) appropriate remedy was to remand to EPA for exercise of its discretion to revise and reissue proper schedule.

Ordered accordingly.

#### Attorneys and Law Firms

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#### Opinion

### ORDER ON EPA'S MOTION TO DISMISS AND PLAINTIFFS' MOTION FOR ORDER ESTABLISHING TMDL SCHEDULE

DWYER, District Judge.

#### I. BACKGROUND

This is a citizen suit brought under the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 501 *et seq.*, for declaratory and injunctive relief compelling the defendants (collectively the Environmental Protection Agency or "EPA") to perform certain duties required by the CWA as steps toward ridding Idaho's rivers, streams, and other waterbodies of pollution. In their first amended complaint, plaintiffs Idaho Sportsmen's Coalition and Idaho Conservation League sought judgment directing the EPA to compile a list of "water quality limited segments" ("WQLSs"), *i.e.*, waterbodies in Idaho that do not, or may not, comply with applicable water quality standards. Plaintiffs now seek judgment requiring the EPA to develop a "total maximum daily load" ("TMDL") of pollutants for each WQLS. Four parties have been granted leave to intervene: Clean Water for Idaho, Inc.; Intermountain Forest Industry Assn.; Potlatch Corp., Inc.; and Shearer Lumber Products. In addition, the State of Idaho and Associated Logging Contractors, Inc., have appeared as *amici curiae*.

On April 14, 1994, an order was entered granting plaintiffs' motion for partial summary judgment on the WQLS listing issue (Dkt. # 140). The order noted that Idaho submitted no WQLS list to the EPA until 1989, seventeen years after the Clean Water Act became law and ten years after the statutory due date. The EPA neither approved nor disapproved the 1989 list. In 1992 Idaho submitted a second list; a year later—although action within thirty days was required by statute—the EPA approved it. The court determined that the EPA's approval of Idaho's 1992 WQLS list, which included only thirty-six threatened and degraded waters although hundreds manifestly existed, was contrary to law. The order directed the EPA to promulgate a WQLS list for Idaho. In compliance

with the order, the EPA in October 1994 identified 962 Idaho WQLSs.

The next step under the CWA was to be the development of TMDLs for the WQLSs. In 1995, both sides moved for summary judgment on that issue. The court, granting plaintiffs' motion in part, found that "the EPA has failed to perform its statutory and regulatory duty to determine, with Idaho, a reasonable schedule for the development of TMDLs for all waterbodies designated as WQLSs." Order dated May 19, 1995 (Dkt. # 233), at 14. The court declined to order the EPA to develop the TMDLs without Idaho's participation; instead, the EPA was directed to perform its statutory duty in cooperation with Idaho and to file "a complete and duly-adopted reasonable schedule" within one year.

EPA now moves for dismissal of the case, contending that it has complied with the May 1995 order by approving a "complete and reasonable" schedule for the development of "all necessary TMDLs" in Idaho. The proposed schedule is set out in an exchange of letters between the EPA and the State of Idaho. It calls for the TMDL process to go on until at least the year 2021—that is, for twenty-five more years. Plaintiffs oppose the motion to dismiss, contending that the proposed schedule complies neither with the \*965 court's order nor with the Clean Water Act. They seek an order requiring EPA to develop TMDLs for all Idaho's WQLSs by December 31, 2000. This request is, in substance, a cross-motion for partial summary judgment, and has been fully briefed. Intervenor Clean Water for Idaho, an industry-sponsored entity, supports the EPA's proposal in general, but opposes any deadline for completion of the TMDL listing process. The other intervenors have not filed briefs on the present motions. The State of Idaho, as *amicus curiae*, supports the EPA's position.

There is no genuine issue of material fact for trial within the meaning of Fed.R.Civ.P. 56, and summary judgment may be entered. All materials filed, and the arguments of counsel presented in open court, have been fully considered. The plaintiffs' standing to sue, and the standard of review, have been discussed in the April 1994 and May 1995 orders. Accordingly, this order will deal with the applicable provisions of the Clean Water Act, the EPA's proposed schedule, whether the EPA has complied with the law, and the remedy.

## II. THE CLEAN WATER ACT

In *Alaska Center for the Environment v. Reilly*, 762 F.Supp. 1422 (W.D.Wash.1991) ("ACE I"), dealing with the same

Clean Water Act provisions, the district court wrote a summary that was later adopted by the Ninth Circuit in *Alaska Center for the Environment v. Browner*, 20 F.3d 981 (9th Cir.1994) ("ACE III"). It is worth repeating here:

Congress passed the Federal Water Pollution Control Act (commonly referred to as the CWA) in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Sec. 101(a), 33 U.S.C. § 1251. In order to achieve that objective, Congress declared as a "national goal" that "the discharge of pollutants into the navigable waters be eliminated by 1985." *Id.*, § 101(a)(1).

EPA's regulatory program for water protection focuses on two potential sources of pollution: point sources and nonpoint sources. Point source pollution was addressed in the 1972 amendments to the Act, where Congress prohibited the discharge of any pollutant from any point source into certain waters unless that discharge complies with the Act's specific requirements. Secs. 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12). Under this approach, compliance is focused on technology-based controls for limiting the discharge of pollutants through the National Pollution Discharge Elimination System ("NPDES") permit process.

When these requirements are found insufficient to clean up certain rivers, streams or smaller water segments, the Act requires use of a water-quality based approach. States are required to identify such waters and designate them as "water quality limited." The states are then to establish a priority ranking for these waters, and in accordance with that ranking, to establish more stringent pollution limits called "total maximum daily loads" or "TMDLs." 33 U.S.C. §§ 1313(d)(1)(A), (C). TMDLs are the greatest amount of a pollutant the water body can receive daily without violating a state's water quality standard.

The TMDL calculations help ensure that the cumulative impacts of multiple point source discharges are accounted for, and are evaluated in conjunction with pollution from other nonpoint sources. States are then required to take whatever additional cleanup actions are necessary, which can include further controls on both point and nonpoint pollution sources.

\*\*\*\*\*

Under § 303(d), states are required to submit lists of water quality limited segments and TMDLs to the EPA at certain times; the first such submission was due by June 26,

1979. Once such a submission is made, certain mandatory duties by EPA are triggered. *Within 30 days*, the EPA Administrator must review the state's submissions of the identified waters and the load allocations established under § 303(d)(1). Once approved by EPA, the identified waters and TMDLs are incorporated by the state into its continuing planning process established under § 303(e)(3).

If EPA disapproves the identification and/or TMDL, the agency has 30 days after disapproval to make its own identification \*966 of waters and establish TMDLs necessary to implement the applicable water quality standards. § 303(d)(2).

\*\*\*\*\*

Section 505(a) of the CWA authorizes citizens to bring suit in federal court against the EPA for failing to perform an "act or duty" under the CWA which is not discretionary. 33 U.S.C. § 1365(a).

*ACE I* at 1424-26 (emphasis in original).

The citizen suit provision is meant to "aid in enforcement of the Act." *ACE III* at 983.

### III. THE PROPOSED SCHEDULE

TMDL development in itself does not reduce pollution. It is only a step toward bringing WQLSs into compliance with water quality standards; TMDLs inform the design and implementation of pollution control measures. The EPA describes TMDLs as "a tool for implementing State water quality standards.... [that provides] the basis for States to establish water quality-based controls." "Guidance for Water Quality Based Decisions: The TMDL Process," EPA Office of Water Regulations, April 1991 at 1. The TMDL process provides "[a] rational method for weighing the competing pollution concerns and developing an integrated pollution reduction strategy for point and non-point sources." *Id.* at 15.

Under the EPA's proposed schedule, Idaho would develop "all necessary TMDLs" by the year 2021. The EPA and Idaho argue that to develop TMDLs for all WQLSs would be premature because the state has not monitored and assessed most of them. The proposed schedule thus contains short-term goals for developing TMDLs for certain high priority waters (while omitting others), and calls for monitoring and assessment of other listed waters. Idaho would prepare TMDLs for forty-three waters between now and 1999. It would submit twelve more TMDLs, two for each of the

state's six basins, to the EPA every two years beginning in 1997. Idaho would monitor WQLSs, remove those in attainment of water quality standards from the WQLS list, and evaluate impaired waters to determine whether existing pollution controls would implement water quality standards. It would develop TMDLs only for WQLSs that it found would not attain standards through application of existing pollution controls. The EPA would evaluate Idaho's progress at five-year intervals. Reliance is placed upon other Idaho programs meant to improve water quality, e.g., nutrient management plans, an agricultural water quality program, and lake management plans. These would be treated, in effect, as substitutes for TMDL development.

Even though the proposed schedule would extend over a quarter-century, it would not assure "all necessary" TMDL development unless hundreds of WQLSs were to fall off the list.

### IV. LEGAL DEFICIENCIES

The EPA's proposed schedule for TMDL development in Idaho violates the CWA because of two flaws.

1 The first is its extreme slowness. The CWA declares as a national goal the elimination of pollutant discharges into navigable waters by the year 1985. 33 U.S.C. § 1251(a)(1). The first TMDLs were due from states in 1979. *See* 33 U.S.C. § 1313(d)(2). The EPA was given thirty days to review state submissions, and thirty more days to promulgate substitute TMDLs if necessary. *Id.* Congress provided that TMDLs might incorporate "a margin of safety which takes into account any lack of knowledge," 33 U.S.C. § 1313(d)(1)(C), showing that a lack of precise information must not be a pretext for delay:

Although these tight deadlines might mean that initially established TMDLs would be based on less than ideal data, that fact was considered and addressed by Congress, as demonstrated by the statutory direction to use "a margin of safety which takes into account any lack of knowledge." [33 U.S.C.] § 1313(d)(1)(C). As expressed by an EPA employee, "In other words, Congress says ignorance is no excuse for inaction. Just add a margin of safety to compensate for the lack of knowledge and keep moving." *ACE*, 762 F.Supp. at 1429 (quoting Thomas Wilson, Chief of the Office of Water Planning, EPA Region X, EPA Nonpoint Source News-Notes, October 1990, at 20).

\*967 *Natural Resources Defense Council, Inc. v. Fox*, 909 F.Supp. 153, 157-58 (S.D.N.Y.1995).

The role of TMDLs in the CWA strategy for improving water quality confirms that they were to be developed quickly. TMDLs provide a basis for developing other pollution control measures where technology-based point source controls prove inadequate. 33 U.S.C. §§ 1313(d)(1)(A), (C). To serve their intended purpose, they must be available early in the development of a state's program.

In the seventeen years since 1979, Idaho has completed only three TMDLS. Under the proposed schedule at least twenty-five more years would go by before the remaining TMDLs were developed. The net result would be to put off for another generation a step that Congress required be taken years ago. And even the twenty-five-year marker could well be missed. The schedule sets only "expected" times and "targets," not firm dates. Even recognizing that a TMDL may cover more than one WQLS, at Idaho's proposed submission rate the twenty-five years could easily turn into fifty or seventy-five. Although courts have allowed additional time when CWA deadlines are missed, nothing in the law could justify so glacial a pace.

The EPA relies upon a statement in *ACE II*, quoted in the May 1995 order herein, that "a schedule may provide more specific deadlines for the establishment of a few TMDLs for well-studied water quality limited segments in the short-term, and set only general planning goals for long-term development of TMDLs for water quality limited segments about which little is known...." *Alaska Center for the Environment v. Reilly*, 796 F.Supp. 1374, 1380 (W.D.Wash.1992), *aff'd*, 20 F.3d 981 (9th Cir.1994). But the context must be borne in mind. Congress prescribed early deadlines for the TMDL process. "Short-term" and "long-term" at most can mean months and a few years, not decades. Nothing could justify a schedule so slow as to defeat the CWA's goals; yet that is what the EPA's proposal for Idaho would do.

2 The second flaw is that the proposed schedule makes no provision for TMDL development for the full list of Idaho WQLSs. Instead, the schedule simply assumes that the list is wrong, i.e., that monitoring and evaluation will massively reduce it.

But WQLSs are, by definition, waterbodies that are not expected to attain applicable water quality standards through application of existing pollution controls. 33 U.S.C. § 1313(d)(1)(A), 40 C.F.R. § 130.7(b). The CWA requires that a

TMDL be proposed for every WQLS. 33 U.S.C. § 1313(d)(1)(C); *Scott v. City of Hammond*, 741 F.2d 992, 996-97 (7th Cir.1984); *ACE II*, 796 F.Supp. at 1378. Accordingly, the May 1995 order herein required that the schedule "encompass all listed water quality limited segments." (Dkt. # 233 at 4). That has not been done.

It is true that WQLS lists are dynamic and that states may delist waters that attain standards. It is possible that some of the 962 Idaho WQLSs will drop off the list as knowledge is gained and conditions change. But that possibility does not entitle the EPA or the state simply to assume that the list will dwindle by hundreds of waterbodies, or to treat the hoped-for results of state programs as a substitute for CWA compliance. The CWA requires that the full WQLS list, even though it may be amended later, be the basis for TMDL development. The proposed schedule manifestly fails to meet that requirement.

3 As noted above, the plaintiffs have sued under both the CWA and the APA. Under the CWA, the EPA has a mandatory duty, if it disapproves a state's TMDL submission, to establish the TMDLs itself within thirty days. Under the APA, the court may compel agency action unlawfully withheld or unreasonably delayed, and a discretionary act may be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. §§ 706(1) and (2); *Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 976, 980-81 (9th Cir.1985). Here, the EPA's approval of Idaho's proposed TMDL schedule is arbitrary, capricious, and an abuse of discretion.

## V. REMEDY

4 The EPA remains in dereliction of its statutory and regulatory duty to determine, with Idaho, a reasonable schedule for the development of TMDLs for all waterbodies designated as WQLSs. The question is what the remedy should be. As stated in *ACE II*:

\*968 Congress established an accelerated schedule for the first identification of water quality limited segments and for the adoption of the first TMDLs. 33 U.S.C. §§ 1313(d)(1)(A), 1313(d)(2).... Congress also expressly stated that TMDLs were to be established for all waters designated as water quality limited segments. 33 U.S.C. § 1313(d)(1)(C). The responsibility of the court is to ensure prompt and attentive adherence to the mandate of the CWA.

*Id.* at 1379.

5 6 When an agency "does not reasonably accommodate the policies of a statute or reaches a decision that is 'not one that Congress would have sanctioned,' ... a reviewing court must intervene to enforce the policy decisions made by Congress." *Environmental Defense Fund v. EPA*, 852 F.2d 1316, 1326 (D.C.Cir.1988) (citations omitted), *cert. denied*, 489 U.S. 1011, 109 S.Ct. 1120, 103 L.Ed.2d 183 (1989). The Supreme Court has held that the citizen suit provisions of the Clean Water Act allow a district court to "order the relief it considers necessary to secure prompt compliance with the Act." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320, 102 S.Ct. 1798, 1807, 72 L.Ed.2d 91 (1982). As the Ninth Circuit noted in *ACE III*, "[t]he district court has broad latitude in fashioning equitable relief when necessary to remedy an established wrong." 20 F.3d at 986. Relief should be tailored to serve congressional objectives, but the court must be careful not to intrude upon the agency's realm of discretionary decision making. *Id.* at 986-87.

Intervenor Clean Water for Idaho argues that the EPA is powerless to set any schedule for a state's TMDL submissions, since the CWA contains no final TMDL deadline. An EPA regulation requires that "[s]chedules for submission of TMDLs shall be determined by the Regional Administrator and the State." 40 C.F.R. § 130.7(d)(1). This regulation derives from Congress's direction that states submit TMDLs "from time to time" under 33 U.S.C. § 1313(d). The Ninth Circuit has recognized that the EPA's authority under the CWA is not circumscribed by the Act's explicit requirements. *See Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517, 1527-28 & n. 14 (9th Cir.1995) ("[T]he Clean Water Act vests in the EPA and the States broad authority to develop long-range, area-wide programs to alleviate and eliminate existing pollution." ). *Id.* at 1528 (citation omitted). The EPA has authority to set, with the state, a schedule to complete the TMDL process; the CWA's enforcement history makes clear that a firm schedule is vital.

Plaintiffs contend that Idaho's proposed schedule, and the state's weak performance to date, are so deficient as to constitute a "constructive submission" of no TMDLs, thus triggering EPA's mandatory duty to develop the TMDLs itself. *See Scott, supra* (constructive submission found where the states of Illinois and Indiana failed to submit any TMDLs for Lake Michigan); *ACE I, supra* (constructive submission found where Alaska failed to submit any TMDLs for over a decade); *cf. Sierra Club v. Browner*, 843 F.Supp. 1304 (D.Minn.1993) (no constructive submission where EPA had

approved forty-three TMDLs submitted by Minnesota, and the state had implemented some TMDLs).

7 8 9 10 On the present record a "constructive submission" has not yet occurred. A remedy must nevertheless be ordered. In devising a remedy the court faces "the difficult task of avoiding both remedies that may be too intrusive ... and those that may prove to be ineffective." *N.A.A.C.P. v. Secretary of Housing & Urban Dev.*, 817 F.2d 149, 159 (1st Cir.1987). Generally, when an agency has abused its discretion the appropriate remedy is a remand for further proceedings consistent with the court's ruling. *See Federal Power Comm'n v. Idaho Power Co.*, 344 U.S. 17, 20, 73 S.Ct. 85, 86-87, 97 L.Ed. 15 (1952). The plaintiffs urge that the court order the EPA to adopt a judicially-decided schedule for TMDL development. They propose a detailed and prioritized schedule calling for all TMDLs in Idaho to be developed by December 31, 2000. The EPA counters with declarations showing the difficulties and complexities of TMDL development; it does not, however, show that plaintiffs' schedule is impossible.<sup>1</sup> The available \*969 remedies are to order a specific schedule now, or to remand. The EPA argues for the latter in its reply brief, stating:

1 Each side relies on expert declarations prepared for this litigation after the administrative action was taken. Under the APA, the focal point for judicial review is the administrative record in existence, not a new record made initially in the reviewing court. *Asarco, Inc. v. EPA*, 616 F.2d 1153, 1159 (9th Cir.1980). Evidence outside the record may be considered for certain limited purposes, e.g., to explain the agency's action or to determine whether its course of inquiry was inadequate. *Love v. Thomas*, 858 F.2d 1347, 1356 (9th Cir.1988), *cert. denied*, 490 U.S. 1035, 109 S.Ct. 1932, 104 L.Ed.2d 403 (1989); *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1436 (9th Cir.1988). Those purposes are present here and the declarations may be considered.

Should the Court determine that EPA's schedule does not comply with the Court's Order, the appropriate remedy is to remand to EPA, so that EPA can exercise its discretion to revise and reissue a proper schedule.

EPA's Reply Memorandum at 20.

The court agrees. Accordingly, it is ordered that:

1. The EPA's motion for dismissal is denied.
2. Plaintiffs' cross-motion for partial summary judgment is granted to the extent that the EPA's approval of Idaho's

proposal for TMDL development, to extend over twenty-five years or more, is held to be arbitrary and capricious, an abuse of discretion, and contrary to law, and is hereby set aside.

3. Plaintiffs' motion for a ruling that a "constructive submission" of no TMDLs be found to have occurred is denied without prejudice to its renewal. The matter is remanded to the EPA with directions to establish with Idaho and file herein, within six months of the date of this order, a complete and duly adopted reasonable schedule for the development of TMDLs for all waterbodies designated as WQLSs in Idaho. The present record, which includes a recognition by all parties that a single TMDL may apply

to several WQLSs in the same watershed, suggests that a completion time of approximately five years would be reasonable.

4. The court retains jurisdiction pending compliance with this order.

The clerk is directed to send copies of this order to all counsel of record.

Parallel Citations

43 ERC 1289, 27 Env'tl. L. Rep. 20,771

End of Document

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# **ATTACHMENT 40**



3 E.A.D. 172 (E.P.A.), 1990 WL 324290 (E.P.A.)

United States Environmental Protection Agency (E.P.A.)

Environmental Appeals Board

IN THE MATTER OF STAR-KIST CARIBE, INC. PETITIONER

**National Pollutant Discharge Elimination System**

NPDES Permit No. PR0022012

NPDES Appeal No. 88-5

April 16, 1990

**ORDER ON PETITION FOR RECONSIDERATION**

\*1 On June 1, 1989, EPA Region II filed a Petition for Reconsideration of the Chief Judicial Officer's (CJO's) March 8, 1989 Order Denying Petition for Review.<sup>1</sup> In that order, the CJO upheld the Regional Administrator's denial of an evidentiary hearing on the issue of whether Star-Kist Caribe was entitled to a schedule of compliance in its NPDES permit that would allow it to delay compliance with applicable water-quality-based effluent limitations, i.e., those established pursuant to §301(b)(1)(C) of the Clean Water Act to ensure that pollutant discharges from the facility will meet state water quality standards. The Regional Administrator had refused Star-Kist's request to include such a schedule in the permit. In its petition for reconsideration, Region II does not contest the CJO's ultimate conclusion -- i.e., that the Regional Administrator's denial of the request for the schedule of compliance was proper. Instead, Region II argues that the CJO's ruling was too broad and went beyond the arguments presented in the case. Specifically, the CJO had ruled that §301(b)(1)(C) of the Act barred EPA from including such a schedule in the permit, since it would extend compliance with applicable water quality standards beyond the July 1, 1977 statutory deadline. That section of the Act provides as follows:

**[§301] (b) Timetable for achievement of objectives**

In order to carry out the objective of this chapter there shall be achieved --

\*\*\*

[(1)](C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

33 U.S.C. §1311(b)(1)(C). Region II requests that the CJO's opinion be modified to delete the discussion concerning compliance dates for post-July 1, 1977 state water quality standards or, alternatively, that the opinion be modified to make it clear that the Clean Water Act does not categorically prohibit schedules of compliance for meeting such standards. In its response to Region II's Petition for Reconsideration, Star-Kist concurs with Region II's assertion that the March 8, 1989 ruling was too broad, and argues further that upon reconsideration its request for an evidentiary hearing should be granted.<sup>2</sup>

Based on Region II's Petition for Reconsideration and attachments, it has become apparent that, for some time now, the policy and practice of the Agency's Office of Water has been to include, in some permits, so-called "schedules of compliance"<sup>3</sup> containing interim effluent limitations that do not "meet" applicable, post-July 1, 1977 state water quality standards. These schedules allow the discharger to postpone immediate compliance with more stringent effluent limitations specifically tailored to meet the applicable state water quality standards. By allowing the discharger to phase in compliance over time, the interim limitations implicitly sanction pollutant discharges that violate applicable state water quality standards.

\*2 The only direct legal authority relied upon by the Office of Water in support of these schedules of compliance is a 1978 memorandum from an EPA Associate General Counsel (Water and Waste Division).<sup>4</sup> The following excerpt from the memorandum (at 4-5), as quoted by the Region, contains the entire analysis of the issue:

The Act establishes the end date [July 1, 1977] for the first stages of WQS [water quality standard] compliance, but for subsequent levels of possibly more stringent WQS, the Act defers to State planning determinations \* \* \*. However, if the State plans do not contain specific compliance schedules, the EPA permit writer must establish the source's Phase II WQS compliance schedule.

The Act supplies no express guidance as to what the EPA-determined, post-1977 WQS compliance schedule should be. In general, Congress intended compliance with the Act's requirements to occur at the earliest practicable time. One option, therefore, might be for EPA simply to establish the policy that post-1977 compliance must be achieved by the earliest practicable time.

The conclusion reached in the memorandum thus rests on a single proposition, namely, that the Act does not specify a fixed deadline for compliance with state water quality standards after July 1, 1977, and therefore EPA should be free to add schedules as it sees fit, subject only to a self-imposed "earliest practicable time" deadline. The Region's reconsideration request, although more detailed than the memorandum, basically relies on the same reasoning for its analysis and defense of post-July 1, 1977 compliance schedules.

Despite the long-standing practice of the Office of Water and the reliance it has placed on the memorandum, I cannot concur in either the practice or the memorandum. I agree with the CJO's conclusion that the Clean Water Act does not authorize EPA to establish schedules of compliance in the permit that would sanction pollutant discharges that do not meet applicable state water quality standards. In my opinion, the only instance in which the permit may lawfully authorize a permittee to delay compliance after July 1, 1977, pursuant to a schedule of compliance, is when the water quality standard itself (or the State's implementing regulations) can be fairly construed as authorizing a schedule of compliance. The Agency's powers in this respect, as discussed below, are no greater than the States'. Thus, the Associate General Counsel was in error in concluding that EPA could establish schedules of compliance "if the State plans do not contain specific compliance schedules \* \* \*." If, on the other hand, a schedule of compliance is authorized by the State program, EPA's inclusion of interim limitations pursuant to the schedule would be fully consistent with, and therefore "meet," the requirements of the state water quality standard as contemplated by §301(b)(1)(C).<sup>5</sup> In the present case, however, there is no indication from the record before me that Puerto Rico's water quality standards authorize any such schedules of compliance.<sup>6</sup>

#### A.

\*3 The Region's belief that §301(b)(1)(C) does not bar EPA from establishing schedules of compliance for meeting state water quality standards after July 1, 1977, is based on an incomplete and, ultimately, erroneous reading of the Act. The Region takes the position that a literal reading of the section produces an illogical result: it argues that "since standards adopted after [July 1, 1977] obviously cannot be complied with 'no later than July 1, 1977,' that deadline cannot be applied literally." Pet. for Recon. at 3 (emphasis added). Because a literal reading is illogical in its view, the Region argues we should look elsewhere in the statute for indications of Congressional intent. It then proceeds to argue that the results of such a search lead to the conclusion that EPA is not barred from establishing schedules of compliance as it deems necessary and appropriate in the exercise of its own discretion.

The flaw in this reasoning is that it omits a step. Rather than immediately looking elsewhere in the statute for indications of Congressional intent, more time should be spent concentrating on the language of the section in question. The caption, "Timetable for achievement of objectives," provides two keys to construing §301(b)(1)(C). First, the section is part of a timetable and should be understood as such, and second, the timetable is designed to achieve the objectives of the Act. As for the timetable, it serves to ensure that state water quality standards are attained by a specified date. It is like any other timetable in the sense that it specifies a date by which something is to be achieved. The date itself is unambiguous: it is July 1, 1977. The "something" to be achieved is also unambiguous in most respects. For example, when discussing the pre-July 1, 1977 period, it is clear that §301(b)(1)(C) required all permittees to meet, by no later than July 1, 1977, any more stringent limitation necessary to meet

state water quality standards in existence at the time of permit issuance. Thus, schedules of compliance were allowed during that period, and they could be established by either EPA or the State where the discharge was occurring (depending on which entity was the permit issuing authority at the time of permit issuance). By including the July 1, 1977 deadline in the statute, Congress was, in effect, establishing a "grace period" as part of its timetable for implementation of the Act.

As for the post-July 1, 1977 period, there is no dispute that §301(b)(1)(C) continues to have regulatory force and applicability.<sup>7</sup> It is clear, therefore, that permits must prescribe limitations derived from state water quality standards in effect at the time of permit issuance, even if the standards did not come into existence until the post-July 1, 1977 period. Less clear, however, is whether there are any limitations on schedules of compliance after July 1, 1977. The answer lies in what Congress intended when it established the timetable, which in turn requires us to focus on the objectives Congress had in mind in creating the timetable.

\*4 First, however, one point alluded to earlier merits emphasis since it narrows the focus of the issue under consideration. Specifically, since the Clean Water Act provides ample, direct authority for the States to adopt schedules of compliance under appropriate circumstances,<sup>8</sup> EPA may add a schedule of compliance to a permit when EPA is the permit issuer if a State has laid the necessary groundwork in its standards or regulations. In such circumstances, the schedule would be meeting the requirements of the state water quality standards, and therefore no basis would exist for challenging its validity. Thus, the real question raised by the Region's petition for reconsideration is whether EPA can add these schedules after July 1, 1977, if the necessary enabling language is missing from the applicable state water quality standards or regulations. This is where an analysis of the Act's objectives enters the discussion.

The overarching objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as Congress provided in its declaration of goals and policy contained in §101(a) of the Act, 33 U.S.C. §1251(a). When read in context with §301(b)(1)(C), this objective, with its implicit censure of "backsliding,"<sup>9</sup> would appear to rule out schedules of compliance after July 1, 1977, if they would delay attainment of pre-July 1, 1977 state water quality standards. In other words, if a pre-July 1, 1977 water quality standard remains on the books after that date, full and immediate compliance with the standard is mandatory.<sup>10</sup> Neither the States nor EPA would be permitted to use schedules of compliance under those circumstances, since to do so would completely undo what § 301(b)(1)(C), inter alia, unambiguously set out to accomplish, i.e., to ensure full compliance with pre-July 1, 1977 state water quality standards no later than July 1, 1977.

The above recited objective does not, however, provide any definitive direction in deciding whether EPA, as permit issuer, can establish schedules of compliance for new or revised post-July 1, 1977 state water quality standards (in the absence of enabling language in the state standards). The answer to this question is found in §402(a)(3) of the Act, which embodies another major objective of the Act and says that the Agency's powers as permit issuer are no greater than the States':

**[§402] National pollutant discharge elimination system**

**(a) permits for discharge of pollutants**

\*\*\*

(3) The permit program of the Administrator \* \* \* and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder \* \* \*.

33 U.S.C. §1342(a)(3). Thus, if a State lacks authority to establish schedules of compliance (for instance, if it elected not to include the necessary enabling language in its water quality standards), EPA would also lack that authority because of its derivative relationship to the State under §402(a)(3).

\*5 The latter section furthers the Act's objective of assigning a major role to the States in managing water quality within their own borders. The Congressional declaration of goals and policy contained in §101 of the Clean Water Act, 33 U.S.C. §1251, demonstrates that Congress intended the individual States to play a leading part in formulating their own water quality policies and that Congress did not want EPA to preempt the States' rights to impose and enforce stringent state water quality requirements:

**[§101](b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States**

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution \* \* \*.

33 U.S.C. §1251(b). The policy announced in §101(b) is given prescriptive force in §510 of the Act, as follows:

**[§510] State Authority**

[N]othing in this chapter shall (1) preclude or deny the right of any State \* \* \* to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except \* \* \* [one] which is less stringent than the effluent limitation \* \* \* in this chapter \* \* \*.

33 U.S.C. §1370. With respect to schedules of compliance specifically, the Act keeps them in the hands of the States, not EPA, as part of a continuing planning process for water quality under §303(e) of the Act (subject only to EPA review and approval):

**[§303](e) Continuing planning process**

\*\*\*

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1) \* \* \* and at least as stringent as any requirements contained in any applicable water quality standards in effect under authority of this section;

\*\*\*

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section \* \* \*.

33 U.S.C. §1313(e) (emphasis added).<sup>11</sup>

Section 301(b)(1)(C) draws on all three of the preceding provisions of the Act by requiring EPA, when it is the permit issuer, to include any limitations that will be necessary to meet state water quality standards, thus deferring to the reserved rights of the States to impose more stringent requirements than the technology-based standards of the Act would otherwise mandate.<sup>12</sup> This requirement extends to schedules of compliance. Specifically, in directing EPA to prescribe more stringent limitations necessary to meet applicable state water quality standards, §301(b)(1)(C) also directs EPA to “includ[e] those necessary to meet \* \* \* schedules of compliance [] established pursuant to any State law or regulations \* \* \*.” 33 U.S.C. §1311(b)(1)(C) (emphasis added). Except for this language (and the pre-July 1, 1977 authority also in the same section), nowhere else in the Act is EPA authorized to establish schedules of compliance where state standards or regulations do not provide for them.<sup>13</sup>

\*6 To further promote the form of federalism envisioned by the Act, and to ensure that all permits contain limitations necessary to meet all state water quality standards, the Act establishes a certification system for EPA-issued permits. Under §401(a)(1), EPA cannot issue an NPDES permit without first receiving a certification (or a waiver of certification) from the State in which the discharge is to occur, certifying, inter alia, that the permit complies with §301(b)(1)(C).<sup>14</sup> Once the state certifies that a permit limitation is necessary to meet state water quality standards, EPA is without authority to modify the limitation. The legislative history of the Act leaves no doubt as to this interpretation:

[T]he provision makes clear that any water quality requirements established under State law, more stringent than those requirements established under this Act, also shall through certification become conditions on any Federal license permit. The purpose of that certification mechanism provided in this law is to assure that Federal licensing or permitting agencies cannot override State water quality requirements.

S. Rep. No. 92-414, 92nd Cong., 2nd Sess., reprinted in, 1972 U.S. Code Cong. & Adm. News 3735 (emphasis added). This Congressional injunction against “overriding” state water quality standards logically extends to a State’s timetable for implementing its water quality standards. Not surprisingly, the legislative history also supports this modest extension:

If a State establishes more stringent limitations and/or time schedules pursuant to Section 303, they should be set forth in a certification under Section 401. Of course, any more stringent requirements imposed by a State pursuant to this section shall be enforced by the Administrator.

Report of the Conference Committee on S. 2770, October 4, 1972, reprinted in A Legislative History of the Water Pollution Control Act Amendments of 1972 at 171 (1973) (emphasis added).

In sum, the language, structure, and objectives of the Act, as set forth in §§ 101(a) and (b), 402(a)(3), and 510, all support an interpretation of § 301(b)(1)(C) that Congress intended the States, not EPA, to become the proper authorities to define appropriate deadlines for complying with their own state law requirements. Just how stringent such limitations are, or whether limited forms of relief such as variances, mixing zones, and compliance schedules should be granted are purely matters of state law, which EPA has no authority to override. Consequently, if a State elects not to include a provision for a schedule of compliance in a water quality standard, EPA has no authority to override the State’s authority by adding a schedule of compliance of its own invention.<sup>15</sup> It is well established in federal case law that the Clean Water Act preserves a State’s right to enact its own anti-pollution measures even if they are more stringent than necessary to comply with the Clean Water Act. Roosevelt-Campobello International Park Commission, 684 F.2d 1041, 1056 (1st Cir. 1982). The Region’s interpretation makes no mention of the States’ role in carrying out the timetable and objectives of the Act and is fatally flawed for that reason.

B.

\*7 To buttress its position, the Region makes a plea on grounds of practical necessity. The Region asserts that because water quality standards, unlike technology-based standards, depend on the quality of the receiving waters and other factors that make it difficult for a permittee to plan ahead and predict what its limitations will be, EPA should have the authority to “define appropriate deadlines for complying with post-1977 standards.” Pet. for Recon. at 7-8. This argument fails for the reasons previously stated, and more particularly because the States have full authority to make appropriate accommodations for dischargers needing additional time for compliance, and it is up to the States, not EPA, to decide whether their water quality standards should be applied in a flexible manner.<sup>16</sup> If a State does not provide for compliance schedules in its water quality standards, it may be assumed that the omission was deliberate.<sup>17</sup> Cases interpreting the Clean Water Act make it clear that States have a right to make this type of decision even at the cost of forcing companies out of business. See, e.g., United States Steel Corp. v. Train, 556 F. 2d 822, 838 (7th Cir. 1977) (“[T]he states are free to force technology” and “[i]f the states wish to achieve better water quality, they may [do so], even at the cost of economic and social dislocations \* \* \*”). The “practical necessity” argument also misses the mark on other grounds. For example, where the Agency determines that, despite good faith efforts, a permittee cannot come into immediate compliance with a newly adopted, revised, or interpreted state water quality standard, EPA may bring an enforcement action against the discharger pursuant to §309 of the Act<sup>18</sup> and issue an administrative compliance order giving the permittee a reasonable amount of time to comply.<sup>19</sup>

Also lacking merit is the Region’s argument that EPA needs to establish compliance schedules because water quality standards are revised periodically. When a water quality standard is revised to be more stringent, the holder of an existing permit is not required to meet the new standard until the term of the existing permit expires and the permittee applies for a renewed permit.<sup>20</sup> In addition, the Clean Water Act requires States to allow for public participation in setting water quality standards. See 33 U.S.C. §1313(c); 40 CFR §131.20. Thus, dischargers may convince States that newly adopted and revised water quality standards should provide for grace periods for compliance. Therefore, contrary to the Region’s contentions, strict compliance with the July 1, 1977 deadline need not lead to harsh or inequitable results.

C.

In conclusion, EPA does not have the authority to establish schedules of compliance in NPDES permits that will postpone compliance with state water quality standards beyond the July 1, 1977 statutory deadline, unless the schedule is added pursuant to authorization contained in the state water quality standards or the State's regulations implementing the standards. In the absence of such authorization, state water quality standards, like the great majority of laws and regulations, take effect immediately in accordance with their terms, and EPA is not empowered to postpone their effectiveness even temporarily through use of compliance schedules, no matter the justification. For the reasons stated above, the Region's assertion that the deadline in § 301(b)(1)(C) applies only to state water quality standards adopted prior to July 1, 1977, is rejected. By including the July 1, 1977 deadline in the statute, Congress was, in effect, providing a "grace period" as part of a timetable for implementation of the requirements of the Act. Once the grace period has lapsed, EPA must ensure that all permits contain limitations necessary to meet whatever state water quality standards are in effect at the time of permit issuance, regardless of when the standards were adopted or revised.<sup>21</sup> Reconsideration of the Chief Judicial Officer's March 8, 1989 Order Denying Petition for Review is therefore denied. The Office of Water is directed to take immediate action to ensure that the States are aware of their responsibilities under the Clean Water Act *vis a vis* schedules of compliance and of the consequences of omitting enabling language for such schedules from their regulations and water quality standards.<sup>22</sup>

\*8 So ordered.<sup>23</sup>

William K. Reilly  
Administrator

- 1 The petition for reconsideration is signed by representatives of the Agency's Office of the General Counsel (Headquarters) and Region II's Office of Regional Counsel.
- 2 On June 27, 1989, the Region filed a reply to Star-Kist's response, opposing Star-Kist's argument that its request for an evidentiary hearing should be granted. In its reply, Region II contends that compliance schedules may be considered only where the water quality standards at issue are adopted, or in some instances, newly interpreted, after the statutory deadline. Because the standards at issue here were not newly adopted or interpreted after the July 1, 1977 deadline, Region II reasons, it may not consider a schedule of compliance. I do not concur with Region II's unqualified assertion that the Clean Water Act allows it to establish compliance schedules for post-July 1, 1977 standards. Nevertheless, as this decision intends to make clear, the Region is correct that it would not be appropriate to establish a schedule of compliance here because the water quality standards at issue are virtually identical to those that existed prior to July 1, 1977.
- 3 The Clean Water Act defines "schedule of compliance" in Section 502(17):  
The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.  
33 U.S.C.A. §1362(17). It is unclear whether the Office of Water is intending to use the term in any strict statutory sense.
- 4 Memorandum from James A. Rogers, Associate General Counsel, Water and Solid Waste Division, to the Deputy Assistant Administrator for Water Enforcement (December 28, 1978).
- 5 For that reason it is incorrect to read the CJO's decision as barring all schedules of compliance in permits issued after July 1, 1977. The CJO did not rule that schedules of compliance consistent with a State's water quality standards (or implementing regulations) are nevertheless barred by the July 1, 1977 deadline. What he did was hold that schedules of compliance not meeting the requirements of state water quality standards are barred after July 1, 1977. As stated in the decision:  
The EQB is likewise without authority to extend the July 1, 1977 deadline, particularly by including a vague statement in a water quality certification that it has no objection to a compliance schedule. Star-Kist has not shown that Puerto Rico's water quality standards contain a provision that could be read to allow a delay in implementation.  
Order Denying Petition for Review at 6 (emphasis added). Because the CJO's decision should not be read as barring all post-July 1, 1977 schedules of compliance, the Region's arguments respecting §§303(e) and 304(1) are not pertinent.

- 6 The Puerto Rico Environmental Quality Board stated that it would have “no objections” if EPA included a schedule of compliance in the permit containing interim effluent limitations for pollutant parameters not in compliance with state water quality standards. Water Quality Certificate, page 16, Special Condition #17 (Puerto Rico Environmental Quality Board, June 29, 1987). The Board, however, did not specify what interim limitations the schedule must contain, or what the duration of the interim limitations must be to comply with state water quality standards. More importantly, neither the Board nor Star-Kist has shown that the Puerto Rico water quality standards allow compliance schedules under the circumstances of this case.
- 7 See Opinion of the General Counsel, **Memorandum from Robert M. Perry, General Counsel, to John E. Daniel, Chief of Staff** (February 23, 1982).
- 8 See, e.g., §303(e)(3)(A) and (F) of the Clean Water Act, 33 U.S.C. § 1313(e)(3)(A) and (F) (discussed in text, *infra*).
- 9 The term “backsliding” refers to the renewal or reissuance of a permit containing less stringent limitations than the comparable limitations in the previous permit. EPA’s regulatory backsliding prohibition, 40 CFR §122.44(1), was given explicit statutory recognition (in a specific context) in 1987 by the enactment of §402(o), 33 U.S.C. §1342(o).
- 10 Of course, post-July 1, 1977 readoption of a pre-July 1, 1977 standard without any substantive changes would not open the door to schedules of compliance because the standard would still be one that was in effect prior to July 1, 1977.
- 11 See also 40 CFR §130.5 (continuing planning process).
- 12 By enacting §301(b) of the Clean Water Act, Congress sought to put into place certain technology-based controls on water pollution while simultaneously requiring attainment of state water quality standards. The basic scheme of the [Clean Water Act] \* \* \* is to require all dischargers to meet uniform technology-based effluent standards as a minimum. However, each body of water also has water quality standards, and a discharger may be required to achieve a greater reduction in his effluent than the applicable effluent standard would require if such a reduction is necessary to meet the water quality standards applicable to the body of water that receives his effluent. R. Zener, The Federal Law of Water Pollution Control, in **Federal Environmental Law** 694 (1974).
- 13 EPA’s rights are coextensive with the States’ insofar as writing a water quality standard is concerned. Thus, if EPA is prescribing a federal water quality standard to take effect in lieu of a state water quality standard, it would have authority, like the States, to establish schedules of compliance in the water quality standard. See 40 CFR §131.22.
- 14 Section 401(a)(1) of the Clean Water Act provides in relevant part as follows:  
Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate \* \* \* that any such discharge will comply with the applicable provisions of section[] 1311 [CWA §301] \* \* \* of this title.  
33 U.S.C. §1341(a)(1).
- 15 Although §401 of the Clean Water Act gives the States an effective veto power over any EPA-issued permit not meeting the requirements of state water quality standards, EPA’s long-standing practice of adding schedules of compliance under the aegis of the 1978 legal opinion may have misled the States into believing they lack this authority insofar as the schedules are concerned.
- 16 Section 131.13 of the regulations, 40 CFR §131.13, authorizes the States, at their discretion (but subject to EPA approval), to include in their water quality standards “policies generally affecting their application and implementation, such as mixing zones, low flows and variances.” Logically, schedules of compliance fall within the category of “policies” listed in this regulation. Moreover, as noted in the text, the Act itself contemplates schedules of compliance being established by the States. See §§301(b)(1)(C) and 303(e)(3)(A) and (F).
- 17 In preparing a “continuing planning process” under §303(e) of the Act, EPA regulations direct the States to include schedules of compliance in the process:  
**§130.5 Continuing planning process.**  
(a) **General.** Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A)-(H) of the Act.

\*\*\*

(b) Content. \* \* \* The following processes must be described in each State CPP, and the State may include other processes at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by sections 301(b)(1) and (2), 306 and 307, and at least as stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

\*\*\*

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

40 CFR §130.5 (emphasis added).

- 18 EPA has the authority under §309 of the Act to deal in a flexible manner, through use of compliance orders, with deserving permittees who are unable come into immediate compliance with the Act:
- (3) Whenever \* \* \* the Administrator finds that any person is in violation of section 1311 \* \* \* or is in violation of any permit condition or limitation implementing \* \* \* such section[] \* \* \* he shall issue an order requiring such person to comply with such section or requirement \* \* \*.
- (5) [A]ny order issued under this subsection \* \* \* shall specify a time for compliance not to exceed 30 days in the case of a violation of an interim compliance schedule \* \* \* and not to exceed a time the Administrator determines to be reasonable in the case of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. 33 U.S.C. §1319(a)(3) & (5)(A).
- 19 The Region acknowledges the existence of this method of establishing schedules of compliance but argues that it should not be restricted to this single option. Pet. for Recon. at 7 (“in some circumstances a schedule of compliance in the permit itself may be a reasonable alternative to a schedule in an administrative order”).
- 20 permit applicants need only comply with water quality standards that are in the permit, not with standards adopted or revised subsequent to permit issuance. Once issued, the permits are valid for a fixed term not to exceed five years. 33 U.S.C. §1342(b)(1)(B); 40 CFR §122.46(a). During the term of the permit, compliance with the permit and effluent limitations in it constitute compliance with section 301. 33 U.S.C. §1342(k). In fact, EPA cannot modify existing permits to require compliance with newly adopted or revised water quality standards unless the permit applicant requests such a modification. 40 CFR §122.62(3)(i)(C).
- 21 In other words, after the grace period has run, the statute would be read and applied in the same manner as if the deadline had never appeared in the statute. (Had the Clean Water Act contained a provision identical to § 301(b)(1)(C) but omitted the July 1, 1977 deadline, the clear meaning of the statute would be that, as of the effective date of the statute, EPA must ensure that all permits contain limitations necessary to meet whatever state water quality standards are in effect at the time of permit issuance. Also, if the State subsequently revised or adopted new water quality standards, a renewed permit would have to meet the new or revised standards, unless the State granted some form of relief, such as a variance or compliance schedule.) Thus, contrary to Region II’s contentions (see, e.g., page 7, supra), the July 1, 1977 “deadline” can be literally applied to future water quality standards in the same manner that a statute with no grace period can require EPA to ensure compliance with future standards.
- 22 The Region suggested rulemaking as a potential alternative to deciding the merits of its petition for reconsideration. It did not explain, however, why rulemaking is either necessary or desirable. The need for it is not readily apparent in view of the clear statutory and regulatory basis for schedules of compliance, and in view of EPA’s considerable authority respecting approval of state water quality standards and regulations. Public comment on any proposed policies the Office of Water might adopt can be solicited independently of rulemaking.
- 23 This decision shall have no retroactive effect on existing permits. Schedules of compliance in those permits shall be enforceable in accordance with the terms of the permits for the remainder of the permit term. See note 20 supra.

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# **ATTACHMENT 41**



568 F.2d 1369

United States Court of Appeals,  
District of Columbia Circuit.

\* For convenience the court will refer to this case hereafter as NRDC v. Costle (Runoff Point Sources).

NATURAL RESOURCES

DEFENSE COUNCIL, INC. \*

v.

Douglas M. COSTLE, Administrator,  
Environmental Protection Agency, et al.,  
National Forest Products Association, Appellant.

NATURAL RESOURCES

DEFENSE COUNCIL, INC., etc.

v.

Douglas M. COSTLE, Administrator,  
Environmental Protection Agency, et al.,  
National Milk Producers Federation, Appellant.

NATURAL RESOURCES

DEFENSE COUNCIL, INC., etc.

v.

Douglas M. COSTLE, Administrator, and  
Environmental Protection Agency, et al., Appellants.  
NATURAL RESOURCES DEFENSE COUNCIL, INC.

v.

Douglas M. COSTLE, Administrator,  
Environmental Protection Agency, Colorado  
River Water Conservation District, Appellant.

Nos. 75-2056, 75-2066, 75-2067  
and 75-2235. Argued Dec. 3,  
1976. Decided Nov. 16, 1977.

The National Resources Defense Council, Inc. challenged authority of the Environmental Protection Agency Administrator to exempt categories of point sources from permit requirements of the Federal Water Pollution Control Act Amendments of 1972. The United States District Court for the District of Columbia, Thomas A. Flannery, J., 396 F.Supp. 1393, granted summary judgment to the NRDC and the Administrator and others appealed. The Court of Appeals, Leventhal, Circuit Judge, held that: (1) legislative history shows that National Pollution Discharge Elimination System permit is the only means by which discharger may escape total prohibition of discharges from point sources found in FWPCA; (2) national effluent limitations need not

be uniform as precondition for NPDES program to include pollution from agricultural, silvicultural, and storm runoff point sources, and while technological or administrative infeasibility of such limitations may warrant adjustments in permit program it does not authorize Administrator to exclude relevant point sources; (3) where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate problems of point source pollution as well as require monitoring and reporting of effluent level; and (4) a number of administrative devices, including general or area permits are available to aid EPA in practical administration of NPDES program, and FWPCA, however tight in some respects, leaves some leeway to EPA in interpretation of that statute and affords agency some means to consider matters of feasibility.

Affirmed in accordance with opinion.

MacKinnon, Circuit Judge, filed a concurring opinion.

*\*1370 \*\*148 Syllabus by the Court*

The National Resources Defense Council, Inc. (NRDC) challenged the authority of the EPA Administrator to exempt categories of point sources from the permit requirements of s 402 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. s 1342 (Supp. V 1975). On appeal from a grant of summary judgment to NRDC, held:

1. The legislative history makes clear that Congress intended the National Pollution Discharge Elimination System (NPDES) permit to be the only means by which a discharger may escape the total prohibition of discharges from point sources found in FWPCA s 301(a), 33 U.S.C. s 1311(a) (Supp. V 1975).
2. It is not necessary that national effluent limitations be uniform as a precondition for the NPDES program to include pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility *\*1371 \*\*149* of such limitations may warrant adjustments in the permit program, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.
3. Where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate the problems of point source pollution as well as require monitoring and reporting of effluent levels.

4. A number of administrative devices, including general or area permits, are available to aid EPA in the practical administration of the NPDES program. The FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute and, in that regard, affords the agency some means to consider matters of feasibility.

Appeals from the United States District Court for the District of Columbia (D.C. Civil 1629-73).

#### Attorneys and Law Firms

Irvin B. Nathan, Washington, D. C., with whom Burton J. Mallinger, Washington, D. C., was on the brief, for appellant in No. 75-2056.

Charles W. Bills, Washington, D. C., with whom James R. Murphy, Washington, D. C., was on the brief for appellant in No. 75-2066.

G. William Frick, Atty., Dept. of Justice, Kansas City, Mo., of the bar of the Supreme Court of Missouri, pro hac vice by special leave of court for appellants in No. 75-2067. Peter R. Taft, Asst. Atty. Gen., Robert V. Zener, Gen. Counsel, Environmental Protection Agency, Edmund B. Clark, Lloyd S. Guerci, Larry A. Boggs, Attys., Dept. of Justice and Pamela P. Quinn, Atty., Environmental Protection Agency, Washington, D. C., were on the brief for appellants in No. 75-2067.

Christopher D. Williams, Washington D. C., with whom Kenneth Balcomb and Robert L. McCarty, Washington, D. C., were on the brief for appellant in No. 75-2235.

J. G. Speth, Washington, D. C., for appellee.

Theodore O. Torve, Asst. Atty. Gen., State of Washington, Olympia, Wash., filed a brief on behalf of the State of Washington as amicus curiae urging reversal in No. 75-2056.

Richard E. Schwartz, Jefferson City, Mo., filed a brief on behalf of Iron and Steel Institute, as amicus curiae urging reversal in No. 75-2067.

John L. Hill, Atty. Gen., State of Texas, and David M. Kendall, Jr., First Asst. Atty. Gen., State of Texas, Austin, Tex., filed a brief on behalf of State of Texas as amicus curiae urging reversal in No. 75-2067.

Before BAZELON, Chief Judge, and LEVENTHAL and MacKINNON, Circuit Judges.

#### Opinion

Opinion for the Court filed by LEVENTHAL, Circuit Judge.

Concurring Opinion filed by MacKINNON, Circuit Judge.

LEVENTHAL, Circuit Judge:

In 1972 Congress passed the Federal Water Pollution Control Act Amendments (hereafter referred to as the "FWPCA" or the "Act"<sup>1</sup>). It was a dramatic response to accelerating environmental degradation of rivers, lakes and streams in this country. The Act's stated goal is to eliminate the discharge of pollutants into the Nation's waters by 1985. This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act.

1 33 U.S.C. ss 1251-1376 (Supp. V 1975). Although characterized in the official title as "amendments", the 1972 FWPCA actually substitutes its provisions for those of the pre-1972 Federal Water Pollution Control Act as amended, id. ss 1151-1175 (1970).

The FWPCA sets up a permit program, the National Pollutant Discharge Elimination System (NPDES), as the primary means of enforcing the Act's effluent limitations.<sup>2</sup> At issue in this case is the authority \*1372 \*\*150 of the Administrator of the Environmental Protection Agency to make exemptions from this permit component of the FWPCA.

2 This case deals with s 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), which sets out the permitting authority of the EPA Administrator as well as that of the states under EPA-approved state permit programs. The Secretary of the Army also has a permitting authority in certain circumstances. Under s 404 of the FWPCA, 33 U.S.C. s 1344 (Supp. V 1975), he may issue permits for the discharge of dredged or fill material into navigable waters.

Section 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), provides that under certain circumstances the EPA Administrator "may . . . issue a permit for the discharge of any pollutant" notwithstanding the general proscription of pollutant discharges found in s 301 of the Act. 33 U.S.C. s 1311 (Supp. V 1975). The discharge of a pollutant is defined in the FWPCA as "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or floating craft." 33 U.S.C. s 1362(12) (Supp. V 1975). In 1973 the EPA Administrator issued regulations that exempted certain categories of "point sources" of pollution from the permit requirements of s 402.<sup>3</sup> The Administrator's purported

authority to make such exemptions turns on the proper interpretation of s 402.

3 40 C.F.R. s 125.4 (1975). See 38 Fed.Reg. 18000-04 (1973).

A "point source" is defined in s 502(14) as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."<sup>4</sup>

4 33 U.S.C. s 1362(14) (Supp. V 1975).

The 1973 regulations exempted discharges from a number of classes of point sources from the permit requirements of s 402, including all silvicultural point sources; all confined animal feeding operations below a certain size; all irrigation return flows from areas of less than 3,000 contiguous acres or 3,000 noncontiguous acres that use the same drainage system; all nonfeedlot, nonirrigation agricultural point sources; and separate storm sewers containing only storm runoff uncontaminated by any industrial or commercial activity.<sup>5</sup> The EPA's \*1373 \*\*151 rationale for these exemptions is that in order to conserve the Agency's enforcement resources for more significant point sources of pollution, it is necessary to exclude these smaller sources of pollutant discharges from the permit program.

5 40 C.F.R. s 125.4 (1975):

The following do not require an NPDES permit:

- (f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)
- (j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:
- (1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days

or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- (i) 1,000 slaughter and feeder cattle;
- (ii) 700 mature dairy cattle (whether milkers or dry cows);
- (iii) 2,500 swine weighing over 55 pounds;
- (iv) 10,000 sheep;
- (v) 55,000 turkeys;
- (vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;
- (vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;
- (viii) 5,000 ducks;
- (2) Discharges from animal confinement facilities, if such facility or facilities contain, or any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;
- (3) Discharges from aquatic animal production facilities;
- (4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e. g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and
- (5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

The National Resources Defense Council, Inc. (NRDC) sought a declaratory judgment that the regulations are unlawful under the FWPCA. Specifically, NRDC contended that the Administrator does not have authority to exempt any class of point source from the permit requirements of s 402. It argued that Congress in enacting ss 301, 402 of the FWPCA intended to prohibit the discharge of pollutants from all point sources unless a permit had been issued to the discharger under s 402 or unless the point source was explicitly exempted from the permit requirements by statute. The District Court granted NRDC's motion for summary judgment. It held that the FWPCA does not authorize the Administrator to exclude

any class of point sources from the permit program. NRDC v. Train, 396 F.Supp. 1393 (D.D.C.1975). The EPA has appealed to this court. It is joined on appeal by a number of defendant-intervenors, National Forest Products Association (NFPA), National Milk Producers Federation (NMPF), and the Colorado River Conservation District.<sup>6</sup>

6 Briefs as amicus curiae were filed by the American Iron and Steel Institute, the State of Texas, and the State of Washington, Department of Natural Resources.

This case thus presents principally a question of statutory interpretation. EPA also argues that even if Congress intended to include the pertinent categories in the permit program, the regulations exempting them should be upheld on a doctrine of administrative infeasibility, i. e., the regulations should be upheld as a deviation from the literal terms of the FWPCA that is necessary to permit the Agency to realize the principal objectives of the Act.

### I. LEGISLATIVE HISTORY

The principal purpose of the FWPCA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."<sup>7</sup> The Act's ultimate objective, to eliminate the discharge of pollutants into navigable waters by 1985, is to be achieved by means of two intermediate steps. As of July 1, 1977, all point sources other than publicly owned treatment works were to have achieved effluent limitations that require application of the "best practicable control technology."<sup>8</sup> These same point sources must reduce their effluent discharges by July 1, 1983, to meet limitations determined by application of the "best available technology economically achievable" for each category of point source.<sup>9</sup>

7 33 U.S.C. s 1251(a) (Supp. V 1975).

8 33 U.S.C. s 1311(b)(1)(A) (Supp. V 1975).

9 Id. s 1311(b)(2)(A).

The technique for enforcing these effluent limitations is straightforward. Section 301(a) of the FWPCA provides:

Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.<sup>10</sup>

10 Id. s 1311(a).

Appellants concede that if the regulations are valid, it must be because they are authorized \*1374 \*\*152 by s 402; none of the other sections listed in s 301(a) afford grounds for relieving the exempted point sources from the prohibition of s 301.<sup>11</sup>

11 Section 302, 33 U.S.C. s 1312 (Supp. V 1975), permits the Administrator to set water quality related effluent limitations or control strategies where technology-based limitations are inadequate. Section 306, 33 U.S.C. s 1316 (Supp. V 1975), instructs the EPA Administrator to promulgate standards of performance for new sources of pollution constructed after those standards are proposed. Section 307, 33 U.S.C. s 1317 (Supp. V 1975), gives the EPA Administrator the authority to issue generally applicable effluent standards with respect to toxic substances and to require pretreatment of some pollutants before their introduction into treatment works. By virtue of s 318, 33 U.S.C. s 1328 (Supp. V 1975), the Administrator may "permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision." Section 404, 33 U.S.C. s 1344 (Supp. V 1975), gives the Secretary of the Army authority to issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 402 provides in relevant part that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of the necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

The NPDES permit program established by s 402 is central to the enforcement of the FWPCA. It translates general effluent limitations into the specific obligations of a discharger. As this court noted in NRDC v. Train, 166 U.S.App.D.C. 312, 315, 510 F.2d 692, 695 (1975), the Act "relies primarily on a permit program for the achievement of effluent limitations . . . to attain its goals." The comments in floor debates of Senator Muskie, the leading Congressional sponsor of the Act, makes this clear.<sup>12</sup>

12 "The Administrator of the Environmental Protection Agency is authorized to regulate discharge of pollutants

through the use of an expanded permit program." 117 Cong.Rec. 38800 (1971) (Senator Muskie) (emphasis added), reprinted in 2 Environmental Policy Div., Congressional Reference Serv., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 1259 (Senate Public Works Comm. Print 1973) (hereinafter cited as Legislative History).

The appellants argue that s 402 not only gives the Administrator the discretion to grant or refuse a permit, but also gives him the authority to exempt classes of point sources from the permit requirements entirely. They argue that this interpretation is supported by the legislative history of s 402 and the fact that unavailability of this exemption power would place unmanageable administrative burdens on the EPA.

1 Putting aside for the moment the appellants' administrative infeasibility argument, we agree with the District Court that the legislative history makes clear that Congress intended the NPDES permit to be the only means by which a discharger from a point source may escape the total prohibition of s 301(a). This intention is evident in both Committee Reports. In discussing s 301 the House Report stressed:

Any discharge of a pollutant without a permit issued by the Administrator under section 318, or by the Administrator or the State under section 402 or by the Secretary of the Army under section 404 is unlawful. Any discharge of a pollutant not in compliance with the conditions or limitations of such a permit is also unlawful.<sup>13</sup>

13 H.Rep.No.92-911, 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787.

The Senate Report echoed this interpretation:

(Section 301) clearly establishes that the discharge of pollutants is unlawful. Unlike its predecessor program which permitted the discharge of certain amounts of pollutants under the conditions described above, this legislation would clearly establish that no one has the right \*1375 \*\*153 to pollute that pollution continues because of technological limits, not because of any inherent rights to use the nation's waterways for the purpose of disposing of wastes.

The program proposed by this Section will be implemented through permits issued in Section 402. The Administrator will have the capability and the mandate to press technology and economics to achieve those levels of effluent reduction which he believes to be practicable in the first instance and attainable in the second.<sup>14</sup>

14 S.Rep.No.92-414, 92d Cong., 1st Sess. 42 (1971), reprinted in Legislative History at 1460; U.S.Code Cong. & Admin.News 1972, pp. 3668, 3709.

2 The EPA argues that since s 402 provides that "the Administrator may . . . issue a permit for the discharge of any pollutant" (emphasis added), he is given the discretion to exempt point sources from the permit requirements altogether. This argument, as to what Congress meant by the word "may" in s 402, is insufficient to rebut the plain language of the statute and the committee reports. We say this with due awareness of the deference normally due "the construction of a new statute by its implementing agency." NRDC v. Train, 166 U.S.App.D.C. at 326, 510 F.2d at 706; see Zuber v. Allen, 396 U.S. 168, 192, 90 S.Ct. 314, 24 L.Ed.2d 345 (1969); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965). The use of the word "may" in s 402 means only that the Administrator has discretion either to issue a permit or to leave the discharger subject to the total proscription of s 301. This is the natural reading, and the one that retains the fundamental logic of the statute.

Under the EPA's interpretation the Administrator would have broad discretion to exempt large classes of point sources from any or all requirements of the FWPCA. This is a result that the legislators did not intend. Rather they stressed that the FWPCA was a tough law that relied on explicit mandates to a degree uncommon in legislation of this type. A statement of Senator Jennings Randolph of West Virginia, Chairman of the Senate Committee responsible for the Act, is illustrative.

I stress very strongly that Congress has become very specific on the steps it wants taken with regard to environmental protection. We have written into law precise standards and definite guidelines on how the environment should be protected. We have done more than just provide broad directives for administrators to follow. . . .

In the past, too many of our environmental laws have contained vague generalities. What we are attempting to do now is provide laws that can be administered with certainty and precision. I think that is what the American people expect that we do.<sup>15</sup>

15 117 Cong.Rec. 38805 (1971), reprinted in Legislative History at 1272. See also the comments of Senator Montoya on the original Senate bill.

Your committee has placed before you a tough bill. This body and this Nation would not have it be otherwise. Our legislation contains an important principle of psychology: Men seldom draw the best from themselves

unless pressed by circumstances and deadlines. This bill contains deadlines and it imposes rather tough standards on industry, municipalities, and all other sources of pollution. Only under such conditions are we likely to press the technological threshold of invention into new and imaginative developments that will allow us to meet the objectives stated in our bill.

117 Cong.Rec. 38808 (1971), reprinted in Legislative History at 1278.

There are innumerable references in the legislative history to the effect that the Act is founded on the "basic premise that a discharge of pollutants without a permit is unlawful and that discharges not in compliance with the limitations and conditions for a permit are unlawful."<sup>16</sup> Even when infeasibility arguments were squarely raised, \*1376 \*\*154 the legislature declined to abandon the permit requirement.<sup>17</sup> We stand by our previous interpretation of the Act's scheme for the enforcement of effluent limitations:

16 118 Cong.Rec. 10215 (1972) (Rep. Clausen), reprinted in Legislative History at 378. See, e.g., H.R.Rep.No.92-911 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787; S.Rep.No.92-414; 92d Cong., 1st Sess. 42-43 (1971), reprinted in Legislative History at 1460-61; 118 Cong.Rec. 10661 (1972) (Rep. Podell), reprinted in Legislative History at 574.

17 The House rejected an amendment designed to avoid the problems of including irrigation return flows in the permit program. Congressman Teno Roncalio of Wyoming offered an amendment on the floor of the House that would have explicitly exempted irrigated agriculture from the NPDES permit program.

Mr. RONCALIO. . . .

I offer my amendment so that a serious omission to H.R. 11896 can be corrected before we end up with a law that would be virtually impossible to enforce. My amendment would specifically exempt irrigated agriculture from sections 301(a), 302 and 304 of the Federal Water Pollution Control Act.

I think my colleagues will agree that the type of salinity problems created by irrigation runoff are simply not as alarming as the more common pollutants discharged by industrial and municipal facilities. Substantial salinity concentrations have little effect on recreational use of water or its suitability for the propagation of fish.

My amendment is necessary, Mr. Chairman, because at the present time we could not enforce pollution control on irrigation systems. It is virtually impossible to trace pollutants to specific irrigation lands, making these pollutants a nonpoint source in most cases. Second,

we do not have the technology to deal with irrigation runoff (as contrasted to industrial pollution) and if we begin making laws to control something that cannot be handled with our given technological knowledge, we will be doing many thousand farmers and ranchers a great disservice. In fact, we will be doing the Federal Government a great disservice if we actually pass a Federal water pollution control bill that cannot be fully enforced.

118 Cong.Rec. 10764-65 (1972), reprinted in Legislative History at 651. The amendment was rejected.

After dates set forth in (s 301(b)), a person must obtain a permit and comply with its terms in order to discharge any pollutant. The conditions of the permit must assure that any discharge complies with the applicable requirements of numerous sections including the effluent limitations of section 301(b).

NRDC v. Train, 166 U.S.App.D.C. at 316, 510 F.2d at 696 (emphasis added; footnotes omitted).

We also note that all the Supreme Court decisions referring to s 402 view the permit as the only means by which a point source polluter can avoid the ban on discharges found in s 301. Strictly speaking these expressions may be dicta, for they do not touch directly on the interpretation of s 402. But they are at least a considered reading of what the Act appears to mean.

In Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976), Justice Marshall characterized the enforcement scheme of the FWPCA as follows:

(E)ffluent limitations are enforced through a permit program. The discharge of "pollutants" into water is unlawful without a permit issued by the Administrator of the EPA or, if a State has developed a program that complies with the FWPCA, by the State. . . .

Id. at 7, 96 S.Ct. at 1941 (footnote omitted).

In EPA v. State Water Resources Control Board, 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976), the issue was whether federal installations were subject to state NPDES programs. Justice White's majority opinion describes NPDES at 205, 96 S.Ct. at 2025 (footnote omitted):

Under NPDES, it is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. An NPDES permit serves to transform generally

applicable effluent limitations and other standards including those based on water quality into the obligations (including a timetable for compliance) of the individual discharger, and the Amendments provide for direct administrative and judicial enforcement of permits.

In *E. I. du Pont de Nemours v. Train*, 430 U.S. 112, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977), the Court held that under FWPCA the EPA can set uniform effluent limitations through industry-wide regulations rather than develop them on an individual basis during the permit issuance process. But the Court, per Justice Stevens, clearly indicated \*1377 \*\*155 that those limitations were translated into obligations of the discharger through their inclusion in an NPDES permit. *Id.* at 119-20, 97 S.Ct. 965.

The wording of the statute, legislative history, and precedents are clear: the EPA Administrator does not have authority to exempt categories of point sources from the permit requirements of s 402. Courts may not manufacture for an agency a revisory power inconsistent with the clear intent of the relevant statute. In holding that the FPC does not have authority to exempt the rates of small producers from regulation under the Natural Gas Act, the Supreme Court observed:

It is not the Court's role . . . to overturn congressional assumptions embedded into the framework of regulation established by the Act. This is a proper task for the Legislature where the public interest may be considered from the multifaceted points of view of the representational process.

*FPC v. Texaco, Inc.*, 417 U.S. 380, 400, 94 S.Ct. 2315, 2327, 41 L.Ed.2d 141 (1974).

## II. ADMINISTRATIVE INFEASIBILITY

The appellants have stressed in briefs and at oral argument the extraordinary burden on the EPA that will be imposed by the above interpretation of the scope of the NPDES program. The spectre of millions of applications for permits is evoked both as part of appellants' legislative history argument that Congress could not have intended to impose such burdens on the EPA and as an invitation to this court to uphold the regulations as deviations from the literal terms of the FWPCA necessary to permit the agency to realize the general objectives of that act. During oral argument we asked for supplemental briefs so that the appellants could expand on their infeasibility arguments. We consider EPA's infeasibility contentions in turn.

### A. Uniform National Effluent Limitations

EPA argues that the regulatory scheme intended under Titles III and IV of the FWPCA requires, first, that the Administrator establish national effluent limitations<sup>18</sup> and, second, that these limitations be incorporated in the individual permits of dischargers. EPA argues that the establishment of such limitations is simply not possible with the type of point sources involved in the 1973 regulations, which essentially involve the discharge of runoff i. e., wastewaters generated by rainfall that drain over terrain into navigable waters, picking up pollutants along the way.

18 See FWPCA s 502(11), 33 U.S.C. s 1362(11) (Supp. V 1975):

The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

There is an initial question, to what extent point sources are involved in agricultural, silvicultural, and storm sewer runoff. The definition of point source in s 502(14), including the concept of a "discrete conveyance", suggests that there is room here for some exclusion by interpretation. We discuss this issue subsequently. Meanwhile, we assume that even taking into account what are clearly point sources, there is a problem of infeasibility which the EPA properly opens for discussion.

EPA contends that certain characteristics of runoff pollution make it difficult to promulgate effluent limitations for most of the point sources exempted by the 1973 regulations:

The major characteristic of the pollution problem which is generated by runoff . . . is that the owner of the discharge point . . . has no control over the quantity of the flow or the nature and amounts of the pollutants picked up by the runoff. The amount of flow obviously is unpredictable because it results from the duration and intensity of the rainfall event, the topography, the type of ground cover and the saturation point of the land due to any previous \*1378 \*\*156 rainfall. Similar factors affect the types of pollutants which will be picked up by that runoff, including the type of farming practices employed, the rate and type of pesticide and fertilizer application, and the conservation practices employed . . .

An effluent limitation must be a precise number in order for it to be an effective regulatory tool; both the discharger and the regulatory agency need to have an identifiable standard upon which to determine whether the facility is in compliance. That was the principal of the passage of the 1972 Amendments.

Federal Appellants' Memorandum on "Impossibility" at 7-8 (footnote omitted). Implicit in EPA's contentions is the premise that there must be a uniform effluent limitation prior to issuing a permit. That is not our understanding of the law.

In *NRDC v. Train*, we described the interrelationship of the effluent limitations and the NPDES permit program, 166 U.S.App.D.C. at 327, 510 F.2d at 707 (footnotes omitted):

The Act relies on effluent limitations on individual point sources as the "basis of pollution prevention and elimination." . . . Section 301(b) contains a broad description of phase one and phase two effluent limitations, to be achieved by July 1, 1977 and July 1, 1983, respectively. The limitations established under section 301(b) are to be imposed upon individual point sources through permits issued under the National Pollutant Discharge Elimination System (NPDES) established by section 402. Those permits are to contain schedules which will assure phased compliance with the effluent limitations no later than the final dates set forth in section 301(b). Section 304(b) calls for the publication of regulations containing guidelines for effluent limitations for classes and categories of point sources. These guidelines are intended to assist in the establishment of section 301(b) limitations that will provide uniformity in the permit conditions imposed on similar sources within the same category by diverse state and federal permit authorities.

As noted in *NRDC v. Train*, the primary purpose of the effluent limitations and guidelines was to provide uniformity among the federal and state jurisdictions enforcing the NPDES program and prevent the "Tragedy of the Commons"<sup>19</sup> that might result if jurisdictions can compete for industry and development by providing more liberal limitations than their neighboring states. 166 U.S.App.D.C. at 329, 510 F.2d at 709. The effluent limitations were intended to create floors that had to be respected by state permit programs.

19 As one commentator has recently written:  
The Tragedy of the Commons arises in noncentralized decisionmaking under conditions in which the rational but independent pursuit by each decisionmaker of its own self-interest leads to results that leave all

decisionmakers worse off than they would have been had they been able to agree collectively on a different set of policies.

Stewart, *Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 Yale L.J. 1196, 1211 (1977). The classic account of the Tragedy of the Commons can be found in Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968). Hardin makes the point in the context of sheep-grazing. Put simply, even over-simply, Hardin shows that if no one is authorized to set limits to preserve open pasture land as a whole, allowing sheep to graze on that land may lead to serious overgrazing, as each herdsman thinks only of his own advantage. The solution lies in some mandate, from above or by agreement, with sanctions to compel conformance.

But in *NRDC v. Train* it was also recognized that permits could be issued before national effluent limitations were promulgated and that permits issued subsequent to promulgation of uniform effluent limitations could be modified to take account of special characteristics of subcategories of point sources.

Prior to the promulgation of effluent limitations under section 301, the director of a state program is instructed merely to impose such terms and conditions in each permit as he determines are necessary to carry out the provisions of the Act. Once \*1379 \*\*157 an effluent limitation is established, however, the state director and the regional EPA Administrator are required to apply the specified, uniform effluent limitations, modified only as necessary to take account of fundamentally different factors pertaining to particular point sources within a given class or category. Any variation in the uniform limitations adopted for specific dischargers must be approved by the Administrator. 166 U.S.App.D.C. at 330, 510 F.2d at 710 (footnotes omitted).

Another passage in *NRDC v. Train* touches on the infeasibility problem. We noted that "(t)he statutory framework is not so tightly drawn as to require guidelines for each and every class and category of point source regardless of the need for uniform guidelines or to mandate that all guidelines be published prior to December 31 (1974) regardless of their quality or the burden that task would place upon the agency." *Id.* at 320-21, 510 F.2d at 710-11. In that case this court fully appreciated that technological and administrative constraints might prevent the Administrator from developing guidelines and corresponding uniform numeric effluent limitations for certain point sources anytime

in the near future. The Administrator was deemed to have the burden of demonstrating that the failure to develop the guidelines on schedule was due to administrative or technological infeasibility. 166 U.S.App.D.C. at 333, 510 F.2d at 713. Yet the underlying teaching was that technological or administrative infeasibility was a reason for adjusting court mandates to the minimum extent necessary to realize the general objectives of the Act.<sup>20</sup> It is a number of steps again to suggest that these problems afford the Administrator the authority to exempt categories of point sources from the NPDES program entirely.

20 In NRDC v. Train, this court stated:

A federal equity court may exercise its discretion to give or withhold its mandate in furtherance of the public interest, including specifically the interest in effectuating the congressional objective incorporated in regulatory legislation. We think the court may forebear the issuance of an order in those cases where it is convinced by the official involved that he has in good faith employed the utmost diligence in discharging his statutory responsibilities. The sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him "to do an impossibility."

166 U.S.App.D.C. at 333, 510 F.2d at 713 (footnotes omitted). For reasons stated in this opinion, we conclude that to require the EPA Administrator to include silvicultural, agricultural, and storm sewer point sources in the NPDES program is not to require him "to do an impossibility."

With time, experience, and technological development, more point sources in the categories that EPA has now classed as exempt may be amenable to national effluent limitations achieved through end-of-pipe technology or other means of pollution control. EPA has noted its own success with runoff from mining operations:

EPA has found that in the area of runoff from mining operations, there is sufficient predictability because of a longer history of regulation and the relatively confined nature of the operations that numerical limitations can be established. Thus, consistent with EPA's position stated earlier that it will expand the permit program where its capability of establishing effluent limitations allows, appropriate limitations have been created and the permit program expanded.

Federal Appellants' Memorandum on "Impossibility" at 8.

3 In sum, we conclude that the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility of such limitations may result in adjustments in the permit programs, as will be seen, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

#### B. Alternative Permit Conditions under s 402(a)

EPA contends that even if it is possible to issue permits without national effluent limitations, \*1380 \*\*158 the special characteristics of point sources of runoff pollution make it infeasible to develop restrictions on a case-by-case basis. EPA's implicit premise is that whether limitations are promulgated on a class or individual source basis, it is still necessary to articulate any limitation in terms of a numerical effluent standard. That is not our understanding.

4 Section 402 provides that a permit may be issued upon condition "that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act." 33 U.S.C. s 1342(a) (Supp. V 1975) (emphasis added). This provision gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges. The permit may proscribe industry practices that aggravate the problem of point source pollution.<sup>21</sup>

21 That Congress did not regard numeric effluent limitations as the only permissible limitation on a discharger is supported by s 302(a) of the Act, 33 U.S.C. s 1312(a) (Supp. V 1975):

Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under (s 301(b) of the Act), would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies ) for such point source or sources shall be established

which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

The emphasis has been added.

EPA's counsel caricatures the matter by stating that recognition of any such authority would give EPA the power "to instruct each individual farmer on his farming practices." Federal Appellants Memorandum on "Impossibility" at 12. Any limitation on a polluter forces him to modify his conduct and operations. For example, an air polluter may have a choice of installing scrubbers, burning different fuels or reducing output. Indeed, the authority to prescribe limits consistent with the best practicable technology may be tantamount to prescribing that technology. Of course, when alternative techniques are available, Congress intended to give the discharger as much flexibility as possible in choosing his mode of compliance. See, e. g., H.Rep.No.92-911, 92d Cong., 2d Sess. 107, reprinted in Legislative History at 794. We only indicate here that when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.

It may be appropriate in certain circumstances for the EPA to require a permittee simply to monitor and report effluent levels; EPA manifestly has this authority.<sup>22</sup> Such permit conditions might be desirable where the full extent of the pollution problem is not known.

22 FWPCA s 402(a)(3), (b)(2)(B), 33 U.S.C. s 1342(a)(3), (b)(2)(B) (Supp. V 1975). EPA concedes that it has this authority. Federal Appellants' Memorandum on "Impossibility" at 14.

### C. General Permits

Finally, EPA argues that the number of permits involved in the absence of an exemption authority will simply overwhelm the Agency. Affidavits filed with the District Court indicate, for example, that the number of silviculture point sources may be over 300,000 and that there are approximately 100,000 separate storm sewer point sources.<sup>23</sup> We are and must be sensitive to \*1381 \*\*159 EPA's concerns of an intolerable permit load. But the District Court and the various parties have suggested devices to mitigate the burden to accommodate within a practical regulatory scheme

Congress's clear mandate that all point sources have permits. All that is required is that EPA makes full use of its interpretational authority. The existence of a variety of options belies EPA's infeasibility arguments.

23 Affidavit of William H. McCredie, Director, Industrial Forestry, of the NFPA; Affidavit of Walter G. Gilbert, Chief of the Municipal Operations Branch, Municipal Waste Water Systems Div., EPA Office of Air and Water Programs.

5 Section 402 does not explicitly describe the necessary scope of a NPDES permit. The most significant requirement is that the permit be in compliance with limitation sections of the Act described above. As a result NRDC and the District Court have suggested the use of area or general permits. The Act allows such techniques. Area-wide regulation is one well-established means of coping with administrative exigency. An instance is area pricing for natural gas producers, which the Supreme Court upheld in Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968).<sup>24</sup> A more dramatic example is the administrative search warrant, which may be issued on an area basis despite the normal Fourth Amendment requirement of probable cause for searching specific premises. *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

24 In Permian Basin the Supreme Court observed: The Commission has asserted, and the history of producer regulation has confirmed, that the ultimate achievement of the Commission's regulatory purposes may easily depend upon the contrivance of more expeditious administrative methods. The Commission believes that the elements of such methods may be found in area proceedings. "(C)onsiderations of feasibility and practicality are certainly germane" to the issues before us. . . . We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted. 390 U.S. at 777, 88 S.Ct. at 1365.

In response to the District Court's order, EPA promulgated regulations that make use of the general permit device. 42 Fed.Reg. 6846-53 (Feb. 4, 1977). The general permit is addressed to a class of point source dischargers, subject to notice and opportunity for public hearing in the geographical area covered by the permit. Although we do not pass on the validity of the February, 1977, regulations, they serve to dilute an objection of wholesale infeasibility.<sup>25</sup>

25 It is also of some, albeit limited, significance that the House Committee on Government Operations found EPA's administrative problems with applying the permit program to animal feedlots "grossly exaggerated." It was of the opinion that the Administrator did not have authority to exempt point sources from the NPDES program. H.Rep.No.93-1012, 93d Cong., 2d Sess. 15-30 (1974).

Our approach is not fairly subject to the criticism that it elevates form over substance that the end result will look very much like EPA's categorical exemption. It is the function of the courts to require agencies to comply with legislative intent when that intent is clear, and to leave it to the legislature to make adjustments when the result is counterproductive.<sup>26</sup> At the same time, where intent on an issue is unclear, \*1382 \*\*160 we are instructed to afford the administering agency the flexibility necessary to achieve the general objectives of the Act. *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653, 93 S.Ct. 2448, 37 L.Ed.2d 235 (1973); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78, 88 S.Ct. 1994, 20 L.Ed.2d 1001 (1968); *Permian Basin Area Rate Cases*, 390 U.S. 747, 780, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968). These lines of authority conjoin in our approach. We insist, as the Act insists, that a permit is necessary; the Administrator has no authority to exempt point sources from the NPDES program. But we concede necessary flexibility in the shaping of the permits that is not inconsistent with the clear terms of the Act.

26 The Supreme Court recently reiterated this instruction in *Union Electric Co. v. EPA*, 427 U.S. 246, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). There the Court held that the EPA Administrator could not consider claims of technological or economic infeasibility when approving state implementation plans under the Clean Air Act Amendments of 1970, 42 U.S.C. ss 1857a-1857l (1970). Such claims were held only to be cognizable by the states in the plan design stage or by the Administrator when drawing up compliance orders. Justice Marshall, writing for the Court, emphasized that federal courts are not to ignore clear expressions of Congressional intent in order to accommodate claims of technological or economic infeasibility.

Allowing such claims to be raised by appealing the Administrator's approval of an implementation plan . . . would frustrate congressional intent. It would permit a proposed plan to be struck down as infeasible before it is given a chance to work, even though Congress clearly contemplated that some plans would be infeasible when proposed. And it would permit the Administrator or a

federal court to reject a State's legislative choices in regulating air pollution, even though Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent. Technology forcing is a concept somewhat new to our national experience and it necessarily entails certain risks. But Congress considered those risks in passing the 1970 Amendments and decided that the dangers posed by uncontrolled air pollution made them worth taking. Petitioner's theory would render that considered legislative judgment a nullity, and that is a result we refuse to reach.

427 U.S. at 268-69, 96 S.Ct. at 2531 (footnote omitted). See also *Wilderness Society v. Morton*, 156 U.S.App.D.C. 121, 171, 479 F.2d 842, 892 (1973), cert. denied, 411 U.S. 917, 93 S.Ct. 1550, 36 L.Ed.2d 309 (quoting *United States v. City and County of San Francisco*, 310 U.S. 16, 31-32, 60 S.Ct. 749, 84 L.Ed. 1050 (1940): " 'We cannot accept the contention that administrative rulings such as those relied on can thwart the plain purpose of a valid law.' ")

There is also a very practical difference between a general permit and an exemption. An exemption tends to become indefinite: the problem drops out of sight, into a pool of inertia, unlikely to be recalled in the absence of crisis or a strong political protagonist. In contrast, the general or area permit approach forces the Agency to focus on the problems of specific regions and requires that the problems of the region be reconsidered at least every five years, the maximum duration of a permit.<sup>27</sup>

27 33 U.S.C. s 1342(a)(3), (b)(1)(B) (Supp. V 1975).

#### D. Other Interpretational Powers

6 Many of the intervenor-appellants appear to argue that the District Court should be reversed because the categories exempted by EPA are nonpoint sources and are not, in fact, point sources.<sup>28</sup> We agree with the District Court "that the power to define point and nonpoint sources is vested in EPA and should be reviewed by the court only after opportunity for full agency review and examination." 396 F.Supp. at 1396. The only issue precisely confronted by all the parties and properly framed for our consideration is whether the Administrator has authority to exempt point sources from the NPDES program. We also think that we should, for similar reasons, not consider at this time the appropriate definition of "discharge of any pollutant" as used in s 402. The American Iron and Steel Institute as amicus curiae has pressed upon

us the argument that the term "discharge" as used in s 402 was intended to encompass only "volitional flows" that add pollutants to navigable waters. Most forms of runoff, it is argued, do not involve volitional flows.

28 This appears to be the position of the Colorado River Water Conservation District and the NFWA with respect to silvicultural activities, and NMPF; less obviously, with respect to small dairy farms.

We would put in the same category EPA's contention that the exempt categories are best handled under the areawide waste treatment management planning process of s 208 of the FWPCA, 33 U.S.C. s 1288 (Supp. V 1975). By its terms that section is concerned with areawide waste treatment plans that identify and control "agriculturally and silviculturally related non-point sources of pollution." Id. s 1288(b)(2)(F).

7 We assume that FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute, and in that regard affords the Agency some means to consider matters of feasibility. However, for reasons already noted, we do not consider these particular contentions as to interpretation on the merits.

### III. CONCLUSION

8 As the Supreme Court recently stated in a FWPCA case, "(t)he question . . . is **\*\*161 \*1383** not what a court thinks is generally appropriate to the regulatory process, it is what Congress intended . . ." E. I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138, 97 S.Ct. 965, 980, 51 L.Ed.2d 204 (1977). We find a plain Congressional intent to require permits in any situation of pollution from point sources. We also discern an intent to give EPA flexibility in the structure of the permits, in the form of general or area permits. We are aware that Congress hoped that more of the NPDES permit program would be administered by the states at this point.<sup>29</sup> But it also made provision for continuing EPA administration. Imagination conjoined with determination will likely give EPA a capability for practicable administration. If not, the remedy lies with Congress.

29 See, e. g., 118 Cong.Rec. 10235 (1972) (Rep. Ichord) reprinted in Legislative History at 428.

So ordered.

MacKINNON, Circuit Judge, concurring:

I concur in the very sound and practical construction set forth in the foregoing opinion. Any person concerned with the actual application and enforcement of laws would necessarily be concerned by the application of the relevant legislation to all point sources in agriculture and particularly to irrigated agriculture. Concern would also lie in the congressional admission that present technology is inadequate to enable our citizens to meet the standards and deadlines the Act imposes; in passing the law, Congress was relying on the future "invention (of) new and imaginative developments that will allow us to meet the objectives of our bill."<sup>1</sup> In gambling parlance, Congress in enacting the law was "betting on the come." It is relying on our citizens in the near future to develop the complex technology to meet all the law's standards and objectives on time. The difficulty with that approach is that the hopes of Congress in this respect, like that of any gambler, might not be realized. The agency in this case, however, has shown that it takes a realistic view of both the situation and the task of meeting the difficult requirements and objectives of the Act. I sincerely hope that the ability of the agency to issue section 402 permits including general area permits<sup>2</sup> will permit it to meet the present and future compliance problems posed by the Act in a practical way.

1 Comments of Senator Montoya, 117 Cong.Rec. 38808 (1971), quoted in court's opinion at 12, reprinted in Legislative History at 1278.

2 As an example, an area permit with appropriate conditions and modifications could issue for the agricultural point sources within the Grand River Irrigation District, or the watershed of the Roaring Fork River and tributaries, etc.

Parallel Citations

10 ERC 2025, 186 U.S.App.D.C. 147, 8 Env'tl. L. Rep. 20,028

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# **ATTACHMENT 42**



16 F.3d 1395

United States Court of Appeals,  
Fourth Circuit.

NATURAL RESOURCES DEFENSE COUNCIL,  
INCORPORATED; Environmental Defense  
Fund, Incorporated; Audubon Naturalist  
Society of the Central Atlantic States; Maryland  
Conservation Council; Conservation Federation  
of Maryland; John Gottschalk; Mark Kovach;  
Ken Penrod; Glen Peacock; C.L. Fitchett;  
Louis W. Powers, Plaintiffs-Appellants,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; Edwin B. Erickson,  
Region III Administrator; William Reilly,  
Administrator, United States Environmental  
Protection Agency; Westvaco Corporation;  
The American Paper Institute, Incorporated;  
Chesapeake Corporation; Union Camp  
Corporation; The State of Maryland, Department  
of the Environment, Defendants-Appellees.

No. 92-2520. Argued June  
9, 1993. Decided Dec. 22, 1993.

Environmental group sued Environmental Protection Agency (EPA) challenging EPA's dioxin criteria document and its approval of water quality standards of states of Maryland and Virginia which allowed levels of dioxin which exceeded EPA's own guidance criterion. The United States District Court for the Eastern District of Virginia, James R. Spencer, J., 770 F.Supp. 1093, dismissed original count one of complaint with leave to amend, and subsequently, 806 F.Supp. 1263, granted EPA's motion to dismiss and for partial summary judgment affirming EPA's approval of state water quality standards. Environmental groups appealed. The Court of Appeals, Britt, District Judge, sitting by designation, held that: (1) district court applied correct legal standard in reviewing EPA's approval of state dioxin standards; (2) use of 6.5 grams of maximum residue fish per day as fish consumption standard in approving state's use of 1.2 parts per quadrillion of dioxin was proper; (3) approving use of 5,000 bioconcentration factor (BCF) for dioxin by states in establishing water quality standards was not arbitrary; and (4) states were not required under Clean Water Act to adopt

single numeric criterion for dioxin that protected against all identifiable effects to human health, aquatic life and wildlife.

Affirmed.

#### Attorneys and Law Firms

\*1397 **ARGUED:** David Sandburg Bailey, Environmental Defense Fund, Washington, D.C., for appellants. John Alan Bryson, United States Department of Justice, Washington, D.C., for appellees. **ON BRIEF:** Robert W. Adler, Senior Attorney, Natural Resources Defense Counsel, Washington, D.C., for appellants. Myles W. Flint, Acting Assistant Attorney General, Greer S. Goldman, David C. Shilton, United States Department of Justice, Washington, D.C.; Manning Gasch, Jr., Joseph M. Spivey, III, Hunton & Williams, Richmond, Virginia; Roland DuBois, Office of General Counsel, United States Environmental Protection Agency, Washington, D.C.; Andrew Duchovnay, Office of Regional Counsel, United States Environmental Protection Agency, Philadelphia, Pennsylvania, for appellees.

Before HALL and NIEMEYER, Circuit Judges, and BRITT, United States District Judge for the Eastern District of North Carolina, sitting by designation.

#### Opinion

#### OPINION

BRITT, District Judge:

This appeal arises out of consolidated suits brought by the Natural Resources Defense Council ("NRDC") and Environmental Defense Fund ("EDF") to challenge the approval by the United States Environmental Protection Agency ("EPA") of state water quality \*1398 standards implemented by Maryland and Virginia.<sup>1</sup> Specifically, NRDC and EDF contest the approval of these state standards as they relate to dioxin.<sup>2</sup>

- 1 NRDC sued EPA challenging the Maryland water quality standards, and EDF sued EPA challenging the Virginia standards.
- 2 The term "dioxin" generally encompasses a broad range of closely-related toxic organic chemical compounds. The specific dioxin compound at issue on this appeal is 2,3,7,8-Tetrachlorodibenzo-p-dioxin ("2,3,7,8-TCDD"). It is highly probable that dioxin is a potent carcinogen. Dioxin is primarily a by-product

of the chlorine bleaching of pulp associated with paper manufacturing.

The district court below issued two published opinions regarding this action; *Natural Resources Defense Council v. EPA*, 770 F.Supp. 1093 (E.D.Va.1991) (“*NRDC I*”), and *Natural Resources Defense Council v. EPA*, 806 F.Supp. 1263 (E.D.Va.1992) (“*NRDC II*”).

In *NRDC I*, the district court dismissed the original Count One of the Complaint filed in the Maryland action and held that EPA had discretion under the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1251 *et seq.*, whether to include numerical criteria for all identifiable effects of dioxin and to revise criteria when the latest available scientific knowledge demanded it. However, the court allowed plaintiff NRDC an opportunity to amend Count One of the Maryland complaint to assert a claim solely under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500 *et seq.* *NRDC I*, 770 F.Supp. at 1108-10.

In *NRDC II*, the district court granted EPA's motions to dismiss and for partial summary judgment. The court held that EPA sufficiently reviewed the Maryland and Virginia dioxin standards in accordance with the CWA and that EPA did not abuse its discretion in determining that Maryland and Virginia relied on scientifically defensible assumptions in setting dioxin standards. The district court also dismissed amended Count One of the Maryland complaint on grounds that NRDC failed to exhaust administrative remedies. *NRDC II*, 806 F.Supp. at 1277-78.

NRDC and EDF appeal the district court's decisions and make the following assignments of error: (1) that the district court applied an incorrect legal standard in deciding whether EPA properly approved the state water quality standards; (2) that the district court erred in affirming EPA's approval of the state dioxin standards; and (3) that the district court erred in dismissing both the original and amended Count One of the Maryland complaint. Finding no error, we affirm.

### I. FACTS

A full account of the facts can be found in *NRDC I*, 770 F.Supp. at 1094-96, and *NRDC II*, 806 F.Supp. at 1266-72. For ease of reference, this court summarizes the facts as follows: On 11 September 1989, the Maryland Department of the Environment (“MDE”) sought to revise Maryland's water quality standards to allow its waters to contain dioxin in the amount of 1.2 parts per quadrillion (“ppq”), an amount indisputably less protective than EPA's own guidance

criterion of .0013 ppq.<sup>3</sup> However, MDE chose \*1399 this 1.2 ppq criterion because it had been based on the Food and Drug Administration's (“FDA”) less conservative cancer potency factor and because MDE felt that EPA's cancer potency factor overestimated the carcinogenic potential of dioxin.<sup>4</sup> After public hearings were held on the matter, Maryland adopted the 1.2 ppq standard and submitted it to EPA for review and approval.

3 As explained fully by the district court, numeric water criteria, such as the 1.2 ppq and .0013 ppq standards, are based on an assessment of the dose of dioxin that may cause harm and the dose to humans that can be expected as a result of dioxin present in water. Six factors are considered in determining the numeric dioxin criteria: (1) cancer potency; (2) risk level; (3) fish consumption; (4) bioconcentration; (5) water intake; and (6) body weight. *See* discussion *infra*. Of these factors, the first four are primarily at issue on this appeal.

The .0013 ppq figure is taken from EPA's dioxin criteria guidance document, *Ambient Water Quality Criteria for 2,3,7,8-Tetrachlorodibenzo-p-dioxin*, published in 1984 (“1984 dioxin criteria document”). In this document, EPA summarized the scientific information available in 1984 regarding dioxin toxicity and provided useful information for the states to use in adopting their own water quality standards. EPA recommended that where bodies of water are used as a source for both drinking water and edible fish, a dioxin concentration of .0013 ppq is desirable. This .0013 ppq figure means, approximately speaking, that one out of every ten million individuals faces an excess risk of cancer exposure as a result of the water's dioxin content. Thus, a 1.2 ppq standard would mean that, according to EPA's assessment, roughly one out of every ten thousand individuals would face such exposure.

4 EPA relates to the court that its cancer potency factor is among the most conservative, i.e. the most protective, in the world. Other federal agencies, including the FDA and the Center for Disease Control (“CDC”), adopted less conservative dioxin potency standards because these agencies used different assumptions and risk assessment methodologies. Some foreign countries, such as Canada and the Netherlands, have developed estimates of cancer risk even less protective than that used by the FDA or CDC.

Similar events took place in Virginia. On 11 December 1989, the Virginia State Water Control Board (“VSWCB”) proposed to revise its water quality standards to include

the 1.2 ppq dioxin standard. After public hearings were held, VSWCB submitted its proposal to EPA for review and approval on 27 September 1990.

EPA approved the Maryland standard on 12 September 1990, and approved the Virginia standard on 25 February 1991. Accompanying each approval, a Technical Support Document ("TSD") was issued by EPA and set out in detail EPA's scientific review of MDE's and VSWCB's analysis in deriving the 1.2 ppq standard. EPA concluded that Maryland's and Virginia's use of the 1.2 ppq standard for dioxin was scientifically defensible, protective of human health, and in full compliance with the CWA.

Plaintiffs then initiated this suit in the district court to challenge EPA's 1984 dioxin criteria document and EPA's approval of the Maryland and Virginia water quality standards. As noted above, the district court dismissed original Count One of the Maryland complaint on grounds that § 304(a) of the CWA does not impose a mandatory duty on EPA to develop numeric criteria for dioxin or to update its 1984 dioxin criteria document. *NRDC I*, 770 F.Supp. at 1107. After giving NRDC an opportunity to amend Count One, the district court dismissed the amended count for lack of finality and failure to exhaust administrative remedies. *NRDC II*, 806 F.Supp. at 1278. The district court also granted summary judgment to EPA on the remaining claims, holding that EPA had not acted arbitrarily or capriciously in approving the state water quality standards. *Id.* at 1277. This appeal followed.

## II. STATUTORY SCHEME

1 The main purpose of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by reducing, and eventually eliminating, the discharge of pollutants into these waters. 33 U.S.C. § 1251(a) (Supp.1993). While the states and EPA share duties in achieving this goal, primary responsibility for establishing appropriate water quality standards is left to the states. *See id.* §§ 1251(b) (1982); *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483 (9th Cir.1984), *cert. denied sub nom. Chevron U.S.A. Inc. v. Sheffield*, 471 U.S. 1140, 105 S.Ct. 2686, 86 L.Ed.2d 703 (1985); *District of Columbia v. Schramm*, 631 F.2d 854 (D.C.Cir.1980). EPA sits in a reviewing capacity of the state-implemented standards, with approval and rejection powers only. 33 U.S.C. § 1313(c) (1982 & Supp.1993). Water quality standards are a critical component of the CWA regulatory scheme because such standards serve as a guideline for setting applicable limitations in individual discharge permits.

In an effort to meet the CWA's primary goal, section 402 of the Act (33 U.S.C. § 1342) establishes the National Pollutant Discharge Elimination System ("NPDES") permit program.<sup>5</sup> Under this program, permits are issued by either the EPA or by states that have been allocated NPDES permitting authority.<sup>6</sup> *Id.* § 1342 (1982 & Supp.1993). However, a state's exercise of NPDES permitting authority is subject to EPA approval. *Id.* §§ 1342(c), (d) (1982 & Supp.1993). All NPDES permits must take \*1400 into account technology-based effluent limitations that reflect the pollution reduction achievable based on specific equipment or process changes, without reference to the effect on the receiving water, and, where necessary, more stringent limitations representing the level of control necessary to ensure that the receiving waters attain and maintain state water quality standards. *Id.* §§ 1311(b) (1982), 1313(c) (1982 & Supp.1993).

5 For a more thorough explanation of the NPDES framework, see *Westvaco Corp. v. EPA*, 899 F.2d 1383 (4th Cir.1990).

6 It is undisputed that Virginia and Maryland have been given such authority.

Additionally, the CWA requires each state to adopt water quality standards for all waters of that state and to review them at least every three years. *Id.* §§ 1313(a), (b), (c)(1) (1982 & Supp.1993). To adopt these standards, states must first classify the uses for which the water is to be protected, such as fishing and swimming, and then each state must determine the level of water quality necessary to protect those uses. Thus, the following three factors are considered when adopting or evaluating a water quality standard: (1) one or more designated uses of the state waters involved; (2) certain water quality criteria, expressed as numeric pollutant concentration levels or narrative statements representing a quality of water that supports a particular designated use; and (3) an antidegradation policy to protect existing uses and high quality waters. *Id.* § 1313(c)(2)(A) (Supp.1993); 40 C.F.R. § 131.

States are directed to adopt numerical water quality criteria for specific toxic pollutants, such as dioxin, for which EPA has published numerical criteria guidance under 33 U.S.C. § 1314(a), if that pollutant can reasonably be expected to interfere with the designated uses of the states' waters. *Id.* § 1313(c)(2)(B) (Supp.1993). As mentioned previously, states must submit their new or revised water quality standards to EPA for review. *Id.* § 1313(c)(2)(A) (Supp.1993). On review, each submission must contain at least six elements: (1) use

designations consistent with the CWA; (2) a description of methods used and analyses conducted to support revisions of water quality standards; (3) water quality criteria sufficient to protect the designated uses; (4) an antidegradation policy; (5) certification of compliance with state law; and (6) general information to assist EPA in determining the adequacy of the scientific basis for standards that do not include the "fishable/swimmable" uses as set forth in 33 U.S.C. § 1251(a)(2). 40 C.F.R. § 131.6.

EPA regulations also provide that states should develop numerical criteria based on EPA's criteria guidance under § 304(a) of the CWA, EPA's criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods. 40 C.F.R. § 131.11(b)(1). Alternatively, states should establish narrative criteria or criteria based on biomonitoring methods if numerical criteria cannot be ascertained, or to supplement numerical criteria. *Id.* § 131.11(b)(2).

### III. DISCUSSION

#### A. Standard of Review on Appeal

2 As to the first and third issues on appeal, that is, whether the district court properly applied the correct legal standard under the CWA in reviewing EPA's approval of the state water quality standards and whether the district court erred in dismissing both original and amended Count One of the Maryland complaint, this court will apply a *de novo* standard of review. *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir.1991), *cert. denied sub nom. Schatz v. Weinberg & Green*, 503 U.S. 936, 112 S.Ct. 1475, 117 L.Ed.2d 619 (1992); see also *L.K. Comstock & Co. v. United Eng'rs & Constructors Inc.*, 880 F.2d 219, 221 (9th Cir.1989) (explaining that principles of law applied to facts are reviewed *de novo*).

3 Regarding the second issue on appeal, which is whether the district court erred in affirming EPA's approval of the state dioxin standards, it is undisputed that the correct standard of review is whether the agency action was arbitrary or capricious. The applicable statute provides that an agency's action, such as the EPA action at issue here, must be upheld unless that action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A) (1977). This is, of course, a highly deferential standard which presumes the validity of the agency's action. *Ethyl Corp. v. EPA*, 541 F.2d 1, 34 (D.C.Cir.) (en banc), *cert. denied*, \*1401 426 U.S. 941, 96 S.Ct. 2663, 49 L.Ed.2d 394 (1976). Thus, this court's task is to scrutinize the EPA's

activity to determine whether the record reveals that a rational basis exists for its decision. *Id.*

4 This court also is mindful that the CWA is a lengthy and complex statute and that its mandate and policy often require the evaluation of sophisticated data. *Reynolds Metal Co. v. EPA*, 760 F.2d 549, 558 (4th Cir.1985). Of course, in reviewing EPA's actions here, this court does not sit as a scientific body, meticulously reviewing all data under a laboratory microscope. *Id.* at 559. Nonetheless, EPA must fully and ably explain its course of inquiry, its analysis, and its reasoning, and show that a rational connection exists between its decision-making process and its ultimate decision. *Id.*; *Tanners' Council of Am., Inc. v. Train*, 540 F.2d 1188, 1191 (4th Cir.1976).

#### B. The District Court's Statutory Review of EPA's Approval of the State Water Quality Standards

5 NRDC argues that the district court applied an incorrect legal standard in reviewing EPA's approval of the state dioxin standards. To support this argument, NRDC contends that EPA's approval of the state dioxin standards is governed principally by § 303(c) of the CWA, 33 U.S.C. § 1313(c). Error was committed, so the argument goes, when the district court focused not on § 303(c), but on a policy statement contained in § 101(b) of the CWA, 33 U.S.C. § 1251(b), when it reviewed EPA's decision. NRDC argues further that the court's analysis was flawed because it extended excessive deference to EPA's decision and, accordingly, did not uphold the purposes of the CWA with respect to state-implemented water quality standards as § 101(a) and § 303(c) direct it should do. Specifically, NRDC suggests that under sections 101(a) and 303(c), EPA has an independent duty to objectively ensure that state water quality standards meet the requirements of the CWA, and that nothing in the CWA allows EPA to defer to states on this issue. Stated differently, NRDC contends that the district court misunderstood its function in reviewing EPA's approval by according undue deference to that decision. In sum, NRDC maintains that EPA, as well as the district court, had a duty under the CWA to assert a more dominant role in the review process. The court is unpersuaded.

6 At the outset it is important to note, as the district court correctly found, that states have the primary role, under § 303 of the CWA (33 U.S.C. § 1313), in establishing water quality standards. *Chevron U.S.A., Inc.*, 726 F.2d at 489. EPA's sole function, in this respect, is to review those standards for approval. 33 U.S.C. § 1313(c) (1982 & Supp.1993).

Appellants question the intensity of that review, arguing that EPA should not accord an overextended deference to the states' decisions with regard to its water quality standards. EPA, however, asserts that its duty under the CWA is not to determine whether the states used EPA's recommended criterion but instead to review state water quality standards and determine whether the states' decision is *scientifically defensible and protective of designated uses*. See 40 C.F.R. §§ 131.5(a), 131.6(c), 131.11(a) & (b). While the CWA admittedly is less than crystal clear on this precise issue,<sup>7</sup> the court realizes that it must give due weight to EPA's interpretation and administration of this highly complex statute, particularly when its determination appears to be reasonable and is supported by substantial evidence in the administrative record. *Shanty Town Assocs. Ltd. v. EPA*, 843 F.2d 782, 790 (4th Cir.1988).

7 Section 303(c)(3) of the CWA (33 U.S.C. § 1313(c)(3)) provides that “[i]f the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard *meets the requirements of [the Act]*, such standard shall thereafter be the water quality standard for the applicable waters of that State.” 33 U.S.C. § 1313(c)(3) (1982) (emphasis added).

In each Technical Support Document (“TSD”) issued by the EPA, the agency conducted an analysis regarding every assumption used by Maryland and Virginia in deriving their respective water quality standards. EPA independently found that each factor and assumption was scientifically defensible. In reviewing the criteria as a whole, EPA \*1402 also found that they protected the uses that they were designed to protect.

7 In light of this extensive agency review, the court reiterates that it does not sit as a scientific body and is not called on to meticulously inspect each and every bit of technical evidence. *Reynolds Metal Co.*, 760 F.2d at 559. Rather, the court's function is to determine whether proper legal standards were applied. The court agrees with EPA that its duty, under the CWA and the accompanying regulations, is to ensure that the underlying criteria, which are used as the basis of a particular state's water quality standard, are scientifically defensible and are protective of designated uses. EPA and the district court abided by that standard, and appellants fail to cite persuasive authority to the contrary.<sup>8</sup> Furthermore, EPA adequately documented and explained its reasons for approving the states' water quality standards in the Technical Support Documents attached to its final decisions, and did not merely rubber-stamp each state's proposed standard.

8 Appellants contend that the district court committed serious error in its reading and application of *Mississippi Comm'n on Natural Resources v. Costle*, 625 F.2d 1269 (5th Cir.1980). See *NRDC II*, 806 F.Supp. at 1273. We find this argument without merit particularly because the district court cited *Costle* merely as a reference and only for the proposition that “[t]he CWA does not require uniformity among states, only compliance with its statutory mandate.” *Id.* While citation solely to *Costle* for this proposition may be viewed as debatable, the district court did not in any other way rely on *Costle* to ultimately conclude that EPA properly reviewed the Maryland and Virginia standards. Any perceived error therefore would be harmless. In any event, the district court's reading of *Costle* plays no part in our analysis.

We hold that the district court applied the correct legal standard under the CWA in reviewing EPA's approval of the state water quality standards at issue.

### C. The District Court's Affirmance of EPA's Approval of the Maryland and Virginia Dioxin Standards

Appellants argue that the district court's affirmance of EPA's approval of the Maryland and Virginia water standards should be reversed primarily for two reasons. First, they assert that EPA's approval was arbitrary and capricious because it was not based on all relevant factors, ignored key aspects of the record before it, and failed to show a rational connection between the facts found and the choices made. Second, they maintain that EPA's action was contrary to law because it did not ensure, as required by § 303(c) of the CWA (33 U.S.C. § 1313(c)), that state standards were consistent with the CWA; that is, that the standard protected all designated water uses.

Specifically, NRDC attacks EPA's assessment of the Maryland and Virginia standards regarding the first four factors used in the numeric dioxin criteria determination, namely: (1) cancer potency,<sup>9</sup> (2) risk level,<sup>10</sup> (3) fish consumption,<sup>11</sup> and (4) bioconcentration factor (“BCF”).<sup>12</sup> Of these four, NRDC emphasizes its challenge with respect to the latter two factors, fish consumption and BCF. NRDC contends that these two factors, when considered together, are important because they determine the ultimate “exposure” of an individual to dioxin, while the remaining factors only involve choices about risk or toxicity.

9 Cancer potency measures the “strength” of dioxin's potential to cause cancer.

- 10 Risk level is the projected risk of cancer incidence among an exposed population, ranging from one case in ten million individuals to one case in 100,000. NRDC concedes that risk level generally is a state policy choice, and thus this factor is challenged the least by NRDC.
- 11 Fish consumption predicts the amount of dioxin-exposed fish consumed by a given population.
- 12 BCF predicts how many times greater the concentration of a pollutant, such as dioxin, will be in the tissues of living organisms, such as fish, as compared to the concentration of that pollutant in the ambient water in which the fish lives. According to its 1984 dioxin criteria document, EPA calculates a dioxin BCF of 5000.

### 1. Fish Consumption

8 EPA estimates, on a national average, that an individual eats 6.5 grams of fish per <sup>#1403</sup> day.<sup>13</sup> Maryland and Virginia used this estimate, *inter alia*, in calculating the 1.2 ppq water quality standard. Appellants argue that by affirming EPA's approval of the states' use of this estimate, the district court failed to require EPA to protect subpopulations with higher than average fish consumption, particularly recreational and subsistence fishers. Specifically, appellants contend that EPA's 6.5 grams per day fish consumption factor underestimates the actual fish consumption of subpopulations in Maryland and Virginia, and therefore is not protective of a designated use. Appellants further contend that EPA's use of the 6.5 grams per day fish consumption factor is unsupported by the record and violates EPA's own policy and regulations. They emphasize that Maryland and Virginia are coastal states and, as such, are entitled-according to EPA recommendations-to higher than average values for fish consumption.

- 13 This 6.5 grams per day estimate is based on a 1973-74 market survey data compiled by the National Purchase Diary and the National Marine Fisheries Service. This rate includes consumption of all freshwater and estuarine fish and shellfish, both pollutant-bearing and non-pollutant bearing. It does not include marine fish.

EPA points out that the 6.5 grams per day value is not intended to represent *total* fish consumption but, rather, that *subset* of fish containing the *maximum* residues of dioxin permissible under state law. In setting this value, EPA was establishing a national standard and was well aware that subpopulations might very well consume more than 6.5 *total*

grams of fish per day. No evidence was presented that the subpopulations referred to are consuming more than 6.5 grams per day of *maximum residue fish*.

Appellants argue that the risk is especially high for the Mattaponi and Pamunkey Native American peoples who live near a major paper mill in Virginia and who, it is argued, consume higher-than-average amounts of fish. EPA counters that the fish consumption of these subpopulations is speculative at best, that it is based on anecdotal evidence, and that there is no evidence that the fish that actually are consumed are maximum residue fish. In fact, EPA argues that the Native Americans fish in the streams primarily for shad and herring, both of which are anadromous fish that spend a large part of their lives in the oceans and migrate to the rivers only at certain stages during their lives.

The District Court concluded that the EPA, in exercising its judgment, "relied on scientifically defensible means to reach reasoned judgments regarding fish consumption levels." *NRDC II*, at 1276. We agree.

### 2. Bioconcentration Factor (BCF)

9 Based on EPA laboratory studies, dioxin is more soluble in fat tissues than it is in water. As a result, it tends to accumulate in fish fat tissues at concentrations higher than those present in the water. By averaging the fat content of fish likely to be eaten by an exposed population, a generic BCF can be calculated that reflects dioxin's presence in fish as some multiple of its concentration in ambient water. In its 1984 dioxin criteria document, EPA calculates a dioxin BCF of 5000 for fish of average (3%) lipid<sup>14</sup> content. Maryland and Virginia used this BCF figure, *inter alia*, to derive their numeric water quality criteria.

- 14 Lipid content refers to the level of fat found in a species. Because dioxin is "lipophilic," it concentrates in fat tissue to a greater degree than in other body parts.

Appellants challenge EPA's use and approval of a 5000 BCF. They essentially contend that the 5000 BCF figure is outdated because the latest scientific research suggests that a higher BCF should be used. Citing the administrative record, appellants emphasize that: (1) EPA admits that scientific literature and research has changed significantly since preparation of the 1984 dioxin criteria document; (2) EPA further admits that BCF factors now range from 26,000 to 150,000, depending on test species; (3) Virginia conducted a state-specific study which revealed a BCF calculation of 22,000; and (4) Maryland refused to conduct such a

study. Appellants contend that, taking all of these factors into account, EPA ignored all the current scientific data and simply "defaulted" \*1404 to its old BCF assumption. Appellants argue that EPA acted arbitrarily and improperly in not requiring a higher BCF, especially when Virginia and Maryland chose less stringent factors for cancer potency and risk. We disagree.

Once again, we are confronted with an area dominated by complex scientific inquiry and judgment. Although EPA is aware that some recent BCF studies suggested a higher BCF than 5000, EPA maintains that such results are inconclusive and that no compelling scientific evidence indicates that a 5000 BCF is no longer within the range of scientific defensibility. We simply are not in a position to second-guess this technical decision by administrative experts. A review of the record does indicate that several more recent BCF studies have been conducted and that some have suggested a higher BCF; however, the court concludes that the best course of action is to leave this debate to the world of science to ultimately be resolved by those with specialized training in this field. Upon a careful review of the administrative record, we find no clear evidence showing that the 5000 BCF figure is not supported by sound scientific rationale. Accordingly, we hold that EPA did not act arbitrarily in approving the BCF figure used by Maryland and Virginia, and that EPA has made a rational connection between the facts found in the administrative record and its choice to approve the BCF figure. EPA's approval of the 5000 BCF will not be disturbed.

### 3. Protection of All Stream Uses

10 Appellants next contend that the district court ratified EPA's approval of the state dioxin standards without ensuring protection of all stream uses. Appellants suggest that when EPA adopted the 1.2 ppq standard, it was required to demonstrate that other stream uses were protected. They maintain that EPA ignored record evidence revealing that the 1.2 ppq standard could cause serious, direct, toxic effects to aquatic life and other wildlife that consume fish tainted with dioxin. Appellants thus argue that EPA did not follow the CWA, its regulations, or its own guidelines by asserting that the water quality criteria were intended to address only one of the minimum statutory uses, human health protection. Essentially, appellants claim that states must adopt a single criterion for dioxin that protects against all identifiable effects on human health, aquatic life, and wildlife. We disagree.

Section 303(c)(2)(A) of the CWA (33 U.S.C. § 1313(c)(2)(A) (Supp.1993)) requires that new or revised water quality

standards "consist of designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." That section also provides:

Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

*Id.*

Reference to the regulations also is instructive: "A water quality standard ... defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 C.F.R. §§ 130.3, 131.2. The regulations define "criteria" as "elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use." *Id.* § 131.3(b). Section 131.11(a) further provides that "[s]tates must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use." *Id.* § 131.11(a).

11 As previously indicated, states should develop either numerical criteria \*1405 based upon CWA guidance (or other scientific methods), or narrative criteria, if numerical criteria cannot be established. Narrative criteria might also be developed to supplement numerical criteria. *Id.* § 131.11(b). Clearly, the form of a particular state's water criteria may be either numeric or narrative,<sup>15</sup> depending upon the designated use, as the district court correctly recognized. *NRDC II*, 806 F.Supp. at 1277.

15 EPA has not established national numeric criteria guidance for dioxin with respect to its effects on aquatic life and wildlife.

12 In view of the above, we find that use of the term "criteria" in CWA § 303(c)(2)(A) and the regulations means that states may adopt multiple criteria for the same pollutant. Thus, where multiple uses are designated for a body of water, there may be multiple criteria applicable to it, as long as the

criteria support the most sensitive use of that particular body of water. States have exclusive responsibility to designate water uses. *See* 40 C.F.R. § 131.10. However, in determining these use designations, states must take into account whether the body of water serves as a public water supply, its role in the protection and propagation of fish, shellfish and wildlife, recreation in and on the water, and agricultural, industrial, and other uses, including navigation. *Id.*

EPA avers that its review of the Maryland and Virginia standards was limited exclusively to protection of human health against any potential adverse effects (both cancerous and non-cancerous) caused by dioxin. The TSDs reflect this position. In reviewing the Virginia water quality standard, EPA stated:

The Virginia criterion for [dioxin] is designed to protect human health. Accordingly, EPA has limited its review to assessing the adequacy of the numeric criterion for that purpose. Virginia did not submit a criterion for [dioxin] for the protection of aquatic life. Depending on the circumstances, greater protection than is afforded by Virginia's 1.2 ppq criterion may be required for this purpose. In the absence of a numeric criterion for [dioxin] to protect aquatic life, Virginia's narrative criterion must, consistent with 40 C.F.R. § 122.44(d), be interpreted in individual permitting actions to prevent harm to aquatic life.

J.A. at 280-81 (footnote omitted). EPA's comments in the Maryland TSD are similar:

The Maryland criterion for [dioxin] is designed to protect human health. Accordingly, EPA's review is limited to assessing the adequacy of the numeric criterion for that purpose. In the absence of a numeric criterion for [dioxin] to protect aquatic life, Maryland's narrative criteria must be interpreted in individual permitting actions to prevent harm to aquatic life. *See* COMAR § 26.10.01.03.B.(5)(b). Depending on the circumstances, greater protection than is afforded by Maryland's 1.2 ppq criterion may be required for this purpose.

*Id.* at 314 (footnote omitted). Thus, EPA duly acknowledged that dioxin may have adverse effects on aquatic life. However, EPA also noted that application of existing, separate narrative criteria protecting such aquatic life and wildlife could require more stringent controls in some cases than would be required through use of the human health criteria alone.

EPA conducted an extensive review of the adequacy of the states' criteria to protect human health, aquatic life

and wildlife. Appellants have failed to cite any convincing authority showing that states have an obligation under the CWA or its accompanying regulations to adopt a *single* numeric criterion for dioxin that protects against all identifiable effects to human health, aquatic life, and wildlife.

#### D. Summary

We find that EPA's review of the Maryland and Virginia water quality standards was neither arbitrary nor capricious. Each review conducted by EPA was supported by lengthy, highly scientific, technical support documents explaining in detail EPA's rationale in approving the 1.2 ppq standards. EPA has satisfied this court that substantial evidence exists in the administrative record to support its decision, and that it acted *\*1406* rationally and in accordance with the CWA and its regulations. We therefore refuse to upset either EPA's decision to approve Maryland's and Virginia's adoption of the 1.2 ppq standard or the district court decision affirming the same.

#### E. The District Court's Dismissal of the Original and Amended Count One of the Maryland Complaint

In original and amended Count One of the Maryland complaint, NRDC challenges EPA's water quality criteria as a whole, alleging that EPA failed to issue and revise complete water quality criteria for dioxin.

##### 1. Original Count One

13 Original Count One of NRDC's complaint alleged that EPA violated a nondiscretionary duty, assigned to it by § 304(a) of the CWA (33 U.S.C. § 1314(a)),<sup>16</sup> to issue water quality criteria for dioxin that reflect the latest scientific information and that address all identifiable effects on health and welfare.<sup>17</sup> The district court found that EPA's duty was discretionary, *see NRDC I*, 770 F.Supp. at 1107, and dismissed original Count One, ruling that the citizen's suit provision, § 505(a)(2) of the CWA (33 U.S.C. § 1365(a)(2)) (1982 & Supp.1993), did not confer jurisdiction over NRDC's claim. *Id.* at 1110.

16 Section 304(a) (33 U.S.C. § 1314(a) (1982)) provides in pertinent part that the EPA Administrator "shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including[, but not limited to, various forms of plant life, wildlife, and fish]."

- 17 This count was brought pursuant to the citizen's suit provision, § 505(a)(2) of the CWA (33 U.S.C. § 1365(a)(2) (1982 & Supp.1993)), which permits citizens to bring suit "where there is an alleged failure of the Administrator to perform any act or duty under [the CWA] which is not discretionary."

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law....

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

5 U.S.C. § 706 (1977).

On appeal, NRDC maintains that EPA has a mandatory duty to issue complete, numerical water quality criteria for dioxin, and to revise such criteria based on the latest scientific information. The district court conducted a plenary, exhaustive examination as to whether EPA had a mandatory duty to issue or revise numerical water quality criteria for dioxin and concluded that it did not. We agree and therefore affirm dismissal of original Count One for the reasons expressed by the district court in its thorough and well-reasoned opinion, *Natural Resources Defense Council v. EPA*, 770 F.Supp. 1093 (E.D.Va.1991) ("*NRDC I*").

\*1407 NRDC claims that the district court's dismissal of amended Count One improperly closed the door to further judicial review of EPA's dioxin criteria. NRDC argues that the district court's analysis of this issue focused only on NRDC's claim that EPA failed to revise its dioxin criteria based on new scientific evidence. In light of this, NRDC contends that the district court erroneously failed to explain how NRDC was barred from challenging EPA's 1984 dioxin criteria document under the APA. Having reviewed relevant provisions of the APA and corresponding case law, we are not persuaded.

## 2. Amended Count One

14 As part of its ruling in *NRDC I*, the district court permitted NRDC to amend Count One to challenge EPA's actions solely under the APA. *Id.* at 1110 n. 14. NRDC's amended complaint asserted such a claim under 5 U.S.C. § 706 of the APA.<sup>18</sup> EPA moved to dismiss amended Count One on grounds that the applicable statute of limitations had run and that NRDC had failed to exhaust its administrative remedies. Although the district court found that the applicable statute of limitations had not expired, the court granted EPA's motion, holding that because EPA was in the process of reviewing its dioxin criteria, it had made a reviewable final administrative decision. *NRDC II*, 806 F.Supp. at 1278.

Section 704 of the APA provides, in pertinent part, that an "[a]gency action made reviewable by statute and [a] final agency action for which there is no other adequate remedy in a court is subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of final agency action." 5 U.S.C. § 704. Thus, the key focus here is whether EPA's actions with respect to its 1984 dioxin criteria document are "final" such that federal courts may exercise their powers of review under the APA.

- 18 Specifically, NRDC alleged in amended Count One that EPA's failure to issue and revise current numeric criteria for dioxin "was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; and constituted agency action unlawfully withheld or unreasonably delayed; in violation of 5 U.S.C. § 706." Pls.' Am.Compl. at 21-22 (J.A. at 71-72). Section 706 of the APA provides in relevant part:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be-

In *FTC v. Standard Oil Co.*, 449 U.S. 232, 239-40, 101 S.Ct. 488, 492-93, 66 L.Ed.2d 416 (1980), the Supreme Court outlined several factors to consider in determining whether an agency action is "final": (1) whether the action is a definitive statement of the agency's position; (2) whether the action had the status of law and immediate compliance with its terms was expected; (3) whether the action had a direct impact on the day-to-day business of plaintiff; and (4) whether pre-enforcement challenge was calculated to speed enforcement and prevent piecemeal litigation. An analysis of these factors reveals that EPA's actions regarding its 1984 criteria document are not "final" within the meaning of the APA.

Considering the first and second factors, EPA's 1984 criteria document is neither a "definitive" statement of its position nor does it have the status of law, compelling immediate compliance with its terms. Although this document does serve as an important reference manual to states as they develop water quality criteria for dioxin, we note that it does not

purport to create or establish rights or responsibilities for any party, nor does it mandate legal action.

EPA's interpretation of the role the criteria play in the CWA regulatory process is illustrative: "Section 304(a)(1) criteria are not rules and they have no regulatory impact. Rather, these criteria present scientific data and guidance on the environmental effect of pollutants which can be useful to derive regulatory requirements based on the considerations of water quality impacts." 45 Fed.Reg. 79,319 (1980). Also informative is the language contained in the preface to the 1984 criteria document:

[Water quality criteria] represent[ ] a non-regulatory, scientific assessment of ecological effects. The criteria presented in this publication are such scientific assessments.... The water quality criteria adopted in the State water quality standards could have the same numerical limits as the criteria developed under section 304. However, in many situations States may want to adjust water quality criteria developed under section 304 to reflect local environmental conditions and human exposure patterns before incorporation into water quality standards. *It is not until their adoption as part of the State water quality standards that the criteria become regulatory.*

*1984 Dioxin Criteria Document* at iii (J.A. at 1051) (emphasis added). No compulsory language is included in this provision of the 1984 criteria document. It specifically states that these water quality criteria are non-regulatory, and that they become regulatory only when a state adopts them. Until such time, however, a state may or may not choose to follow EPA's water quality criteria, and the preface to the 1984 dioxin criteria document expressly acknowledges this. In view of the above, we conclude that the 1984 dioxin criteria document simply serves as a useful guide to assist the states in developing their own respective water quality standards. *See American Paper Inst., Inc. v. EPA*, 882 F.2d 287 (7th Cir.1989) (holding that EPA Region's "policy statement"

does not constitute \*1408 final agency action because it does not compel action).

Regarding the third factor, the 1984 criteria does not affect the day-to-day business of NRDC for the reason that any practical effects will occur only when and if state-issued standards are incorporated into enforceable NPDES permit limitations. It would therefore be entirely too speculative to presume that an EPA criteria guidance will have any impact when it may or may not serve as the basis for state adoption and subsequent EPA approval of a state water quality standard.

Finally, with respect to the fourth factor, we believe that to review EPA's actions at this stage, when it currently is engaging in a reassessment of its dioxin criteria, would be premature and would foster unnecessary piecemeal litigation. A waste of judicial resources is almost inevitable if we were to allow an exhaustive review of EPA's current water quality criteria, only to have EPA drastically overhaul its existing water criteria with a completely new and different standard. We therefore hold that EPA's action with regard to its water quality criteria for dioxin is not a reviewable "final" agency action for purposes of the APA. Nothing in the record, briefs, or oral argument leads this court to believe that EPA has not been forthright, or has otherwise proceeded in bad faith, with regard to its reassessment of dioxin criteria. We trust and expect that EPA will expedite its ongoing review of dioxin, as it has so conveyed in its briefs. We will not disturb this highly technical administrative process at this point and instead will allow it an opportunity to run its course. *See Hopewell Nursing Home, Inc. v. Heckler*, 784 F.2d 554, 557-58 (4th Cir.1986); *American Gen. Ins. Co. v. FTC*, 496 F.2d 197, 200 (5th Cir.1974).

For the foregoing reasons, the judgment of the district court is

**AFFIRMED.**

Parallel Citations

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# **ATTACHMENT 43**



291 F.3d 1123  
United States Court of Appeals,  
Ninth Circuit.

American Forest & Paper Association;  
California Forestry Association,  
Plaintiff-Intervenors-Appellants.

Nos. 00-16026, 00-16027. Argued and  
Submitted July 9, 2001. Filed May 31, 2002.

Guido A. PRONSOLINO; Betty J. Pronsolino,  
as Trustees for the Guido A. Pronsolino and  
Betty J. Pronsolino Trust; The Mendocino  
County Farm Bureau; The California Farm  
Bureau Federation; The American Farm  
Bureau Federation, Plaintiffs-Appellants,

v.

Wayne NASTRI, Regional Administrator,  
United States Environmental Protection Agency  
Region 9; Christie Whitman, Administrator,  
United States Environmental Protection  
Agency; United States Environmental  
Protection Agency, Defendants-Appellees,  
Pacific Coast Federation of Fishermen's  
Associations, a California Non-Profit corporation;  
San Francisco Baykeeper, a California Public Benefit  
corporation; Association of Metropolitan Sewerage  
Agencies, Defendants-Intervenors-Appellees.

\* Wayne Nastri is substituted for his predecessor, as  
Regional Administrator, U.S. Environmental Protection  
Agency Region 9. Fed. R.App. P. 43(c)(2).

\*\* Christie Whitman is substituted for her predecessor as  
Administrator, U.S. Environmental Protection Agency.  
Fed. R.App. P 43(c)(2).

Guido A. Pronsolino, Plaintiff,

v.

Wayne Nastri, \* Regional Administrator,  
United States Environmental Protection  
Agency Region 9; Christie Whitman, \*\*  
Administrator, United States Environmental  
Protection Agency; United States Environmental  
Protection Agency, Defendants-Appellees,  
Pacific Coast Federation of Fishermen's  
Associations, a California Non Profit corporation;  
San Francisco Baykeeper, a California Public Benefit  
corporation, Defendants-Intervenors-Appellees,

v.

Landowners brought action against Environmental Protection  
Agency (EPA), challenging authority of EPA to determine  
total maximum daily load (TMDL) for river. The United  
States District Court for the Northern District of California,  
91 F.Supp.2d 1337, William H. Alsup, J., granted summary  
judgment in favor of EPA. Landowners appealed. The Court  
of Appeals, Berzon, Circuit Judge, held that Clean Water  
Act (CWA) authorized EPA to determine TMDL for river  
polluted only by logging runoff and other nonpoint sources of  
pollution after state failed timely to establish TMDL for river.

Affirmed.

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for amici curiae.

Appeal from the United States District Court for the Northern  
District of California; William H. Alsup, District Judge,  
Presiding. D.C. No. CV-99-01828-WHA.

Before: HALL, WARDLAW and BERZON, Circuit Judges.

#### Opinion

#### OPINION

BERZON, Circuit Judge.

The United States Environmental Protection Agency ("EPA") required California to identify the Garcia River as a water body with insufficient pollution controls and, as required for waters so identified, to set so-called "total maximum daily loads" ("TMDLs")—the significance of which we explain later—for pollution entering the river. Appellants challenge the EPA's authority under the Clean Water Act ("CWA" or the "Act") § 303(d), 33 U.S.C. § 1313(d), to apply the pertinent identification and TMDL requirements to the Garcia River. The district court rejected this challenge, and we do as well.

CWA § 303(d) requires the states to identify and compile a list of waters for which certain "effluent limitations" "are not stringent enough" to implement the applicable water quality standards for such waters. § 303(d)(1)(A). Effluent limitations pertain only to point sources of pollution; point sources of pollution are those \*1126 from a discrete conveyance, such as a pipe or tunnel. Nonpoint sources of pollution are non-discrete sources; sediment run-off from timber harvesting, for example, derives from a nonpoint source. The Garcia River is polluted only by nonpoint sources. Therefore, neither the effluent limitations referenced in § 303(d) nor any other effluent limitations apply to the pollutants entering the Garcia River.

The precise statutory question before us is whether the phrase "are not stringent enough" triggers the identification requirement both for waters as to which effluent limitations apply but do not suffice to attain water quality standards and for waters as to which effluent limitations do not apply at all to the pollution sources impairing the water. We answer this question in the affirmative, a conclusion which triggers the application of the statutory TMDL requirement to waters such as the Garcia River.

## I. STATUTORY BACKGROUND

Resolution of the statutory interpretation question before us, discrete though it is, "requires a familiarity with the history, the structure, and, alas, the jargon of the federal water pollution laws." *Natural Res. Def. Council v. EPA*, 915 F.2d 1314, 1316 (9th Cir.1990). We therefore begin with a brief overview of the Act.

### A. The Major Goals and Concepts of the CWA

Congress enacted the CWA in 1972, amending earlier federal water pollution laws that had proven ineffective. *EPA v. California*, 426 U.S. 200, 202, 96 S.Ct. 2022, 48 L.Ed.2d

578 (1976). Prior to 1972, federal water pollution laws relied on "water quality standards specifying the acceptable levels of pollution in a State's interstate navigable waters as the primary mechanism ... for the control of water pollution." *Id.* The pre-1972 laws did not, however, provide concrete direction concerning how those standards were to be met in the foreseeable future.

In enacting sweeping revisions to the nation's water pollution laws in 1972, Congress began from the premise that the focus "on the tolerable effects rather than the preventable causes of pollution" constituted a major shortcoming in the pre 1972 laws. *Oregon Natural Desert Assoc. v. Dombeck*, 172 F.3d 1092, 1096 (9th Cir.1998) (quoting *EPA v. State Water Resources Control Board*, 426 U.S. 200, 202-03, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976)). The 1972 Act therefore sought to target primarily "the preventable causes of pollution," by emphasizing the use of technological controls. *Id.*; *Oregon Natural Res. Council v. United States Forest Serv.*, 834 F.2d 842, 849 (9th Cir.1987).

At the same time, Congress decidedly did *not* in 1972 give up on the broader goal of attaining acceptable water quality. CWA § 101(a), 33 U.S.C. § 1251(a). Rather, the new statute recognized that even with the application of the mandated technological controls on point source discharges, water bodies still might not meet state-set water quality standards, *Natural Res. Def. Council*, 915 F.2d at 1316-17. The 1972 statute therefore put in place mechanisms other than direct federal regulation of point sources, designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." § 101(a).

In so doing, the CWA uses distinctly different methods to control pollution released from point sources and that traceable to nonpoint sources. *Oregon Natural Res. Council*, 834 F.2d at 849. The Act directly mandates technological controls to limit the pollution point sources may discharge into a body of water. *Dombeck*, 172 F.3d at 1096. On the other hand, the Act "provides no direct mechanism to control nonpoint source pollution but rather uses the 'threat and promise' of federal \*1127 grants to the states to accomplish this task," *id.* at 1097 (citations omitted), thereby "recogniz [ing], preserv [ing], and protect[ing] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use ... of land and water resources ...." § 101(b).

### B. The Structure of CWA § 303, 33 U.S.C. § 1313

### 1. Water Quality Standards

Section 303 is central to the Act's carrot-and-stick approach to attaining acceptable water quality without direct federal regulation of nonpoint sources of pollution. Entitled "Water Quality Standards and Implementation Plans," the provision begins by spelling out the statutory requirements for water quality standards: "Water quality standards" specify a water body's "designated uses" and "water quality criteria," taking into account the water's "use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes ...." § 303(c)(2). The states are required to set water quality standards for *all* waters within their boundaries regardless of the sources of the pollution entering the waters. If a state does not set water quality standards, or if the EPA determines that the state's standards do not meet the requirements of the Act, the EPA promulgates standards for the state. §§ 303(b), (c) (3)-(4).

### 2. Section 303(d): "Identification of Areas with Insufficient Controls; Maximum Daily Load"<sup>1</sup>

1 The complete text of sections 303(d)(1)(A) and (C) reads:

(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

§§ 303(d)(1)(A), (C).

Section 303(d)(1)(A) requires each state to identify as "areas with insufficient controls" "those waters within its boundaries

for which the effluent limitations required by section [301(b)(1)(A)] and section [301(b)(1)(B)] of this title are not stringent enough to implement any water quality standard applicable to such waters." *Id.* The CWA defines "effluent limitations" as restrictions on pollutants "discharged from point sources." CWA § 502(11), 33 U.S.C. § 1362(11). Section 301(b)(1)(A) mandates application of the "best practicable control technology" effluent limitations for most point source discharges, while § 301(b)(1)(B) mandates application of effluent limitations adopted specifically for secondary treatment at publicly owned treatment works. § 301(b)(1), 33 U.S.C. § 1311(b)(1).

1 For waters identified pursuant to § 303(d)(1)(A) (the "§ 303(d)(1) list"), the states must establish the "total maximum daily load" ("TMDL") for pollutants identified by the EPA as suitable for TMDL calculation.<sup>2</sup> § 303(d)(1)(C). "A TMDL defines \*1128 the specified maximum amount of a pollutant which can be discharged or 'loaded' into the waters at issue from all combined sources." *Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517, 1520 (9th Cir.1995).<sup>3</sup> The TMDL "shall be established at a level necessary to implement the applicable water quality standards ...." § 303(d)(1)(C).

2 The EPA has identified all pollutants, under proper technical conditions, as suitable for TMDL calculation. 43 Fed.Reg. 60662(Dec. 28, 1978).

3 The CWA does not define the term "total maximum daily load." The term "discharge" refers only to pollution emanating from point sources. *Dombeck*, 172 F.3d at 1097. The term "loading" refers to the addition of pollution into a body of water from either point or nonpoint sources. 40 C.F.R. § 130.2(e) (2000).

Section 303(d)(2), in turn, requires each state to submit its § 303(d)(1) list and TMDLs to the EPA for its approval or disapproval. If the EPA approves the list and TMDLs, the state must incorporate the list and TMDLs into its "continuing planning process," the requirements for which are set forth in § 303(e). § 303(d)(2). If the EPA disapproves either the § 303(d)(1) list or any TMDLs, the EPA must itself put together the missing document or documents. *Id.* The state then incorporates any EPA-set list or TMDL into the state's continuing planning process. *Id.*

Each state must also identify all waters *not* placed on its § 303(d)(1) list (the "§ 303(d)(3) list") and "estimate" TMDLs for pollutants in those waters. § 303(d)(3). There is no requirement that the EPA approve the § 303(d)(3) lists or the TMDLs estimated for those waters. *Id.*

The EPA in regulations has made more concrete the statutory requirements. Those regulations, in summary, define "water quality limited segment[s]"—those waters that must be included on the § 303(d)(1) list—as "[a]ny segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306[, 33 U.S.C. § 1316]." 40 C.F.R. § 130.2(j) (2000). The regulations then divide TMDLs into two types: "load allocations," for nonpoint source pollution, and "wasteload allocations," for point source pollution. § 130.2(g)-(i); *see also* p. 7919, *infra*. Under the regulations, states must identify those waters on the § 303(d)(1) lists as "still requiring TMDLs" if any required effluent limitation or other pollution control requirement (including those for nonpoint source pollution) will not bring the water into compliance with water quality standards. § 130.7(b) (2000).<sup>4</sup>

<sup>4</sup> We review the regulations in greater detail below.

### 3. Continuing Planning Process

The final pertinent section of § 303, § 303(e), requiring each state to have a "continuing planning process," gives some operational force to the prior information-gathering provisions. The EPA may approve a state's continuing planning process only if it "will result in plans for all navigable waters within such State" that include, *inter alia*, effluent limitations, TMDLs, areawide waste management plans for nonpoint sources of pollution, and plans for "adequate implementation, including schedules of compliance, for revised or new water quality standards." § 303(e)(3).

The upshot of this intricate scheme is that the CWA leaves to the states the responsibility of developing plans to achieve water quality standards if the statutorily-mandated point source controls will not alone suffice, while providing federal funding to aid in the implementation of the state plans. *See* \*1129 *Dombeck*, 172 F.3d at 1097; § 303(e); *see also* § 319(h), 33 U.S.C. § 1329(h) (providing for grants to states to combat nonpoint source pollution). TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans. *See Alaska Center for the Environment v. Browner*, 20 F.3d 981, 984-85 (9th Cir.1994). As such, TMDLs serve as a link in an implementation chain that includes federally-regulated point source controls, state or

local plans for point and nonpoint source pollution reduction, and assessment of the impact of such measures on water quality, all to the end of attaining water quality goals for the nation's waters.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. The Garcia River TMDL

In 1992, California submitted to the EPA a list of waters pursuant to § 303(d)(1)(A). Pursuant to § 303(d)(2), the EPA disapproved California's 1992 list because it omitted seventeen water segments that did not meet the water quality standards set by California for those segments. Sixteen of the seventeen water segments, including the Garcia River, were impaired only by nonpoint sources of pollution.<sup>5</sup> After California rejected an opportunity to amend its § 303(d)(1) list to include the seventeen sub-standard segments, the EPA, again acting pursuant to § 303(d)(2), established a new § 303(d)(1) list for California, including those segments on it. California retained the seventeen segments on its 1994, 1996, and 1998 § 303(d)(1) lists.

<sup>5</sup> California had, however, previously included on its § 303(d)(1) list other waters polluted only by nonpoint sources of pollution.

California did not, however, establish TMDLs for the segments added by the EPA. Environmental and fishermen's groups sued the EPA in 1995 to require the EPA to establish TMDLs for the seventeen segments, and in a March 1997 consent decree the EPA agreed to do so. *See Pacific Coast Fishermens Assocs. v. Marcus*, No. 95-4474. According to the terms of the consent decree, the EPA set March 18, 1998, as the deadline for the establishment of a TMDL for the Garcia River. When California missed the deadline despite having initiated public comment on a draft TMDL and having prepared a draft implementation plan, the EPA established a TMDL for the Garcia River. The EPA's TMDL differed only slightly from the state's draft TMDL.

The Garcia River TMDL for sediment is 552 tons per square mile per year, a sixty percent reduction from historical loadings. The TMDL allocates portions of the total yearly load among the following categories of nonpoint source pollution: a) "mass wasting" associated with roads; b) "mass wasting" associated with timber-harvesting; c) erosion related to road surfaces; and d) erosion related to road and skid trail crossings.

## B. The Appellants

In 1960, appellants Betty and Guido Pronsolino purchased approximately 800 acres of heavily logged timber land in the Garcia River watershed. In 1998, after re-growth of the forest, the Pronsolinos applied for a harvesting permit from the California Department of Forestry ("Forestry").

In order to comply with the Garcia River TMDL, Forestry and/or the state's Regional Water Quality Control Board required, among other things, that the Pronsolinos' harvesting permit provide for mitigation of 90% of controllable road-related sediment run-off and contain prohibitions \*1130 on removing certain trees and on harvesting from mid-October until May 1.<sup>6</sup> The Pronsolinos' forester estimates that the large tree restriction will cost the Pronsolinos \$750,000.

- 6 Specifically, the harvesting permit specified that the Pronsolinos must: "a) inventory controllable sediment sources from all roads, landings, skid trails and agricultural facilities by June 1, 2002; b) mitigate 90% of controllable sediment volume at 'road related' inventoried sites by June 1, 2012; c) prevent sediment loadings caused by road construction; d) retain five conifer trees greater than 32 inches in diameter at breast height ... per 100 feet of all Class I and Class II watercourses (if the site lacks enough trees to comply, the five largest trees per 100 feet must be retained); e) harvest only during dry, rainless periods between May 1 and October 15; f) refrain from constructing or using skid trails on slopes greater than 40 degrees within 200 feet of a watercourse; and g) forbear from removing trees from certain unstable areas which have a potential to deliver sediment to a watercourse."

Larry Mailliard, a member of the Mendocino County Farm Bureau, submitted a draft harvesting permit on February 4, 1998, for a portion of his property in the Garcia River watershed. Forestry granted a final version of the permit after incorporation of a 60.3% reduction of sediment loading, a requirement included to comply with the Garcia River TMDL. Mr. Mailliard's forester estimates that the additional restrictions imposed to comply with the Garcia River TMDL will cost Mr. Mailliard \$10,602,000.

Bill Barr, another member of the Mendocino County Farm Bureau, also applied for a harvesting permit in 1998 for his property located within the Garcia River watershed. Forestry granted the permit after incorporation of restrictions similar to those included in the Pronsolinos' permit. A forester states

that these additional restrictions, included to comply with the TMDL, will cost Mr. Barr at least \$962,000.

## C. Proceedings Below

On August 12, 1999, the Pronsolinos, the Mendocino County Farm Bureau, the California Farm Bureau Federation, and the American Farm Bureau Federation brought this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, in the District Court for the Northern District of California against the EPA and two of its administrators. The Pronsolinos challenged the EPA's authority to impose TMDLs on rivers polluted only by nonpoint sources of pollution and sought a determination of whether the Act authorized the Garcia River TMDL.

The parties filed cross-motions for summary judgment. On August 6, 2000, the district court entered final judgment in favor of the EPA. The Pronsolinos timely filed this appeal.<sup>7</sup>

- 7 The American Forest & Paper Association and the California Forestry Association intervened as intervenor-appellants. The Pacific Coast Federation of Fishermen's Association and the Association of Metropolitan Sewerage Agencies intervened as intervenor-appellees. The Pacific Legal Foundation, Forest Landowners of California, and Oregon Lands Coalition filed an amici curiae brief in support of appellants. The States of California, Oregon, Washington, Delaware, Maine, Maryland, and New Jersey submitted an amici curiae brief in support of appellees. Westcas filed a brief as amicus curiae in support of neither party but supporting reversal.

## III. ANALYSIS

### A. Deference to the EPA

As this is a summary judgment case, our review of the district court's decision is, of course, de novo. *See Oregon Natural Res. Council*, 834 F.2d at 844. Harder to answer is the question of the degree of deference we owe the EPA's regulations and \*1131 decisions interpreting and applying CWA § 303.

- 2 3 The EPA argues that we owe deference to the interpretation of § 303 embodied in its regulations, pursuant to *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). An agency's statutory interpretation is entitled to *Chevron* deference if "Congress delegated authority to the agency generally to

make rules carrying the force of law, and ... the agency interpretation claiming deference was promulgated in the exercise of that authority.” *United States v. Mead*, 533 U.S. 218, 226-27, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001). If *Chevron* deference applies, we must defer to the agency’s interpretation as long as it is reasonably consistent with the statute. *Id.* at 229, 121 S.Ct. 2164.

The Pronsolinos urge an approach at the opposite end of the deference spectrum, asserting that the EPA’s interpretation should receive no deference at all because, they maintain, the EPA has inconsistently interpreted § 303(d) and has not included its current interpretation in a regulation that has the force of law. In between *Chevron* deference and no deference, however, lies another possibility. The Supreme Court in *Mead* recently clarified that agency interpretations that do not qualify for *Chevron* deference may nonetheless merit deference pursuant to *Skidmore v. Swift & Co.*, 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (1944). 533 U.S. at 237, 121 S.Ct. 2164. Under *Skidmore*, we defer to the agency’s position according to its persuasiveness. *Mead*, 533 U.S. at 221, 121 S.Ct. 2164. Factors relevant to determining persuasiveness may include the agency’s expertise, care, consistency, and formality, as well as the logic of the agency’s position. *Id.* at 228, 121 S.Ct. 2164 (citing *Skidmore*, 323 U.S. at 139-40, 65 S.Ct. 161). Thus, we must consider whether the EPA’s interpretation is due *Chevron* deference, as the EPA argues; no deference, as the Pronsolinos argue; or, alternatively, *Skidmore* deference (and, if so, to what extent).

4 The EPA has the statutory authority to enact a rule carrying the force of law as to the issue at hand. The CWA delegates to the EPA the general rule-making authority necessary for the agency to carry out its functions under the Act. CWA § 501(a), 33 U.S.C. § 1361(a). One of those functions is to approve or disapprove the § 303(d)(1) list and any required TMDLs. § 303(d)(2). So the EPA has the delegated authority to enact regulations carrying the force of law regarding the identification of § 303(d)(1) waters and TMDLs. *See Mead*, 533 U.S. at 229, 121 S.Ct. 2164.

The Pronsolinos do not contest the EPA’s general rule-making authority but maintain that it has not been exercised, because no currently-operative EPA regulation expressly precludes the Pronsolinos’ position that §§ 303(d)(1)(A) and (C) do not apply to rivers impaired only by nonpoint source pollution.<sup>8</sup> The pertinent regulations do, however, reflect the EPA’s interpretation—that is, that the statute requires the identification on § 303(d)(1) lists of waters impaired only

by nonpoint sources of pollution—and the EPA so reads its regulations.

8 In July 2000, the EPA published a final rule that, among many other provisions, amends its regulations expressly to require the inclusion on § 303(d)(1) lists of waters polluted only by nonpoint sources. 65 Fed.Reg. 43586 (July 13, 2000). As the EPA has published a final rule delaying until August 30, 2003, the effective date of the July 2000 final rule, 66 Fed.Reg. 53044 (Oct. 18, 2001), we do not consider the final rule’s amendments in our analysis.

\*1132 The EPA regulations pertinent to § 303(d)(1) lists and TMDLs focus on the attainment of water quality standards, whatever the source of any pollution. For instance, the EPA’s regulations define TMDLs as the “sum of the individual WLAs [wasteload allocations] for point sources and LAs [load allocations] for nonpoint sources and natural background.” 40 C.F.R. § 130.2(i). Section 130.2 also defines a “wasteload allocation” as the “portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution,” § 130.2(h), and a “load allocation” as the “portion of a receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources,” § 130.2(g). The load allocation regulation also advises that, if possible, “natural and nonpoint source loads should be distinguished.” *Id.* No reason appears why, under this TMDL definition, the amount of either point source loads or nonpoint source loads cannot be zero. If the wasteload allocation is zero, then the TMDL would cover only the nonpoint sources and natural background sources. So read, the regulation provides that a TMDL can apply where there is no wasteload allocation for point source pollution. *See also, e.g.*, § 130.2 (referencing the establishment of TMDLs for non-point source pollution); 40 C.F.R. § 130.7(c)(1)(ii) (TMDLs must be established for *all* pollutants that prevent the attainment of water quality standards).

Section 130.7 evinces the same understanding. That regulation directs states to identify those waters listed pursuant to § 303(d)(1) that still require the establishment of TMDLs if:

- (i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;
- (ii) More stringent effluent limitations (including prohibitions) required ...; and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards ... applicable to such waters.

§ 130.7(b)(1). "Best management practices" pertain to non-point sources of pollution. CWA § 208, 33 U.S.C. § 1288; CWA § 319, 33 U.S.C. § 1329. So, again, § 130.7 does not distinguish between sources of pollution for purposes of applying the TMDL requirement. Instead, control requirements applicable to either type of pollution receive equal treatment in the quest to achieve water quality standards.

Also consistent with application of the § 303(d)(1) listing and TMDL requirements to waters impaired only by nonpoint sources is the regulation addressing water quality standards. Section 130.3 explains that "[s]uch standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of water quality-based treatment controls and strategies beyond the technology-based level of treatment required ..." 40 C.F.R. § 130.3. One purpose of water quality standards therefore-and not surprisingly-is to provide federally-approved goals to be achieved *both* by state controls and by federal strategies *other* than point-source technology-based limitations. This purpose pertains to waters impaired by both point and nonpoint source pollution. The regulations addressing states' water quality management plans, intended to attain the promulgated water quality standards, confirm this understanding. Such plans must include, among other things, TMDLs, effluent limitations, and "*nonpoint* source management and control." 40 C.F.R. § 130.6 (emphasis added).

In short, the EPA's regulations concerning § 303(d)(1) lists and TMDLs apply whether a water body receives pollution \*1133 from point sources only, nonpoint sources only, or a combination of the two. The EPA has issued directives concerning the states' CWA § 303(d) requirements in conformity with this understanding of its regulations. *See, e.g.,* Memorandum from Geoffrey Grubbs, Director, EPA Assessment and Watershed Protection Division, to Water Quality Branch Chiefs and TMDL Coordinators (Aug. 13, 1992) (Section 303(d)(1)(A) "applies equally to segments affected by point sources only, a combination of point and nonpoint sources, and nonpoint sources only."); EPA, *National Clarifying Guidance for 1998 State and Territory Clean Water Act Section 303(d) Listing Decisions* 6 (1997)

("Consistent with long-standing EPA policy, regulations, and practice, States should include waterbodies impaired by nonpoint sources alone on 1998 section 303(d)(1)(A) lists....").

In light of the current regulations and the agency's understanding of those regulations, as well as the delegated authority of the EPA to interpret the CWA, the EPA's interpretation is entitled to *Chevron* deference. *See Mead*, 533 U.S. at 226-27, 121 S.Ct. 2164; *see also Auer v. Robbins*, 519 U.S. 452, 461, 117 S.Ct. 905, 137 L.Ed.2d 79 (1997) (stating that an agency's interpretation of its own regulation is "controlling unless plainly erroneous or inconsistent with the regulation") (citations and internal quotation marks omitted).

5 At the least, however, we owe the agency's interpretation substantial deference under *Skidmore*. *Cf. Mead*, 533 U.S. at 237 n. 18, 121 S.Ct. 2164 ("It is, of course, true that the limit of *Chevron* deference is not marked by a hard-edged rule."). Section 303(d) is one of numerous interwoven components that together make up an intricate statutory scheme addressing technically complex environmental issues. Confronted with an issue dependent upon, and the resolution of which will affect, a complicated, science-driven statute for which the EPA has delegated regulatory authority, we consider the EPA's interpretation of the issue informative. *See Mead*, 533 U.S. at 234, 121 S.Ct. 2164 (noting the "specialized experience and broader investigations and information available" to agencies and "the value of uniformity in [ ] administrative and judicial understandings of what a national law requires") (citations and internal quotation marks omitted).

Appellants maintain that we should instead ignore the EPA's position, arguing that the Agency has not consistently interpreted the statute. We disagree with this characterization of the EPA's position over the thirty-year period since the enactment of the statute.

The first regulations promulgated after the enactment of the CWA in 1972 quite clearly required the identification on § 303(d)(1) lists of waters polluted only by nonpoint sources. The EPA defined as a "water quality" segment-again, those water bodies to be included on the § 303(d)(1) list, *see* 43 Fed.Reg. 60662, 60665 (Dec. 28, 1978)-any water "where it is known that water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards even after the application of the effluent limitations required..." 40 C.F.R. § 130.2(o)(1) (1978); *id.* (1977); *id.* (1976); 40 C.F.R. §

130.11(d)(1) (1975); *id.* (1974); *id.* (1973).<sup>9</sup> In contrast, the EPA defined as an “effluent limitation” segment—those waters making up the separate § 303(d)(3) list<sup>10</sup>—any water “where \*1134 it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required ....” 40 C.F.R. § 130.2(o)(2) (1978); *id.* (1977); *id.* (1976); 40 C.F.R. § 130.11(d)(2) (1975); *id.* (1974); *id.* (1973).<sup>11</sup> Thus, if a water segment had not met, or would not soon meet, applicable water quality standards, regardless of the source of pollution, the EPA required its identification pursuant to § 303(d)(1)(A). In other words, the EPA initially interpreted § 303(d) exactly as it does today.<sup>12</sup>

9 The 1973 regulation differed in an insignificant way from the text quoted.

10 Section 303(d)(3) provides:

For the specific purpose of developing information, *each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B)[waters for which controls on thermal discharges are not stringent enough for certain identified purposes] of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title[CWA § 304(a)(2)] as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.*

§ 303(d)(3) (emphasis added).

11 Again, the 1973 regulation differed insignificantly from the quotation.

12 The EPA overhauled its regulations in 1979 and provided almost no regulatory guidance as to the requirements of § 303(d) until the enactment in 1985 of the current regulations. *See* 44 Fed.Reg. 30016 (May 23, 1979) (repealing 40 C.F.R. part 130); *see also* 40 C.F.R. § 35.1511-1(d)(2) (1979); § 35.1521-4(a) (1979).

The Pronsolinos nevertheless contend that the EPA's current interpretation is an invention of the early 1990s. They point out that until that time the EPA did not actively police the requirement that states include on their § 303(d)(1) lists waters polluted only by nonpoint source pollution. While that

is true, that agency stance reflected a more general regulatory failure to enforce the § 303(d) requirements, not a failure with regard only to waters impaired by nonpoint sources. Until the early 1990s, the EPA focused its attention almost entirely on the new point source technological controls, to the exclusion of § 303(d) and the TMDL program. *See Pronsolino v. Marcus*, 91 F.Supp.2d 1337, 1354 (N.D.Cal.2000)<sup>13</sup> (citing United States General Accounting Office, *Water Pollution: More EPA Action Needed to Improve the Quality of Heavily Polluted Waters*, GAO Report to the Chairman: Subcommittee on Regulation and Business Opportunities Committee on Small Business, House of Representatives (Jan.1989)); *see also id.* at 1353-54 (describing the history of EPA enforcement action with respect to § 303(d)); Oliver A. Houck, *The Clean Water Act TMDL Program: Law, Policy, and Implementation 49-56* (1999) (“*The Clean Water Act TMDL Program*”) (same). We have not found, and the Pronsolinos have not pointed to, any statement by the EPA—either in regulations or otherwise—that is inconsistent with the interpretation the agency now espouses.

13 The district court opinion in this case explains this history, as well as many other aspects of this case, carefully and lucidly. We therefore refer to that opinion at points rather than repeating its analysis.

In short, Congress entrusted to the EPA the responsibility of approving or disapproving § 303(d)(1) lists, bestowing upon it the discretion that comes with such responsibility; the EPA has specialized experience regarding the CWA which this court lacks; and the agency has consistently interpreted the provisions at issue. We conclude that the EPA's interpretation is one to which we owe substantial *Skidmore* \*1135 deference, at the very least. *See Mead*, 533 U.S. at 227-28, 121 S.Ct. 2164.

In the end, though, it does not much matter in this case whether we review the EPA's position through the *Chevron* or *Skidmore/Mead* prism. Under both the more and less rigorous versions of the judicial review standard, the Agency's position is, as the discussion below indicates, more than sufficiently supported by the statutory materials.

## B. Plain Meaning and Structural Issues

### 1. The Competing Interpretations

Section 303(d)(1)(A) requires listing and calculation of TMDLs for “those waters within [the state's] boundaries for which the effluent limitations required by section [301(b)(1)(A)] and section [301(b)(1)(B)] of this title *are not stringent*

enough to implement any water quality standard applicable to such waters." § 303(d) (emphasis added). The precise statutory question before us is whether, as the Pronsolinos maintain, the term "not stringent enough to implement ... water quality standard[s]" as used in § 303(d)(1)(A) must be interpreted to mean *both* that application of effluent limitations will not achieve water quality standards *and* that the waters at issue are subject to effluent limitations. As only waters with point source pollution are subject to effluent limitations, such an interpretation would exclude from the § 303(d)(1) listing and TMDL requirements waters impaired only by nonpoint sources of pollution.

The EPA, as noted, interprets "not stringent enough to implement ... water quality standard[s]" to mean "not adequate" or "not sufficient ... to implement any water quality standard," and does not read the statute as implicitly containing a limitation to waters initially covered by effluent limitations. According to the EPA, if the use of effluent limitations will not implement applicable water quality standards, the water falls within § 303(d)(1)(A) regardless of whether it is point or nonpoint sources, or a combination of the two, that continue to pollute the water.

## 2. The Language and Structure of § 303(d)

6 Whether or not the appellants' suggested interpretation is entirely implausible, it is at least considerably weaker than the EPA's competing construction. The Pronsolinos' version necessarily relies upon: (1) understanding "stringent enough" to mean "strict enough" rather than "thorough going enough" or "adequate" or "sufficient";<sup>14</sup> and (2) reading the phrase "not stringent enough" in isolation, rather than with reference to the stated goal of implementing "any water quality standard applicable to such waters." Where the answer to the question "not stringent enough for what?" is "to implement any [applicable] water quality standard," the meaning of "stringent" should be determined by looking forward to the broad goal to be attained, not backwards at the inadequate effluent limitations. One might comment, for example, about a \*1136 teacher that her standards requiring good spelling were not stringent enough to assure good writing, as her students still used bad grammar and poor logic. Based on the language of the contested phrase alone, then, the more sensible conclusion is that the § 303(d)(1) list must contain any waters for which the particular effluent limitations will not be adequate to attain the statute's water quality goals.

14 Stringent means "rigorous, strict, thoroughgoing; rigorously binding or coercive." *Oxford English*

*Dictionary Online* (2001). Defining "stringent" as "rigorous" or "strict" would lend support to the Pronsolinos' interpretation. If "stringent" means "thoroughgoing," however, § 303(d)(1)(A) would encompass the EPA's broader reading of the statute. Also, "stringent enough" may have a slightly different meaning from "stringent" standing alone, such as "adequate" or "sufficient." See 1 *Legislative History of the Water Pollution Control Act Amendments of 1972* at 792 (1973) (*Legislative History*) (H.R. Rep. 92-911 to accompany H.R. 11896 (March 11, 1972)) (using the term "are inadequate" in place of "not stringent enough.").

Placing the phrase in its statutory context supports this conclusion. Section 303(d) begins with the requirement that each state "identify those waters within its boundaries...." § 303(d)(1)(A). So the statute's starting point for the listing project is a compilation of each and every navigable water within the state. Then, only those waters that will attain water quality standards after application of the new point source technology are excluded from the § 303(d)(1) list, leaving all those waters for which that technology will not "implement any water quality standard applicable to such waters." § 303(d)(1)(A); see *American Wildlands v. Browner*, 260 F.3d 1192, 1194 (10th Cir.2001) ("[E]ach state is required to identify all of the waters within its borders not meeting water quality standards and establish [TMDLs] for those waters.") (citing § 303(d)); *Pronsolino*, 91 F.Supp.2d at 1347. The alternative construction, in contrast, would begin with a subset of all the state's waterways, those that have point sources subject to effluent limitations, and would result in a list containing only a subset of that subset—those waters as to which the applicable effluent limitations are not adequate to attain water quality standards.

[5] The Pronsolinos' contention to the contrary notwithstanding, no such odd reading of the statute is necessary in order to give meaning to the phrase "for which the effluent limitations required by section [301(b)(1)(A)] and section [301(b)(1)(B)] ... are not stringent enough." The EPA interprets § 303(d)(1)(A) to require the identification of any waters not meeting water quality standards only if specified effluent limitations would not achieve those standards. 40 C.F.R. § 130.2(j). If the pertinent effluent limitations would, if implemented, achieve the water quality standards but are not in place yet, there need be no listing and no TMDL calculation. *Id.*

So construed, the meaning of the statute is different than it would be were the language recast to state only that "Each

State shall identify those waters within its boundaries ... [not meeting] any water quality standard applicable to such waters." Under the EPA's construction, the reference to effluent limitations reflects Congress' intent that the EPA focus initially on implementing effluent limitations and only later avert its attention to water quality standards. *See e.g.*, 1 *Legislative History* 171 ("The Administrator should assign secondary priority to [§ 303] to the extent limited manpower and funding may require a choice between a water quality standards process and early and effective implementation of the effluent limitation-permit program." (statement of Sen. Muskie, principal author of the CWA and the Chair of the Senate's Public Works Committee)); *see also Environmental Def. Fund, Inc. v. Costle*, 657 F.2d 275, 279 (D.C.Cir.1981) (The 1972 CWA "assigned secondary priority to the [water quality] standards and placed primary emphasis upon both a point source discharge permit program and federal technology-based effluent limitations....").<sup>15</sup>

15 The district court expressed the same point differently: "The 1972 Act superimposed the technology-driven mandate of point-source effluent limitations. To assess the impact of the new strategy on the monumental clean-up task facing the nation, Congress called for a list of the unfinished business expected to remain even after application of the new cleanup strategy." *Pronsolino*, 91 F.Supp.2d at 1347.

\*1137 Given all these language considerations, it is not surprising that the only time this court addressed the reach of § 303(d)(1)(A), it rejected a reading of § 303(d)(1)(A) similar to the one the Pronsolinos now proffer. In *Dioxin*, 57 F.3d at 1526-27, the plaintiffs argued that the phrase "not stringent enough" prohibited the EPA from listing under § 303(d)(1)(A) and establishing TMDLs for toxic pollutants, until after the implementation and proven failure of § 301(b)(1)(A) "best practicable technology" effluent limitations. Toxic pollutants, however, are not subject to "best practicable technology" controls,<sup>16</sup> but to more demanding "best available technology," precisely because of their toxicity. *Id.*

16 Nor did the effluent limitations required by § 301(b)(1)(B) apply to the pollutants at issue.

The court in *Dioxin* held that the EPA acted within its statutory authority in setting TMDLs for toxic pollutants, even though the effluent limitations referenced by § 303(d)(1)(A) did not apply to those pollutants. *Id.* at 1528. The court explained that, since best practical technology effluent limitations do not apply to toxic pollutants, those limitations are, as a matter of law, "not stringent enough" to achieve

water quality standards. *Id.* In other words, *Dioxin* read § 303(d)(1)(A) as applying to all waters in the state, not only to the subset covered by certain kinds of effluent controls, and it understood "not stringent enough" to mean "not adequate for" or "inapplicable to."

Nothing in § 303(d)(1)(A) distinguishes the treatment of point sources and nonpoint sources as such; the only reference is to the "effluent limitations required by" § 301(b)(1). So if the effluent limitations required by § 301(b)(1) are "as a matter of law" "not stringent enough" to achieve the applicable water quality standards for waters impaired by point sources not subject to those requirements, then they are also "not stringent enough" to achieve applicable water quality standards for other waters not subject to those requirements, in this instance because they are impacted only by nonpoint sources. Additionally, the *Dioxin* court, applying *Chevron* deference, upheld the EPA's interpretation of § 303(d) "as requiring TMDLs where existing pollution controls will not lead to attainment of water standards," *id.* at 1527; *see also* 40 C.F.R. § 130.7(b), a holding that directly encompasses waters polluted only by nonpoint sources.

### 3. The Statutory Scheme as a Whole

The Pronsolinos' objection to this view of § 303(d), and of *Dioxin*, is, in essence, that the CWA as a whole distinguishes between the regulatory schemes applicable to point and nonpoint sources, so we must assume such a distinction in applying §§ 303(d)(1)(A) and (C). We would hesitate in any case to read into a discrete statutory provision something that is not there because it is contained elsewhere in the statute. But here, the premise is wrong: There is no such general division throughout the CWA.

Point sources are treated differently from nonpoint sources for many purposes under the statute, but not all. In particular, there is no such distinction with regard to the basic purpose for which the § 303(d) list and TMDLs are compiled, the eventual attainment of state-defined water quality standards. Water quality standards reflect a state's designated uses for a water body and do not depend in any way upon the source of pollution. *See* § 303(a)-(c).

Nor is there any other basis for inferring from the structure of the Act an implicit limitation in §§ 303(d)(1)(A) and (C). The statutory subsection requiring \*1138 water quality segment identification and TMDLs, § 303(d), appears in the section entitled "Water Quality Standards and Implementation Plans," not in the immediately preceding section, CWA § 302, 33 U.S.C. § 1312, entitled "Water Quality Related Effluent

Limitations." So the section heading does not suggest any limitation to waters subject to effluent limitations. *Porter v. Nussle*, 534 U.S. 516, 122 S.Ct. 983, 990, 152 L.Ed.2d 12 (2002) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.") (citation omitted).

Additionally, § 303(d) follows the subsections setting forth the requirements for water quality standards, § 303(a)-(c)-which, as noted above, apply without regard to the source of pollution-and precedes the "continuing planning process" subsection, § 303(e), which applies broadly as well. Thus, § 303(d) is structurally part of a set of provisions governing an interrelated goal-setting, information-gathering, and planning process that, unlike many other aspects of the CWA, applies without regard to the source of pollution.

True, there are, as the Pronsolinos point out, two sections of the statute as amended, § 208 and § 319, that set requirements exclusively for nonpoint sources of pollution. But the structural inference we are asked to draw from those specialized sections-that no *other* provisions of the Act set requirements for waters polluted by nonpoint sources-simply does not follow. Absent some irreconcilable contradiction between the requirements contained in §§ 208 and 319, on the one hand, and the listing and TMDL requirements of § 303(d), on the other, both apply.

There is no such contradiction. Section 208 provides for federal grants to encourage the development of state "areawide waste treatment management plans" for areas with substantial water quality problems, § 208(a), (f), and requires that those plans include a process for identifying and controlling nonpoint source pollution "to the extent feasible." § 208(b)(2)(F). Section 319, added to the CWA in 1987, directs states to adopt "nonpoint source management programs"; provides grants for nonpoint source pollution reduction; and requires states to submit a report to the EPA that "identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter." § 319(a)(1)(A). This report must also describe state programs for reducing nonpoint source pollution and the process "to reduce, to the maximum extent practicable, the level of pollution" resulting from particular categories of nonpoint source pollution. § 319(a)(1)(C), (D).

The CWA is replete with multiple listing and planning requirements applicable to the same waterways (quite confusingly so, indeed), so no inference can be drawn from the overlap alone. *See, e.g.*, § 208(b); § 303(d)(1)(A), (d)(1)(B), (d)(3), (e); CWA § 304(l), 33 U.S.C. § 1314(l); CWA § 314, 33 U.S.C. § 1324(a); § 319(a). Nor are we willing to draw the more discrete inference that the § 303(d) listing and TMDL requirements cannot apply to nonpoint source pollutants because the planning requirements imposed by § 208 and § 319 are qualified ones-"to the extent feasible" and "to the maximum extent practicable"-while the § 303(d) requirements are unbending. For one thing, the water quality standards set under § 303 are functional and may permit more pollution than it is "feasible" or "practicable" to eliminate, depending upon the intended use of a particular waterway. For another, with or without TMDLs, the § 303(e) plans for attaining water quality standards must, without qualification, account for *\*1139* elimination of nonpoint source pollution to the extent necessary to meet those standards. § 303(e)(3)(F).

The various reporting requirements that apply to nonpoint source pollution are no more impermissibly redundant than are the planning requirements. Congress specifically provided that in preparing the § 319 report, states may rely on information from § 303(e), which incorporates the TMDLs. § 319(a)(2). Moreover, states must produce a § 319 report only once, but must update the § 303(d)(1) list periodically. § 319; § 303(d)(2). Also, the § 319 report requires the identification of a plan to reduce nonpoint source pollution, without regard to the attainment of water quality standards, while the plans generated using the § 303(d)(1) lists and TMDLs are guided by the goal of achieving those standards. § 319; § 303(d), (e).

Essentially, § 319 encourages the states to institute an approach to the elimination of nonpoint source pollution similar to the federally-mandated effluent controls contained in the CWA, while § 303 encompasses a water quality based approach applicable to all sources of water pollution. As various sections of the Act encourage different, and complementary, state schemes for cleaning up nonpoint source pollution in the nation's waterways, there is no basis for reading any of those sections-including § 303(d)-out of the statute.

There is one final aspect of the Act's structure that bears consideration because it supports the EPA's interpretation of § 303(d): The list required by § 303(d)(1)(A) requires that waters be listed if they are impaired by a combination of point

sources and nonpoint sources; the language admits of no other reading. Section 303(d)(1)(C), in turn, directs that TMDLs "shall be established at a level necessary to implement the applicable water quality standards..." *Id.* (emphasis added). So, at least in blended waters, TMDLs must be calculated with regard to nonpoint sources of pollution; otherwise, it would be impossible "to implement the applicable water quality standards," which do not differentiate sources of pollution. This court has so recognized. *Browner*, 20 F.3d at 985 ("Congress and the EPA have already determined that establishing TMDLs is an effective tool for achieving water quality standards in waters impacted by non-point source pollution.").

Nothing in the statutory structure-or purpose-suggests that Congress meant to distinguish, as to § 303(d)(1) lists and TMDLs, between waters with one insignificant point source and substantial nonpoint source pollution and waters with only nonpoint source pollution. Such a distinction would, for no apparent reason, require the states or the EPA to monitor waters to determine whether a point source had been added or removed, and to adjust the § 303(d)(1) list and establish TMDLs accordingly. There is no statutory basis for concluding that Congress intended such an irrational regime.

Looking at the statute as a whole, we conclude that the EPA's interpretation of § 303(d) is not only entirely reasonable but considerably more convincing than the one offered by the plaintiffs in this case.<sup>17</sup>

17 It is therefore unnecessary to examine the legislative history. *See Dept of Hous. and Urban Dev. v. Rucker*, 535 U.S. 125, ---, 122 S.Ct. 1230, 1234, 152 L.Ed.2d 258 (2002). Nonetheless, we have reviewed that history and considered the legislative history arguments put forth by the Pronsolinos. The thrust of those arguments mirrors the arguments based on the statute's language and structure, addressed above. We reject them for the same reason: That Congress meant to include waters impaired by point sources where technological controls had not attained water quality standards-as the legislative history shows, 1 *Legislative History* 792-93 (H.R. Rep. 92-911 to accompany H.R. 11896 (March 11, 1972))-does not prove that it intended to exclude nonpoint sources from the TMDL requirement.

#### \*1140 C. Federalism Concerns

The Pronsolinos finally contend that, by establishing TMDLs for waters impaired only by nonpoint source pollution, the EPA has upset the balance of federal-state control established in the CWA by intruding into the states' traditional control

over land use. *See Solid Waste Agency of Northern Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159, 172-73, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001). That is not the case.

7 The Garcia River TMDL identifies the maximum load of pollutants that can enter the Garcia River from certain broad categories of nonpoint sources if the river is to attain water quality standards. It does not specify the load of pollutants that may be received from particular parcels of land or describe what measures the state should take to implement the TMDL. Instead, the TMDL expressly recognizes that "implementation and monitoring" "are state responsibilities" and notes that, for this reason, the EPA did not include implementation or monitoring plans within the TMDL.<sup>18</sup> EPA, *Garcia River Sediment Total Maximum Daily Load* 43(Mar. 16, 1998).

18 The regulatory amendments scheduled to go into effect August 30, 2003, do require the inclusion of an implementation plan as part of each TMDL. 65 Fed.Reg. 43586 (July 13, 2000); *see also* 66 Fed.Reg. 53044 (Oct. 18, 2001) (effective date). We express no opinion as to the validity of this requirement.

Moreover, § 303(e) requires-separately from the § 303(d) (1) listing and TMDL requirements-that each state include in its continuing planning process "adequate implementation, including schedules of compliance, for revised or new water quality standards" "for all navigable waters within such State." § 303(e)(3). The Garcia River TMDL thus serves as an informational tool for the creation of the state's implementation plan, independently-and explicitly-required by Congress.

California chose both *if* and *how* it would implement the Garcia River TMDL. States must implement TMDLs only to the extent that they seek to avoid losing federal grant money; there is no pertinent statutory provision otherwise requiring implementation of § 303 plans or providing for their enforcement. *See* CWA § 309, 33 U.S.C. § 1319; CWA § 505, 33 U.S.C. § 1365.<sup>19</sup>

19 See also Professor Houck's summary:

Within the statutory scheme § 319 is the carrot, funding state programs for nonpoint source abatement statewide, for all waters whether they are currently above standard or below. In keeping with its broad sweep, § 319's provisions are voluntary. States may choose to participate or not.... Section 303(d), on the other hand, addresses a narrower and more nasty job: the chronically

polluted waters of the United States. For this problem zone, enter a stick: quantified pollution load allocations. The nature of the allocations and of the implementing controls remains up to the states, but states do have to come up with them.

*The Clean Water Act TMDL Program* 62.

Finally, it is worth noting that the arguments that the Pronsolinos raise here would apply equally to nonpoint source pollution controls for blended waters. Yet, as discussed above, Congress definitely required that the states or the EPA establish TMDLs for all pollutants in waters on § 303(d)(1) lists, including blended waters.

We conclude that the Pronsolinos' federalism basis for reading § 303 against its own words and structure is unfounded.

#### IV. CONCLUSION

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For all the reasons we have surveyed, the CWA is best read to include in the § 303(d)(1) listing and TMDLs requirements \*1141 waters impaired only by nonpoint sources of pollution. Moreover, to the extent the statute is ambiguous-which is not very much-the substantial deference we owe the EPA's interpretation, under either *Chevron* or *Skidmore*, requires that we uphold the agency's more than reasonable interpretation. We therefore hold that the EPA did not exceed its statutory authority in identifying the Garcia River pursuant to § 303(d)(1)(A) and establishing the Garcia River TMDL, even though the river is polluted only by nonpoint sources of pollution.

The decision of the district court is AFFIRMED.

#### Parallel Citations

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# **ATTACHMENT 44**



296 F.3d 1021  
United States Court of Appeals,  
Eleventh Circuit.

SIERRA CLUB, Georgia Environmental  
Organization, Inc., Coosa River Basin Initiative  
Inc., Trout Unlimited, Ogeechee River  
Valley Association, Inc., Plaintiffs-Appellees,

v.

A. Stanley MEIBURG, Acting Regional  
Administrator, Christine T. Whitman,  
Administrator, the United States  
Environmental Protection Agency, United  
States Environmental Protection Agency  
("U.S.EPA"), Defendants-Appellants.

No. 01-14587. July 2, 2002.

Order was entered by the United States District Court for the Northern District of Georgia, No. 94-02501-CV-MHS-1, Marvin H. Shoob, J., allegedly interpreting consent decree previously entered in lawsuit under the Clean Water Act. Appeal was taken. The Court of Appeals, Carnes, Circuit Judge, held that: (1) district court's order was, in reality, a modification of consent decree, which Court of Appeals had jurisdiction to review; and (2) order modifying consent decree entered in prior lawsuit under the Clean Water Act, to require the Environmental Protection Agency (EPA), not just to formulate total maximum daily load (TMDL) standards for presence of particular pollutants in Georgia water bodies, but to develop implementation plans, constituted abuse of district court's discretion.

Reversed and remanded.

#### Attorneys and Law Firms

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Appeal from the United States District Court for the Northern District of Georgia.

Before EDMONDSON, Chief Judge, and CARNES and SILER \*, Circuit Judges.

\* Eugene E. Siler, Jr., U.S. Circuit Judge, for the Sixth Circuit, sitting by designation.

#### Opinion

CARNES, Circuit Judge:

The order we have before us in this appeal is based upon either an interpretation of a consent decree or a modification of the decree. Which one of the two the order is determines whether we have jurisdiction to review it. If the order is a modification of the decree, instead of merely an interpretation, we have appellate jurisdiction and the issue we must then decide is whether the district court abused its discretion by modifying the decree as it did.

The consent decree itself resulted from a lawsuit brought by Sierra Club, along with a collection of state and local environmental organizations, against EPA.<sup>1</sup> The plaintiff environmental groups (for convenience we will refer to them collectively as Sierra Club), had sued EPA to force it to establish and implement pollution standards for Georgia waterways. The consent decree that was eventually entered set out a timetable for the establishment of those standards. EPA did establish the standards.

1 Those organizations include the Ogeechee River Valley Association, Trout Unlimited, Georgia Environmental Organization, and the Coosa River Basin Initiative.

A couple of years after the consent decree had been entered, none of the pollution standards EPA established as a result of the decree had actually been implemented. Upset with the lack of progress, Sierra Club moved the district court to reopen the consent decree and to take action compelling EPA to develop implementation plans for the standards. EPA took the position that the State of Georgia had the primary responsibility for implementing the standards EPA had established. The district court deferred ruling on Sierra Club's motion pending Georgia's development of the

implementation plans. Once Georgia filed with the court what it asserted were the required plans, EPA moved to have Sierra Club's motion to re-open and compel declared moot. Sierra Club responded that Georgia's implementation plans were not adequate and insisted that EPA had the responsibility under the decree for formulating them. The district court denied EPA's mootness motion because it agreed with Sierra Club that the consent decree required EPA to develop implementation plans or to ensure that those Georgia developed were adequate to satisfy the Clean Water Act.

EPA has appealed the district court's order refusing to dismiss as moot Sierra Club's motion to re-open and compel, contending \*1024 that the court's decision to impose on it an implementation-plan requirement modified the decree, and that the modification was an abuse of the district court's discretion. Sierra Club takes the position that the district court, when it stated EPA was required to develop implementation plans, was not modifying but merely interpreting the consent decree. If that is so, we lack jurisdiction over this appeal, because the only possible jurisdictional basis for it is 28 U.S.C. § 1292(a)(1) which authorizes us to review interlocutorily an order modifying an injunction. Sierra Club also argues in the alternative that, even if the district court's interpretation of the decree crossed the line into modification, thereby giving us jurisdiction to review it, we should hold that in view of changed circumstances the modification was not an abuse of discretion.

Our reading of the consent decree convinces us it did not require EPA to develop an implementation plan for the water quality standards it was to set, and the clarity of the decree on the point is sufficient that the district court's later imposition of such a requirement constitutes a modification of the decree. As a result, we have jurisdiction to review the district court's action, and we conclude that the court abused its discretion by grafting onto the decree a substantial modification that was not part of the original bargain between the parties.

## I. BACKGROUND

The dispute about the terms of the consent decree plays out against the background of the statutory and regulatory scheme established by the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, so we will start with a description of that scheme. Congress passed the Clean Water Act (the "Act") "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To achieve that goal, the Act gives EPA two main roles and responsibilities. The first is issuing permits that govern individual discharges

of pollutants, and the second is setting global water quality standards for particular bodies of water.

### *Permits and Point Sources*

Section 301(a) of the Act prohibits the discharge of any pollutants except those that are sanctioned by a permit. 33 U.S.C. § 1311(a). The statute gives EPA the authority to issue permits for point sources, and those permits are to establish technology-based effluent limitations that incorporate increasingly stringent levels of pollution control technology over time. 33 U.S.C. §§ 1311(b)(1)(A), (B), (b)(2). The limits set out in the permits are to be based on how low current technology can push pollution levels, and those limits are to be lowered as pollution-reducing technology improves. Permits are issued to individual dischargers through the National Pollutant Discharge Elimination System (NPDES) program. *Id.* at § 1342. Like most states, Georgia administers the NPDES program within its borders subject to EPA oversight of the states's permit-issuing procedures.<sup>2</sup>

- 2 Like Georgia, most states-44 of them-are in charge of their own NPDES program. In the other six states EPA runs the program.

Permits cannot control all sources of pollution. They are aimed only at pollution coming from a "point source," which is "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged," that offers a particular "point" to measure the amount of \*1025 pollution being discharged. 33 U.S.C. § 1362(14).

### *Non-Point Sources, Water Quality Standards, and TMDLs*

In addition to originating from point sources, pollution also comes from non-point sources, such as runoff from farmlands, mining activity, housing construction projects, roads, and so on. Non-point sources cannot be regulated by permits because there is no way to trace the pollution to a particular point, measure it, and then set an acceptable level for that point. Therefore, to regulate non-point pollution, the Act requires states to establish water quality standards. 33 U.S.C. §§ 1313(a)-(c). To determine the water quality standard, a state designates the use for which a given body of water is to be protected (fishing, for example), and then determines the level of water quality needed to safely allow that use. *Id.* at § 1313(c)(2)(A). That level becomes the water quality standard for that body of water.

Things can get complicated. Because of non-point source pollution, achieving the specified water quality standard in a body of water may require more stringent limitations upon point-source discharges than would otherwise be required under the permit-issuing regime we have previously described. If the regulation of point-source discharges does not achieve the necessary level of water quality, Total Maximum Daily Loads (TMDLs) come into play. *Id.* at § 1313(d)(1)(A), (C). A TMDL is a specification of the maximum amount of a particular pollutant that can pass through a waterbody each day without water quality standards being violated. *Id.* at § 1313(d)(1)(C).

TMDLs must be established for every waterbody within the state for which ordinary technology-based point-source limits will not do enough to achieve the necessary level of water quality. *Id.* at §§ 1313(d)(1)(A), (C). The state must compile a list of these bodies of water in a report and submit it to EPA for approval. *Id.* at §§ 1313(d)(1)(A), (d)(2). (This list is sometimes referred to as “the 303(d) list,” because that is the section of the Act which requires each state to prepare the list.) Each body of water on the list is known as a “water quality limited segment” (or “limited segment” for short), *see* 40 C.F.R. § 130.2(j), and the state must set a TMDL for every pollutant in each limited segment.<sup>3</sup> 33 U.S.C. § 1313(d)(1)(C).

<sup>3</sup> A limited segment is often referred to as a “WQLS,” but given the number of other acronyms in our discussion we will avoid that one.

Each TMDL serves as the goal for the level of that pollutant in the waterbody to which that TMDL applies, allocating the total “load”—the amount of pollutant introduced into the water, *see* 40 C.F.R. § 130.2(e)—specified in that TMDL among contributing point and non-point sources. The theory is that individual-discharge permits will be adjusted and other measures taken so that the sum of that pollutant in the waterbody is reduced to the level specified by the TMDL. As should be apparent, TMDLs are central to the Clean Water Act's water-quality scheme because, as one of the plaintiffs puts it, they tie “together point-source and nonpoint-source pollution issues in a manner that addresses the whole health of the water.” Brief of Appellee Ogeechee River Valley Association at 14.

The states are primarily responsible for preparing lists of limited segments and their corresponding TMDLs, *see* 33 U.S.C. §§ 1313(d)(1)(A), (C), but EPA has approval authority over those lists. *Id.* at § 1313(d)(2). If EPA

disapproves a state's list of limited segments, or a TMDL, EPA must issue its own list or TMDL. *Id.* Some courts have held that a state's failure to timely submit its TMDLs can be taken under certain circumstances by EPA as a constructive submission of no TMDLs, triggering EPA's responsibility to establish its own. *See Scott v. City of Hammond*, 741 F.2d 992, 996-98 (7th Cir.1984); *Kingman Park Civic Ass'n v. EPA*, 84 F.Supp.2d 1, 5 (D.D.C.1999) (holding that “[l]ike the majority of courts that have confronted this quandary, this Court holds that ‘if a state fails over a long period of time to submit proposed TMDL's, this prolonged failure may amount to constructive submission by that state of no TMDL's’ ” (omitted citation)). We have not addressed this issue of constructive submission yet, and need not do so in this case because under the consent decree EPA was obligated to issue its own TMDLs according to a prescribed timetable if Georgia continued to fail to establish them.

Once established, TMDLs are implemented through various mechanisms, some of which are provided in the Act, with responsibilities for implementation divided between EPA and the states. Point-source discharges are regulated through the federal permit regime, with TMDLs incorporated into the effluent and technological-based limitations. 40 C.F.R. § 122.44(d)(1)(vii)(B). Although EPA has the authority to issue permits, it has delegated that authority to the states, at least to the majority of them, including Georgia. Even where it has delegated that basic authority, however, EPA does retain the right to include additional limits in NPDES permits when necessary to ensure a congressionally-established standard of water quality. 33 U.S.C. §§ 1312(a), 1342(a).

The Act generally leaves regulation of non-point source discharges through the implementation of TMDLs to the states. 33 U.S.C. § 1329. It imposes on the states planning responsibilities, including the preparation of a non-point source management plan, commonly referred to as a § 319 report. *Id.* at § 1329(a). In this report, a state must, among other things, identify waters where water quality standards can reasonably be met only by additional action to control non-point source pollution, and designate the categories and subcategories of non-point sources that contribute to the pollution in those waters. *Id.* at § 1329(a)(1). States also have to prepare a management program that identifies “best management practices and measures” to reduce pollution. *Id.* at § 1329(b). EPA exercises authority over these programs and must approve them. Once the programs have been approved, EPA may make grants to the states to allow them to implement the plans. *Id.* at § 1329(h).

Finally, a state has to prepare a "continuing planning process," which is essentially a plan for how the state is going to clean up pollution. *Id.* at § 1313(e)(1). Like the best management program, EPA has to approve or disapprove each state's continuing planning process and, once it has been approved, occasionally review it to ensure it stays consistent with the Act. *Id.* at § 1313(e)(2). In preparing its continuing planning process, a state must incorporate established TMDLs. *See id.* at § 1313(e)(3)(C).

To summarize, under the Clean Water Act, Georgia has the primary authority and responsibility for issuing permits and controlling nonpoint source pollution in that state. It also has both the authority and the duty to compile the list of limited segments (the § 303(d) list), and establish TMDLs for each waterbody on the list. \*1027 EPA, for its part, has supervisory authority over various reports and plans which the state is required by the Act to produce. EPA can also compile its own list of limited segments and establish its own TMDLs, if the state's efforts are either inadequate or too long delayed.

#### *The Consent Decree and Dispute in this Appeal*

By the time Sierra Club sued EPA in 1994, sixteen years after the Act had gone into effect, Georgia had established only two TMDLs for the approximately 340 limited segments identified in its 303(d) list, and the district court found that neither of those two TMDLs satisfied the requirements of the Act. In the lawsuit, Sierra Club asked the court to force EPA to establish the TMDLs and to implement them, because Georgia had not done so. The district court granted summary judgment for Sierra Club, *Sierra Club v. Hankinson*, 939 F.Supp. 865 (N.D.Ga.1996), and entered an injunction requiring the EPA to both establish and implement TMDLs for all Georgia limited segments by June 2001. *Sierra Club v. Hankinson*, 939 F.Supp. 872 (N.D.Ga.1996). The injunction directed EPA to "implement (or ensure that the State implements)" TMDLs through the modification, revocation, and re-issuance of permits. It also imposed a number of other requirements on EPA, most of which had to do with making it exercise supervision over Georgia's water quality control efforts. EPA appealed to this Court.

While EPA's appeal was still pending, in July of 1997 the parties agreed upon the terms of a consent decree and persuaded the district court to enter it, which it did in October of 1997. In the consent decree, EPA was ordered to establish TMDLs for the limited segments on Georgia's § 303(d) list

on a basin approach if Georgia continued to fail to do so. Under a schedule set out in the decree, all TMDLs were to be established by 2004, and additional, more specific deadlines were included. The decree provided that by 1998, EPA was to establish TMDLs for twenty percent of the waterways on Georgia's 1996 list of limited segments. These 1998 TMDLs are the ones that are the subject of this appeal, the ones Sierra Club says EPA should have prepared an implementation plan for, but they are only the first group of TMDLs that EPA was to establish under the terms of the consent decree. The decree also required the EPA to establish TMDLs for the remaining waterbodies on a river basin rotation schedule, if Georgia failed to do so.

The basin rotation schedule was to begin in 1999, with TMDLs proposed for all the basins by 2004.<sup>4</sup> Besides establishing TMDLs, the decree imposed other responsibilities on EPA, including: (1) review of Georgia's continuing planning process, (2) proposal of specific terms for Georgia/EPA Performance Partnership Agreements, (3) biennial review of Georgia's TMDL program, and (4) submission of annual compliance reports to the court and to the plaintiff groups.

- 4 EPA's performance in establishing the TMDLs for some of the water basins has been the subject of other litigation under the consent decree, which has resulted in another decree further defining EPA's duties.

EPA proposed 124 TMDLs for Georgia's waterbodies in August of 1997 and attached them to the consent decree which the parties submitted to the district court for its approval. Under the terms of the decree, those TMDLs were to be "established, or finalized" within six months after being proposed. All but eight were timely established by EPA, and even those eight \*1028 were established after Sierra Club filed a motion to force EPA to do so. Once EPA had established the TMDLs, nothing else was done with them. Georgia did not incorporate the TMDLs into any of its non-point source management plans or reports and did not implement them. As a result, two years after entering into the consent decree, only one of the 124 waterbodies on Georgia's 1996 § 303(d) list met water quality standards.

Dissatisfied with the progress made towards clean water in Georgia and with EPA action or lack of it, in February 2000 Sierra Club moved the district court to re-open the decree and to compel EPA to take further action. Specifically, Sierra Club moved the court to order EPA to prepare implementation plans for the 124 TMDLs the agency had

established in 1998.<sup>5</sup> EPA argued in response that the decree did not obligate it to prepare implementation plans for or to implement TMDLs, and that the decree should not be modified to impose that responsibility on it.

- 5 Sierra Club moved for other relief as well, but the request that EPA be required to establish implementation plans is the only one involved in this appeal.

The district court deferred ruling on Sierra Club's motion because Georgia promised to develop implementation plans for the 124 TMDLs within nine months. Within that time period, Georgia did develop implementation plans for all 124 of those TMDLs. Because the plans which Sierra Club wanted EPA to develop had now been developed by Georgia, EPA moved the court to dismiss as moot Sierra Club's motion to reopen and compel. Sierra Club argued that its motion was not moot, because Georgia's implementation plans were flawed or otherwise unsatisfactory.

The district court denied the EPA's motion to dismiss as moot Sierra Club's motion. In its order, the court ruled that "TMDL implementation plans are required [of EPA] by the Consent Decree." As for the Georgia-prepared plans, the court ruled that EPA had "obligations" to "ensure" those plans were adequate. The order did not, however, declare the Georgia plans insufficient. Instead, it directed EPA and Sierra Club to confer about those plans and attempt to reach an agreement concerning them. If their disagreements could not be resolved by discussion, the order stated, the court would grant either party's request for an evidentiary hearing on the sufficiency of the Georgia plans.

EPA appealed the district court's order and also filed an emergency motion for stay pending appeal. In response to a jurisdictional question we issued to the parties, Sierra Club contends that we lack jurisdiction because the district court's order denying EPA's motion to dismiss on mootness grounds is not final so as to be appealable under 28 U.S.C. § 1291, is not appealable under the collateral order doctrine, and is not a modification of an injunction appealable under 28 U.S.C. § 1292(a)(1). Sierra Club also filed a motion to dismiss for lack of jurisdiction on those grounds. EPA responded that this Court does have jurisdiction and, alternatively, petitioned for a writ of mandamus.

## II. DISCUSSION

### A. Jurisdiction-the District Court Did Modify the Consent Decree

EPA contends that we have jurisdiction over this appeal under 28 U.S.C. § 1292(a)(1), which gives appellate courts jurisdiction to review interlocutory orders of district courts "granting, continuing, \*1029 [and] modifying" injunctions.<sup>6</sup> Sierra Club contends that we do not, because the district court did not modify the injunctive relief provided for by the consent decree, but only interpreted the decree.<sup>7</sup> If Sierra Club is correct and the district court only interpreted the decree, we do not have jurisdiction. See *Birmingham Fire Fighters Ass'n 117 v. Jefferson County*, 280 F.3d 1289, 1292 (11th Cir.2002).

- 6 The parties agree that the district court's order denying EPA's motion to dismiss Sierra Club's motion to enforce or modify the consent decree is not a final order as that term is used in 28 U.S.C. § 1291, and that the order does not fall within the collateral order doctrine. We concur with them on those points. Accordingly, whether we have jurisdiction turns on 28 U.S.C. § 1292(a)(1).

- 7 The plaintiffs also contend that we lack jurisdiction on the ground that there is no justiciable controversy, because the issue is not yet ripe. The district court's interpretation of the decree imposed on EPA a requirement to prepare implementation plans or ensure that the ones prepared by Georgia satisfy the requirements of the Act. It ordered EPA to take action within 30 days, action that EPA insists it has no obligation to undertake. The matter is sufficiently ripe.

1 2 3 We have said that in order to decide whether a district court's order relating to a prior decree falls within the grant of appellate jurisdiction under § 1292(a)(1), we must decide whether the order modified the decree in a "jurisdictionally significant way." *Id.* at 1292. A district court's interpretation of a consent decree operates as a modification when it changes the legal relationship among the parties. *Id.* at 1293. This determination is not significantly affected by whether the district court called its order an interpretation, as this district court did, or a modification. See *Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1539 (11th Cir.1986) ("What matters, however, is not the district court's characterization of its order as amendatory or explanatory, but rather the actual effect of the order on the obligations of the parties as set forth in the original judgment.").

4 5 If the district court's order changes the legal relationship of the parties, it is a modification of the decree, regardless of what it was called. As we explained in *Birmingham Fire Fighters*, we do not engage in a fine point analysis of the original decree and the later order. Instead, we take a fairly loose focus and ask whether the district court's reading of the consent decree is "a gross misinterpretation of the decree's original command," one that "leaps from the page." *Birmingham Fire Fighters*, 280 F.3d at 1293. If so, then we have jurisdiction. Applying this test, our starting point is to determine the legal relationship among the parties that the consent decree itself established. The next step is to determine whether the district court's order changed that relationship in a "jurisdictionally significant way." *Id.* at 1292.

6 7 As this Court has explained before, "As a general matter, the rules we use to interpret a consent decree are the same ones we use to interpret a contract—since a consent decree is a form of contract." *Reynolds v. Roberts*, 202 F.3d 1303, 1312 (11th Cir.2000). With a consent decree as with a contract, the first place we look and often the last as well is to the document itself. The consent decree in this case provided that if Georgia failed to establish TMDLs, EPA was required to do so.<sup>8</sup> The decree defined a TMDL as having \*1030 "the meaning provided at Section 303(d)(1)(C) of the CWA, 33 U.S.C. § 1313(d)(1)(C), and 40 C.F.R. § 130.2(i), as codified as of the Effective Date of this Decree, or as subsequently amended." Neither the referenced statutory provision nor the referenced regulation includes implementation plans within the meaning of TMDLs.<sup>9</sup> The two are different, and the statute and regulation incorporated into the definition part of the consent decree reflect that difference. A TMDL is defined to be a set measure or prescribed maximum quantity of a particular pollutant in a given waterbody, *see* 40 C.F.R. § 130.2(i), while an implementation plan is a formal statement of how the level of that pollutant can and will be brought down to or kept under the TMDL.<sup>10</sup>

8 EPA agreed to establish the 1998 TMDLs, the ones that are the subject of this appeal, without waiting on Georgia to fail to do so first. In July of 1997 the parties had agreed to the terms of the consent decree, one of which was that in August EPA would propose for public comment by August of 1997 TMDLs for twenty percent of the waterbodies in Georgia's 1996 303(d) list. These TMDLs were attached to the consent decree when the parties submitted the decree to the district court for its

approval. The remaining TMDLs were to be developed by EPA only after Georgia failed to do so.

9 The statutory provision says:

Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards.... 33 U.S.C. § 1313.

The regulation defines a TMDL as: "[t]he sum of the individual [wasteload allocations] for point sources and [load allocations] for non-point sources and natural background." 40 C.F.R. § 130.2(i).

10 Sierra Club attempts to escape this clear distinction between TMDLs and implementation plans for them by arguing that implementation plans should be read into TMDLs based upon EPA guidance documents and also a proposed rule that was withdrawn before it went into effect. Putting aside any questions about whether those documents actually do define implementation plans into TMDLs, the inescapable fact is that the consent decree does not, because the decree does not define TMDLs by reference to any guidance documents or aborted rule. Instead, the decree defines the term by reference to a specific statutory provision and a specific regulation that is in effect, and neither of those two definitional sources indicates or even implies that TMDLs include implementation plans. We find no ambiguity on the point in either the statute or regulation, and because they are the sole source of the definition of TMDLs in the consent decree they are all we look at to define the term. *Cf. Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 697 n. 10, 115 S.Ct. 2407, 2413, 132 L.Ed.2d 597 (1995) (refusing to apply the ordinary common-law meaning of a term when it was defined in the statute). Given the clarity of the consent decree, we also decline Sierra Club's invitations to consider any extrinsic evidence on the issue.

The consent decree clearly and explicitly places a number of duties on EPA, including the requirement to establish TMDLs on a basin approach if Georgia fails to do so, but it just as clearly does not require EPA to develop implementation plans for those TMDLs once they are established. The decree contains seven pages setting out in detail EPA's obligations under it, and conspicuously absent from the list of those obligations is any mention of implementation plans. Indeed, implementation plans are not mentioned at all anywhere in

the 28-page decree. If the parties had intended for the decree to put such an important and substantial responsibility on EPA, they would have spelled that out just they spelled out its responsibility to establish TMDLs.

The district court gave two reasons for finding that implementation plans were required by the consent decree. First, it said that “[u]nder EPA’s interpretation of the Consent Decree, TMDLs would be developed with no guarantee that they would ever be implemented. Developing TMDLs without implementing them amounts to an \*1031 academic endeavor which would have no effect on water quality in Georgia.” Or, as Sierra Club restates that concern, unless implementation plans are read into TMDLs, the decree is reduced to “empty formalism.” We doubt that, because TMDLs are a necessary step before any implementation plans can be formulated. Interpreting the decree as written gives it meaning, because establishing TMDLs is a meaningful and not necessarily simple step in the process of controlling pollution in Georgia’s waterbodies. After all, in sixteen years Georgia had established only two of the hundreds of TMDLs that were necessary, and the adequacy of those two was questionable. The decree put the TMDL task with all of its difficulties on EPA. The responsibility for implementing the TMDLs once they were established was left to Georgia, as it is in the Clean Water Act itself.

8 The second reason the district court gave for its conclusion that EPA was required by the consent decree to establish implementation plans is that reading that into the decree would further the goal of the Clean Water Act, which is cleaner water. The court stated, “EPA’s interpretation is incompatible with the Clean Water Act goal of improving water quality. Specifically, among the stated objectives of the Clean Water Act is the following: ‘[I]t is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner...’” Of course, the national policy and objectives relating to clean water are most reliably embodied in the Act itself which puts the responsibility for implementation of TMDLs on the states. Logically, the Act cannot be a source of authority for changing the Act’s allocation of responsibilities. Besides, the district court’s approach disregards the Supreme Court’s instruction that “any command of a consent decree or order must be found within its four corners, and not by reference to any purposes of the parties or of the underlying statutes.” *United States v. IIT Continental Baking Co.*, 420 U.S. 223, 233, 95 S.Ct. 926, 933, 43 L.Ed.2d 148 (1975) (quotations and citations omitted); see also *United States v. Atlantic Refining Co.*, 360 U.S. 19, 23, 79 S.Ct. 944, 946, 3 L.Ed.2d 1054

(1959) (rejecting a loose interpretation of the consent decree even though such an interpretation might better effectuate the purposes of the acts assertedly violated); *Hughes v. United States*, 342 U.S. 353, 356-57, 72 S.Ct. 306, 308, 96 L.Ed. 394 (1952) (rejecting an invitation to advance the asserted purpose of the consent decree through an interpretation of a consent decree not justified by the four corners of the decree).

9 The Supreme Court has observed that consent decrees generally do not have overarching purposes which can be used as guides to interpretation.<sup>11</sup> For example, in \*1032 *United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 1757, 29 L.Ed.2d 256 (1971), the Court explained that because consent decrees are normally compromises between parties with opposing positions in which each party gives up their rights to litigation and to prove their position, consent decrees should be interpreted as written, “and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation.” In this case, the parties negotiated the terms of the decree and the timetable for TMDL establishment and other relief within the framework of the statutory scheme set out in the Act. The decree cannot be interpreted as requiring whatever might be necessary and appropriate to achieve cleaner water, because it was not written that way. It was written to bring about in a more expeditious and certain manner than would otherwise have occurred one important step in the process, and it appears to have achieved that goal or to have nearly done so.

11 While consent decrees should not be interpreted according to a broad, nebulous purpose, in different contexts courts are called upon to decipher the purpose of some consent decrees. For example, the Supreme Court has said that when considering whether an institutional-reform decree or other similar decree should be modified, courts are to determine whether the motion is to modify a term of the decree that is central to the basic purpose of the decree. If it is, then modification is probably not appropriate. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 387, 112 S.Ct. 748, 762, 116 L.Ed.2d 867 (1992) (“If modification of one term of a consent decree defeats the purpose of the decree, obviously modification would be all but impossible.”). See *United States v. City of Miami*, 2 F.3d 1497, 1504 (11th Cir.1993) (“Thus, a court faced with a motion to modify a consent decree in institutional reform litigation must begin by determining the ‘basic purpose’ of the decree.”). But the purpose of the decree even in that context is not to be conceived at too high a level of generality, and is not used as a basis to expansively interpret the terms of the decree. In the case before us, the district court used what is considered to be

the purpose of the decree to interpret expansively the decree's terms. That should not be done.

This, then is the original relationship between the parties as established by the consent decree: at Sierra Club's insistence EPA was obligated to develop for the State of Georgia TMDLs, as defined by the statutory and regulatory provisions. The order we have before us declared that the consent decree went beyond that and required EPA to develop not just TMDLs but implementation plans for TMDLs. Because the decree as written and entered did not require EPA to prepare implementation plans for the TMDLs, the district court's order requiring EPA to prepare them modified the decree because it changed the legal relationship of the parties by "chang[ing] the command of the earlier injunction." *Birmingham Fire Fighters*, 280 F.3d at 1293 (internal quotations omitted). If a party obtains a decree forcing another party to perform task A, and a later order adds task B, the legal relationship between the parties has been changed by the later order. That is what happened in this case. There was a change in EPA's obligations, in the tasks with which it was saddled. The law is that if the change is sufficiently obvious—if the original decree did not even arguably require the additional task or obligation, so that the district court's interpretation of the decree is "blatantly or obviously wrong"—then we have jurisdiction to review the order. *Id.* For the reasons we have set out, we conclude that this is not a close call; the error in the district court's interpretation of the consent decree is obvious enough to give us jurisdiction to review the resulting modification.

#### ***B. The District Court Abused Its Discretion In Modifying the Consent Decree***

10 11 Having decided that the district court obviously modified the decree when it required EPA to prepare implementation plans, which gives us jurisdiction to review its action, we turn now to the merits issue, which is whether the modification was an abuse of discretion. Sierra Club contends that the modification was within the district court's discretion and points to several provisions in the decree which it says gives the district court the power to modify it. One of those provisions says that the court retains jurisdiction over the action and may issue orders to modify the terms of the decree and grant further relief as justice requires. The other says that nothing in the decree "shall be construed to limit the equitable \*1033 powers of the Court to modify those terms upon a showing of good cause by any party." We do not read these boilerplate provisions as giving the district court any

more power to modify the decree than it already had under Rule 60(b)(5) of the Federal Rules of Civil Procedure,<sup>12</sup> as explicated by the Supreme Court in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). The provisions confirm the court's authority to modify the decree, but that authority is still subject to the constraints set out in the *Rufo* decision. In that decision the Supreme said that the party seeking modification of a consent decree must show, first, "a significant change either in factual conditions or in law," *id.* at 384, 112 S.Ct. at 760, and, second, that "the proposed modification is suitably tailored to the changed circumstance." *Id.* at 391, 112 S.Ct. at 763.

- 12 Rule 60(b)(5) provides that a party may obtain relief from a court order when "it is no longer equitable that the judgment should have prospective application." Fed.R.Civ.P. 60(b)(5).

Sierra Club contends that there have been changes in both the law and surrounding circumstances which justify the district court's modification of the decree. It points to some guidance documents and a proposed rule published by EPA as proof that the law has changed, but none of those documents or proposals have the effect of law. As for guidance documents, they can modify neither statutes nor regulations. To legally change its regulations, EPA must comply with the rulemaking procedures set out in the Administrative Procedures Act, 5 U.S.C. §§ 551-706. The method by which guidance documents are created does not even come close to compliance with those procedures.

As for the proposed rule Sierra relies upon, it did not work a change in the law because it has never been implemented and in fact has been withdrawn. EPA proposed the new rule in 1999, *see* 64 Fed.Reg. 46012 (Aug. 23, 1999), and published it as a final rule in July of 2000, *see* 65 Fed.Reg. 43586 (July 13, 2000), but it was never implemented. Congress refused to appropriate the necessary funds for implementation, which delayed things, *see* Pub.L. No. 106-246, 114 Stat. 511, 567 (2000), and then EPA withdrew the proposed rule. *See* 66 Fed.Reg. 41817 (Aug. 9, 2001). At no time was the new rule ever applied by EPA, and as things stand, the relevant regulations related to the Act are the same as they were in 1997. The statutory and regulatory regime—the applicable law—is the same now as it was when the consent decree was entered. There has been no change.

Nor has there been a change in factual circumstances sufficient to justify the district court's modification of the decree. It is true that the state of Georgia is not currently

implementing the TMDLs established by EPA at the rate contemplated by the Act, but Georgia has never carried out its responsibilities under the Act at anywhere near the pace the Act contemplates. Georgia's governmental lethargy in this area is nothing new. Indeed, it was what Sierra Club calls "Georgia's 16 year failure and refusal to develop and implement the [TMDL] process for hundreds of Georgia's rivers, streams, lakes, and estuaries that were not meeting designated standards for fishing, swimming, and drinking," which led to the lawsuit. Brief of Appellee Sierra Club at 3. A decree cannot be justifiably modified based upon the theory of changed factual circumstances when the circumstances simply have not changed.

Sierra Club contends that the district court was within its discretion in modifying <sup>\*1034</sup> the decree because the decree had not achieved its purpose, and such a failure can itself be a changed circumstance justifying modification. See *Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1539 (11th Cir.1986); *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 251-52, 88 S.Ct. 1496, 1501, 20 L.Ed.2d 562 (1968). That contention is based upon the premise that the purpose of the decree was to achieve clean water in Georgia, a state of affairs which everyone concedes is a long way off. But the purpose of the decree was not nearly so ambitious. Clean water may have been Sierra Club's motivation, its reason for bringing the lawsuit to begin with, but the bargain it struck with EPA which produced the consent decree was much more limited.

While the Clean Water Act sets out a process composed of several steps to achieve clean water, the consent decree focuses on bringing about one of those steps, the establishment of TMDLs, and it leaves attainment of the Act's ultimate goal of cleaning up the water to the statutory and regulatory scheme which requires compliance by Georgia subject to some oversight by EPA. The consent decree does not supplant the Act itself. Under the decree, Georgia is still responsible for incorporating TMDLs, regardless of whoever establishes them, into its section 303(e) plan;

Georgia is still responsible for incorporating TMDLs into its NPDES permits; and Georgia is still responsible for implementing non-point source pollution controls. EPA agreed only to a supervisory role with respect to some of these implementation-related processes, but it did not agree to take over the implementation process. The objective of the consent decree was the establishment of TMDLs, not the much more long-term goal of clean water.

12 Nothing has changed to make the provisions of the consent decree ineffective, and experience has not shown that the decree is incapable of achieving its purpose. It is still capable of and is in fact accomplishing what the parties set out to achieve with the decree: the establishment of TMDLs. If Sierra Club wants more done to bring about clean water in Georgia, it will have to look beyond the consent decree and to the Clean Water Act and regulations, and perhaps to additional litigation, to achieve those worthy goals.

A party seeking to modify a consent decree has a high hurdle to clear and the wind in its face. See, e.g., *Reynolds*, 202 F.3d at 1312 ("Long standing precedent evinces a strong public policy against judicial rewriting of consent decrees."). Because Sierra Club has failed to clear that hurdle, the district court should not have modified the decree in the course of interpreting it. It should have granted EPA's motion to dismiss Sierra Club's motion to re-open the decree and to compel action.

### III. CONCLUSION

The district court's order denying EPA's motion to dismiss Sierra Club's motion to re-open and compel action is REVERSED, and this case is REMANDED for further proceedings consistent with this opinion.

#### Parallel Citations

55 ERC 1043, 53 Fed.R.Serv.3d 1135, 32 Env'tl. L. Rep. 20,776, 15 Fla. L. Weekly Fed. C 728

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# California Court Decisions



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# **ATTACHMENT 45**



38 Cal.Rptr.3d 373

Court of Appeal, Fourth District, Division 1, California.

CITY OF ARCADIA et al., Plaintiffs and Appellants,

v.

STATE WATER RESOURCES CONTROL  
BOARD et al., Defendants and Appellants.

No. Do43877. Jan. 26, 2006. Rehearing  
Denied Feb. 17, 2006. Review Denied April 19, 2006.

### Synopsis

**Background:** Cities filed petition for writ of mandate and complaint for declaratory and injunctive relief against state and regional water boards to challenge water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river. The Superior Court, San Diego County, No. GIC803631, Wayne L. Peterson and Linda B. Quinn, JJ., partially granted cities' petition and granted declaratory relief, but did not invalidate trash TMDL on specified grounds. Water boards and cities appealed.

**Holdings:** The Court of Appeal, McConnell, P.J., held that:

- 1 water boards' decision not to conduct an assimilative capacity study before adopting zero trash TMDL was within their expertise rather than trial court's;
- 2 water boards sufficiently complied with statute requiring consideration of economic factors before adopting and approving zero trash TMDL;
- 3 regional water board's environmental checklist with regard to approving zero trash TMDL was deficient for purposes of California Environmental Quality Act (CEQA);
- 4 water boards' adoption and approval of zero trash TMDL did not violate federal standards; and
- 5 adoption and approval of zero trash TMDL did not fail to comply with requisite scientific standards.

Judgment affirmed in part, reversed in part; order affirmed.

### Attorneys and Law Firms

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Richards, Watson & Gershon, and John J. Harris, Los Angeles, for The League of California Cities as Amicus Curiae on behalf of Plaintiffs and Appellants.

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### Opinion

McCONNELL, P.J.

\*1401 This case concerns the serious environmental problem of litter discharged from municipal storm drains into the Los Angeles River, and efforts of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) and the State Water Resources Control Board (State Board)<sup>1</sup> to ameliorate the problem through the adoption and approval of a planning document setting a target of zero trash discharge within a multi-year implementation period.

1 We refer to these entities together as the Water Boards.

The Water Boards appeal a judgment partially granting a petition for writ of mandate brought by the City of Arcadia and 21 other cities (Cities),<sup>2</sup> who \*1402 agree trash pollution must be remedied but oppose the target of zero trash as unattainable and inordinately expensive. The Water Boards challenge the court's findings that an assimilative capacity study is a required element of its action; a cost-benefit analysis and consideration of economic factors are required under state law and are not met; the zero trash target is inapplicable to the Los Angeles River Estuary (Estuary) because it does not appear on the state's list of impaired waters; and, the Water Boards failed to comply with the California Environmental Quality Act (CEQA) by not preparing an Environmental Impact report (EIR) or its functional equivalent.

2 In addition to Arcadia the Cities include Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina and Whittier.

A

### Federal Law

The Water Boards also contend the court erred by granting the Cities declaratory relief on their claim the Trash total maximum daily load (TMDL) does not apply to "nonwaters," meaning areas that do not drain into navigable waters such as the Los Angeles River or tributaries, as the parties agreed during this proceeding that the trash TMDL applies only to navigable waters.

The Cities also appeal, contending the trial court erred by not invalidating the Trash TMDL on the additional grounds the Water Boards failed to provide for deemed compliance with the target of zero trash through certain methods; failed to implement load allocations for nonpoint sources of trash pollution; failed to adhere to the data collection and analysis required by federal and state law; relied on nonexistent, illegal and irrational uses to be made of the Los Angeles River; and, violated the Administrative Procedures Act (APA).

We conclude the Cities' appeal lacks merit. As to the Water Boards' appeal, we conclude the court properly invalidated the planning document on the ground of noncompliance with CEQA, and we affirm the judgment insofar as it is based on that ground. We reverse the judgment to the extent it is based on other grounds. Further, we hold the court erred by granting declaratory relief on the nonwaters issue as there was no controversy when the court ruled.

In 1972 Congress enacted amendments to the Federal Water Pollution Control Act (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816; 33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean Water Act. (*City of Burbank, supra*, 35 Cal.4th at pp. 619-620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Its stated goal is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters" by eliminating the discharge of pollutants into navigable waters. (33 U.S.C. § 1251(a).)

The Clean Water Act places "primary reliance for developing water quality standards on the states." (*Scott v. Hammond* (7th Cir.1984) 741 F.2d 992, 994.) It requires each state to develop such standards and review them at least once every three years for required modifications. (33 U.S.C. § 1313(a), (c)(1).) The standards must include designated uses such as recreation, navigation or the propagation of fish, shellfish and wildlife; water quality criteria sufficient to protect the designated uses; and an antidegradation policy. (40 C.F.R. §§ 131.6, 131.10-131.12 (2003).) The water quality criteria "can be expressed in narrative form or in a numeric form, e.g., specific pollutant concentrations." (*Florida Public Interest Research Group Citizen Lobby, Inc. v. EPA* (11th Cir.2004) 386 F.3d 1070, 1073.) "Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, 'no toxic pollutants in toxic amounts' would be a narrative description." (*City of Burbank, supra*, 35 Cal.4th at p. 622, fn. 4, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

## \*\*379 BACKGROUND INFORMATION

### I

#### Statutory and Regulatory Scheme

The "quality of our nation's waters is governed by a 'complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities.'" \*1403 (*City of Burbank v. State Water Resources Control Bd.* 2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*City of Burbank*).) An overview of applicable law is required to place the facts here in context.

The Clean Water Act focuses on two possible sources of pollution: point sources and nonpoint sources. "Point source" means "any discernable, confined and discrete conveyance" such as a pipe, ditch, channel, tunnel, or conduit. (33 U.S.C. § 1362(14).) The Clean Water Act does not define nonpoint source pollution, but it has been described as "nothing more [than] a [water] pollution problem not involving a discharge from a point source." (*Defenders of Wildlife v. EPA* (10th Cir.2005) 415 F.3d 1121, 1123-1124.)<sup>3</sup>

3 According to the Environmental Protection Act (EPA), nonpoint source pollution is caused by rainfall or snowmelt moving over and through the ground, and includes excess fertilizers, herbicides, and insecticides from agricultural lands and residential areas; oil, grease and toxic chemicals from urban runoff and

energy production; sediment from improperly managed construction sites, crop and forest land, and eroding stream banks; salt from irrigation practices and acid drainage from abandoned mines; and bacteria and nutrients from livestock, pet wastes and faulty septic systems. (<http://www.epa.gov/owow/nps/qa.html>.)

*\*1404* “Congress dealt with the problem of point source pollution using the National Pollution Discharge Elimination System [NPDES] permit process. Under this approach, compliance rests on technology- *\*\*380* based controls that limit the discharge of pollution from any point source into certain waters unless that discharge complies with the [Clean Water] Act's specific requirements.” (*San Francisco BayKeeper v. Whitman* (2002) 297 F.3d 877, 880; 33 U.S.C. § 1311(b)(1)(A).) “Nonpoint sources, because of their very nature, are not regulated under the NPDES [program]. Instead, Congress addressed nonpoint sources of pollution in a separate portion of the [Clean Water] Act which encourages states to develop areawide waste treatment management plans.” (*Pronsolino v. Marcus* (N.D.Cal.2000) 91 F.Supp.2d 1337, 1348, citing 33 U.S.C. § 1288; see also 33 U.S.C. § 1329.)

“When the NPDES system fails to adequately clean up certain rivers, streams or smaller water segments, the [Clean Water] Act requires use of a water-quality based approach. States are required to identify such waters ... [and] rank [them] in order of priority, and based on that ranking, calculate levels of permissible pollution called ‘total maximum daily loads’ or ‘TMDLs.’ ” (*San Francisco BayKeeper v. Whitman, supra*, 297 F.3d at p. 880; 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b) (2003).) “This list of substandard waters is known as the ‘303(d) list’ (section 303 of the Clean Water Act having been codified as [title 33 United States Code] section 1313).” (*City of Arcadia v. EPA* (9th Cir.2005) 411 F.3d 1103, 1105 (*City of Arcadia II*)).

“A TMDL defines the specified maximum amount of a pollutant which can be discharged or ‘loaded’ into the waters at issue from all combined sources.” (*Dioxin/Organochlorine Center v. Clarke* (9th Cir.1995) 57 F.3d 1517, 1520.) “A TMDL must be ‘established at a level necessary to implement the applicable water quality standards....’ [Citation.] A TMDL assigns a *waste load allocation* ... to each point source, which is that portion of the TMDL's total pollutant load, which is allocated to a point source for which an NPDES permit is required. [Citation.] Once a TMDL is developed, effluent limitations in NPDES permits must be consistent with the [waste load allocations] in the TMDL.” (*Communities for a*

*Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1095–1096, 1 Cal.Rptr.3d 76; *Dioxin/Organochlorine Center v. Clarke*, at p. 1520.)<sup>4</sup> A TMDL requires a *\*1405* “margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” (33 U.S.C. § 1313(d)(1)(C).)

4 The Clean Water Act “does not define total maximum daily load. EPA's regulations break it into a ‘waste[ ]load allocation’ for point sources and a ‘load allocation’ for nonpoint sources.” (*Pronsolino v. Marcus, supra*, 91 F.Supp.2d at p. 1344, fn. 8; 40 C.F.R. § 130.2(g)-(i) (2005).)

The EPA may allow states to adopt and administer NPDES permit programs (*Pronsolino v. Marcus, supra*, 91 F.Supp.2d at p. 1347, fn. 10), and it has authorized California to administer such a program. (54 Fed.Reg. 40664 (Oct. 3, 1989).)

B

### State Law

California implements the Clean Water Act through the Porter–Cologne Act (Wat.Code, § 13000 et seq.), which was promulgated in 1969. Under the Porter–Cologne Act, nine regional boards regulate the quality of waters within their regions under the purview of the State Board. (Wat.Code, §§ 13000, 13100, 13200, 13241, 13242.)

*\*\*381* Regional boards must formulate and adopt water quality control plans, commonly called basin plans, which designate the beneficial uses to be protected, water quality objectives and a program to meet the objectives. (Wat.Code, §§ 13050, subd. (j), 13240.) “Water quality objectives’ means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” (*Id.*, § 13050, subd. (h).)

The EPA must approve or disapprove a state's TMDL within 30 days of its submission. (33 U.S.C. § 1313(d)(2).) If the EPA disapproves a state's submission, it must establish its own TMDL within 30 days of the disapproval. (*Ibid.*)

II

### Trash TMDL

The Los Angeles River is a 51-mile flood control channel, largely concrete-lined, which runs through the City of Los Angeles and surrounding municipalities in Los Angeles County and terminates at the Pacific Ocean. In 1990 the Regional Board issued an NPDES storm water permit to the Los Angeles County Department of Public Works as the principal permittee and 84 cities as copermitees, to address various chemical pollutants discharged into the region's water bodies (Municipal NPDES Permit).

\*1406 In 1994 the Regional Board adopted a revised water quality control plan, or basin plan (1994 Basin Plan), which includes narrative water quality objectives. It provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses,” and “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” (Italics omitted.) Beneficial uses of the Los Angeles River and surrounds include wildlife and marine habitat, including habitat for endangered species, and recreational activities such as fishing, walking, hiking, jogging, bicycling, horseback riding, bird watching and photography.

In 1996 and 1998 the Regional Board identified certain reaches of the Los Angeles River on the state's “303(d) list” as being impaired by trash, primarily through storm water runoff in thousands of municipal storm drains.<sup>5</sup> On September 19, 2001, the Regional Board adopted a resolution to amend its 1994 Basin Plan to incorporate a TMDL for trash in the Los Angeles River (Trash TMDL). Despite many objections from affected municipalities, the Trash TMDL sets a numeric target of zero trash as “even a single piece of trash can be detrimental, and no level of trash is acceptable in waters of the state.”<sup>6</sup> “The numeric target is staff's interpretation of the narrative water quality objective [in \*\*382 the 1994 Basin Plan], including an implicit margin of safety.”

5 The Regional Board defines “trash” as “man-made litter” within the meaning of Government Code section 68055.1, subdivision (g), which provides: “‘Litter’ means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other produce packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or

deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.”

6 The Regional Board adopted a Trash TMDL in January 2001, which also had a target of zero trash. It reconsidered the matter on September 19, 2001, “to provide clarifying language and greater flexibility in implementing the [Trash] TMDL.”

The reduction of trash is to be phased over a 14-year period, including an optional two-year baseline monitoring period. In lieu of baseline monitoring, cities may accept a default baseline allocation of “640 gallons of uncompressed trash per square mile per year,” a value based on data the City of Calabasas provided. The Trash TMDL provides for a “review of the current target [of zero trash] ... once a reduction of 50% has been achieved and sustained,” “based on the findings of future studies regarding the threshold levels needed for protecting beneficial uses.”

Under the Trash TMDL, cities may use a variety of compliance methods, including “[e]nd-of-pipe full capture structural controls,” “partial capture \*1407 control systems” and “[i]nstitutional controls.” Cities using a full-capture system meeting certain criteria will be deemed in compliance with the zero target if the systems are properly maintained and maintenance records are available for the Regional Board's inspection.

On December 21, 2001, the Regional Board issued an order under Water Code section 13267 to the County of Los Angeles and copermitees under the Municipal NPDES Permit to submit baseline monitoring plans by February 1, 2002, and to monitor trash in the Los Angeles River between January 2002 and December 2003, with a final report due February 2004.<sup>7</sup> The Regional Board intends to use resulting data to “refine” the default baseline waste load allocations in the Trash TMDL.

7 In *City of Arcadia v. EPA* (N.D.Cal.2003) 265 F.Supp.2d 1142, 1156 (*City of Arcadia I*), the court noted the Los Angeles County Department of Public Works has assumed responsibility for the baseline monitoring burden for all municipalities to which the Trash TMDL applies. The Trash TMDL states that “[e]ach of the permittees and co-permittees are responsible for monitoring land uses within their jurisdiction,” but “monitoring responsibilities may be delegated to a third-party monitoring entity such as the [Department of Public Works].”

In February and July 2002, the State Board and the Office of Administrative Law, respectively, approved the Trash TMDL. In August 2002 the EPA approved it and announced it supersedes an interim TMDL for trash the EPA adopted in March 2002 as a result of a consent decree in litigation between environmental groups and the EPA. (*City of Arcadia I, supra*, 265 F.Supp.2d 1142, 1147.)<sup>8</sup>

8 In *City of Arcadia I, supra*, 265 F.Supp.2d at page 1153, the City of Arcadia and other cities unsuccessfully challenged the EPA's approval of the Trash TMDL on the ground it was unauthorized to do so after adopting its own TMDL. In *City of Arcadia II, supra*, 411 F.3d at pages 1106–1107, the court affirmed the lower court's dismissal of the case.

### III

#### *Procedural History*

The Cities are within the Regional Board's jurisdiction and are permittees under the 2001 Municipal NPDES Permit. In July 2002 the Cities filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the Water Boards. They filed the action in the Los Angeles County Superior Court, but the parties stipulated to its transfer to the San Diego County Superior Court.

The second amended petition alleges numerous grounds on which the Trash TMDL violates the Clean Water Act or the Porter–Cologne Act, and the court adjudicated some issues in favor of each party. It found the \*1408 Water Boards improperly (1) failed to conduct an analysis of the Los Angeles River's assimilative capacity; (2) failed to conduct a cost-benefit analysis or \*\*383 consider economic factors under Water Code sections 13267 and 13241; (3) purported to apply the Trash TMDL to the Estuary even though it is not listed on the state's 1998 303(d) list as impaired; and (4) failed to prepare a required EIR or its functional equivalent under CEQA. The court issued a writ of mandate commanding the Water Boards to set aside the amendment to the 1994 Basin Plan and the Trash TMDL to the extent it was based on the above findings and to not take any further steps to implement it. The court denied the Water Boards' motion to vacate the judgment or grant a new trial, and judgment was entered on December 24, 2003.

The Cities later moved for an order that the prohibitory terms of the writ of mandate and judgment not be stayed on appeal.

(Code Civ. Proc., § 1110b.) The court granted the motion, and further ordered that “to preserve the status quo and prevent injustice to [the Cities], the ... implementation schedule and compliance dates, and all milestones contained in the [Trash TMDL] shall be tolled effective December 24, 2003, through and until a final determination has been rendered on the pending appeal.” The Water Boards appealed that order, and in accordance with the parties' stipulation we consolidated it with the other appeals.

### DISCUSSION

#### *WATER BOARDS' APPEAL*

### I

#### *Standard of Review*

1 2 The Water Boards contend a deferential standard of review applies to our review of their action under Code of Civil Procedure section 1085, and the Cities claim an independent standard applies under Code of Civil Procedure section 1094.5. Code of Civil Procedure section 1094.5, the administrative mandamus statute, applies when “the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal.” (Code Civ. Proc., § 1094.5, subd. (a).) “Acts of an administrative agency that are quasi-legislative in nature, e.g., establishment of regulations to carry out a statutory policy or direction, are not reviewable by administrative mandamus.” (8 Witkin, Cal. Procedure (4th ed. 1997) Extraordinary Writs, § 268, pp. 1067–1068.) Rather, review of a quasi-legislative action is limited to traditional mandamus. (*Id.* at p. 1068.)

3 4 \*1409 The trial court correctly found this proceeding is for traditional mandamus because the Regional Board's adoption and the State Water Board's approval of the Trash TMDL was quasi-legislative. Under Code of Civil Procedure section 1085, “ ‘ ‘review is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support,’ ” ... [and][t]he petitioner has the burden of proof to show that the decision is unreasonable or invalid as a matter of law. [Citation.] We review the record de novo except where the trial court made foundational factual findings, which are binding on appeal if supported

by substantial evidence.” (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 814, 13 Cal.Rptr.3d 259.)

The Cities' reliance on Water Code section 13330 is misplaced. It provides that “[a]ny party aggrieved by a final decision or order of a regional board for which the state board denies review may obtain review of the decision or order of the regional **\*\*384** board in the superior court (*id.*, § 13330, subd. (b), italics added), and “[e]xcept as otherwise provided herein, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section” (*id.*, § 13330, subd. (d)). Given the language italicized above, Water Code section 13330 necessarily applies to an administrative appeal of a quasi-judicial action under Code of Civil Procedure section 1094.5. Here, an appeal to the State Board was unnecessary because the Trash TMDL was ineffective without its approval. (Wat.Code, § 13245.) Indeed, the State Board notified the Cities in March 2001 that it “lacks statutory authority to accept petitions for review of water quality control plan (basin plan) amendments adopted” by regional boards.

**5 6** As to CEQA issues, the parties agree an abuse of discretion standard applies. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1199, 24 Cal.Rptr.3d 543.) Abuse of discretion “is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Resources Code, § 21168.5.) “Our task on appeal is ‘the same as the trial court’s.’ [Citation.] Thus, we conduct our review independent of the trial court’s findings.” (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; fn. 3, 35 Cal.Rptr.2d 470.)

## II

### *Assimilative Capacity Study*

The trial court invalidated the Trash TMDL based in part on the Cities' argument an “assimilative capacity study” is a required element of a TMDL and none was performed here. In its statement of decision, the court **\*1410** explained “[i]t is unreasonable to conclude that the beneficial uses of the [Los Angeles] River could not be maintained with some ‘target’ other than zero. Of course, it is possible the River would not support a greater target, however, without a study it is yet undetermined.”

**7** The Water Boards contend the trial court erred by substituting its own judgment for that of the Water Boards on the issue of whether the adoption of the Trash TMDL should have been preceded by a scientific study of the assimilative capacity of the Los Angeles River. They assert the matter was best suited for their determination rather than the court's and the evidence adequately supports their decision. We agree with the Water Boards.

During the notice and comment period, the Regional Board received numerous complaints that a zero Trash TMDL is infeasible, or at least unwarranted without a scientific assimilative capacity study, or load capacity study, showing a zero limit is the only means of protecting beneficial uses. For instance, the City of Los Angeles worried that “[i]f there's one gum wrapper in the [Los Angeles] River, you can get sued.”

The Regional Board responded to one complaint as follows: “For more typical pollutants, the loading parameters are flow and pollutant concentration. For this pollutant [trash], flow does not serve to dilute the pollutant, but merely serves as a transport mechanism. Therefore, the typical loading calculation does not apply to trash.” The Regional Board took the position that since littering is unlawful, a target of zero trash in the Los Angeles River is the only defensible position. It also explained that its staff “found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life,” and absent such a study it was compelled to adopt a zero target.

**\*\*385** At a Regional Board hearing, Dr. Mark Gold, executive director of Heal the Bay, testified he was unaware of any assimilative capacity study having been performed anywhere on trash. He explained, “Basically it's a physical object. It's trash. It's not something that breaks down and becomes part of the environment in many, many cases. And so honestly, it probably won't reach any sort of threshold of being a scientific study of any value.”

At a State Board hearing Dave Smith, an EPA team leader working with the Regional Board on the trash issue, testified “it would be difficult to design [an assimilative capacity] study and come up with firm answers.” He also explained that both the Regional Board and the State Board “have conducted pretty diligent efforts to find research studies, reports, that look at the affects of trash on the aquatic environment,” and neither they nor the EPA could find any literature to support a target of more than zero trash.

\*1411 Alex Helperin, of the Natural Resources Defense Council, testified at a Regional Board hearing that “[e]ven small quantities [of trash] can maim and kill wildlife, [which] becomes entangled in it or ingest[s] it. [Trash] [c]an obstruct and repel boaters and contract recreators and compromise the aesthetic quality that’s essential to the recognized aspect of non-contact recreation beneficial use for the Los Angeles River.”

The administrative record includes numerous photographs of copious amounts of trash deposited in the Los Angeles River watershed through storm water drains. Dennis Dickerson, the Executive Officer of the Regional Board, testified he took photographs of trash in the Long Beach area shortly after storms, and among them are photographs of “water birds foraging among the trash.” One photograph is of a bird with a cigarette butt in its mouth and another is of a fish trapped in a plastic six-ring can holder.

In arguing an assimilative capacity study is required *before* adopting a TMDL, the Cities rely principally on an EPA document issued January 7, 2000, entitled “Guidance for Developing TMDLs in California” (2000 EPA Guidance). It states: “The TMDL document must describe the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity (loading capacity) of the water[ ]body for the pollutant of concern.... [¶] The loading capacity is the critical quantitative link between the applicable water quality standards (as interpreted through numeric targets) and the TMDL. Thus, a maximum allowable pollutant load must be estimated to address the site-specific nature of the impairment.... [¶] The loading capacity section must discuss the methods and data used to estimate loading capacity. A range of methods can be used....” (Emphasis omitted.)

The 2000 EPA Guidance, however, contains the following disclaimer: “[I]t does not impose legally-binding requirements on the EPA, the State of California, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate and consistent with the requirements of section 303(d) [of the Clean Water Act] and EPA’s regulations.”

Smith, of the EPA, testified at a Regional Board hearing that he wrote the 2000 EPA Guidance and the Trash TMDL “fully complies with the Clean Water Act, its regulations and [the 2000 EPA Guidance].” Smith explained the “TMDL

process specifically contemplates making decisions under uncertainty,” and “[i]t does so by providing that a margin of safety has to be \*\*386 incorporated in every TMDL to account for the uncertainty in the analysis.” Smith said states are required “to move forward to make TMDL decisions \*1412 based on available information and data, not to wait again and again and again for better information to come forward.” Generally, “ ‘considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer.’ ” (*United States v. Mead Corp.* (2001) 533 U.S. 218, 227–228, 121 S.Ct. 2164, 150 L.Ed.2d 292.)

In *Natural Resources Defense Council v. Muszynski* (2d Cir.2001) 268 F.3d 91 (*Muszynski*), the plaintiff asked the court to invalidate a TMDL that the EPA had approved to control phosphorus pollution in drinking water, on the ground a margin of safety of only 10 percent was insufficient to account for uncertainty regarding the effects of phosphorus on water quality. The plaintiff argued “that no scientific or mathematical basis prescribed this percentage as opposed to any other.” (*Id.* at p. 102.) The EPA countered that “because ‘there is no “standard” or guideline for choosing a specific margin of safety, best professional judgment and the available information are used in setting [it].’ ” (*Ibid.*) The *Muszynski* court agreed with the EPA, explaining: “While the [margin of safety] may ... be set with an uncomfortable degree of discretion, requiring that EPA [or authorized regional board] show a rigorous scientific methodology *dictates one course of action as opposed to another and would effectively prevent the agency from acting in situations where action is required in the face of a clear public health or environmental danger but the magnitude of that danger cannot be effectively quantified.* ‘[A]s long as Congress delegates power to an agency to regulate on the borders of the unknown, courts cannot interfere with reasonable interpretations of equivocal evidence.’ [Citation.] ... [S]imply to reject EPA’s efforts to implement the [Clean Water Act] because it must respond to real water quality problems without the guidance of a rigorously precise methodology would essentially nullify the exercise of agency discretion in the form of ‘best professional judgment.’ ” (*Muszynski, supra*, 268 F.3d at pp. 102–103, italics added.)

Further, in *Muszynski, supra*, 268 F.3d 91, 103, the court noted “that approval of the Phase I [margin of safety] was based, in part, on the limited information available. The EPA approval contemplates revision of the [margin of safety] as more information becomes available: ‘As additional reservoir

data and loading data become available, Phase I model assumptions are being reexamined under Phase II.’”

We conclude federal law does not require the Regional Board to conduct an assimilative capacity study before adopting the Trash TMDL. Moreover, the evidence amply shows that because of the nature of trash, including Styrofoam containers and other materials that are undiluted by water, in contrast to chemical pollutants, and the dangers to wildlife of even small amounts of trash, an assimilative capacity study would be difficult to conduct and of little value at the outset. For instance, given the ill effects of trash in a \*1413 water body it is unlikely such a study would determine the Los Angeles River may be loaded with a certain percentage of trash without affecting beneficial uses, particularly since a TMDL must include a margin of safety that “takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” (33 U.S.C. § 1313(d) (1)(C).) In any event, the Trash TMDL requires the Regional Board to reconsider the zero trash target after a 50 percent reduction of trash is achieved, and no party suggests a trash reduction of at least 50 percent is unwarranted or unattainable. Because of \*\*387 this escape hatch, compliance with a zero trash target may never actually be mandated. The Water Boards' decision not to conduct or require an assimilative capacity study is within their expertise, not the court's, and we defer to them on the issue.

### III

#### *Cost-Benefit Analysis and Economic Considerations*

8 The Water Boards next contend the court erred by finding the Trash TMDL is invalid because they violated state law by not conducting a cost-benefit analysis (Wat.Code, § 13267) or considering economic factors (*id.* at § 13241) before adopting and approving it.

#### A

##### *Water Code Section 13267*

A regional board is authorized to investigate the quality of waters in its region (Wat.Code, § 13267, subd. (a)), and when it requires a polluter to furnish “technical or monitoring program reports,” the “burden, including costs, of these reports shall bear a reasonable relationship to the need for the report[s] and the benefits to be obtained from

the reports.” (Wat.Code, § 13267, subd. (b)(1).) The court found the Regional Board adopted the Trash TMDL under the authority of Water Code section 13267, as the document mentions the statute several times and “expressly requires monitoring plans and submission of data to establish baselines for trash discharges.”

The Water Boards persuasively contend Water Code section 13267 is inapplicable, and references to that statute in the Trash TMDL are to contemplated future orders. For instance, the Trash TMDL states “[b]aseline monitoring will be required via [Water Code] Section 13267,” and the submission of baseline monitoring plans will be due “30 days after receipt of the Executive Officer's request as authorized by [Water Code] Section 13267.” \*1414 It also states that “future storm water permits will be modified to incorporate the Waste Load Allocations and to address monitoring and implementation of this [Trash] TMDL.”

Further, the Trash TMDL states “the permittee [under the Municipal NPDES permit] will submit a monitoring plan with the proposed monitoring sites and at least two alternative monitoring locations for each site. The plan must include maps of the drainage and storm drain data for each proposed and alternate monitoring location. The monitoring plan(s) will be submitted to the Regional Board within 30 days after receipt of the Executive Officer's letter requesting such a plan. Such a request is authorized pursuant to [Water Code] [s]ection 13267.... The Regional Board's Executive Officer will have full authority to review the monitoring plan(s), to modify the plan, to select among the alternate monitoring sites, and to approve or disapprove the plan(s).”

Additionally, the Water Boards submit that the December 21, 2001, order the Regional Board issued under Water Code section 13267 to the County of Los Angeles and copermitees under the Municipal NPDES permit regarding baseline monitoring and reporting would have been “useless and unnecessary” had the Trash TMDL itself required monitoring and reporting, and since there was no appeal of the December 21 order to the State Board within 30 days (Wat.Code, § 13320, subd. (a)) the cost-benefit analysis issue is not subject to appellate review. We note that the December 21 order, but not the Trash TMDL, warns that under Water Code section 13268 the “failure to conduct the required monitoring and/or to provide the required information in a timely manner \*\*388 may result in civil liability imposed by the Regional Board in an amount not to exceed ... \$1000.”

9 10 “Our primary aim in construing any law is to determine the legislative intent. [Citation.] In doing so we look first to the words of the statute, giving them their usual and ordinary meaning.” (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501, 247 Cal.Rptr. 362, 754 P.2d 708.) We agree that by its plain terms Water Code section 13267 is inapplicable at the TMDL stage, and thus the court erred by invalidating the Trash TMDL on this ground. The monitoring and reports are required by the December 21, 2001 order, not the Trash TMDL, and the reduction of trash will be implemented by other NPDES permits. “TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans.” (*Pronsolino v. Nastri* (9th Cir.2002) 291 F.3d 1123, 1129.) “A TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source \*1415 controls.” (*City of Arcadia I, supra*, 265 F.Supp.2d at p. 1144.) A “TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and water[ ]bodies.” (*Id.* at p. 1145.)

B

*Water Code Section 13241*

11 Water Code section 13241 provides that “[e]ach regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance.” In establishing water quality objectives a regional board is required to consider several factors, including “[e]conomic considerations.” (Wat.Code, § 13241, subd. (d).)

The Water Boards contend Water Code section 13241 is inapplicable because the Trash TMDL does not establish water quality objectives, but merely implements, under Water Code section 13242, the existing narrative water quality objectives in the 1994 Basin Plan. It provides that waters shall not contain floating materials, including solids, or suspended or settleable materials in concentrations that adversely affect beneficial uses. The Cities counter that the Trash TMDL effectively establishes new water quality objectives, because when the 1994 Basin Plan was adopted a TMDL for trash was not contemplated and thus economic considerations of

such a TMDL were not considered. Further, the Trash TMDL imposes for the first time a numeric limit for trash and significantly increases the costs of compliance.

We need not, however, decide whether the Trash TMDL adopts new or revised water quality objectives within the meaning of Water Code section 13241, because even if the statute is applicable, the Water Boards sufficiently complied with it.<sup>9</sup> Water Code section 13241, subdivision (d) does not define “economic considerations” or specify a particular manner of compliance, and thus, as the Water Boards assert, the matter is within a regional \*\*389 board’s discretion. It appears there is no reported opinion analyzing the “economic considerations” phrase of this statute. In *City of Burbank, supra*, 35 Cal.4th at page 625, 26 Cal.Rptr.3d 304, 108 P.3d 862, the court, without discussion, concluded that in adopting Water Code section 13241 the Legislature intended “that a regional board consider the *cost of compliance* [with numeric pollutant restrictions] when setting effluent limitations in a wastewater discharge permit.” (Italics added.)

9 For the same reason, we are not required to reach the Water Boards’ assertion that to any extent the California Supreme Court’s recent opinion in *City of Burbank, supra*, 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862, applies to a TMDL, it precludes them from considering economic factors in establishing the Trash TMDL.

\*1416 The Trash TMDL discusses the costs of gathering and disposing of trash at the mouth of the Los Angeles River watershed during the rainy seasons between 1995 and 1999. It also states: “Cleaning up the river, its tributaries and the beaches is a costly endeavor. The Los Angeles County Department of Public Works contracts out the cleaning of over 75,000 catchments (catch basins) for a total cost of slightly over \$1 million per year, billed to 42 municipalities.... [¶] Over 4,000 tons of trash are collected from Los Angeles County beaches annually, at a cost of \$3.6 million to Santa Monica Bay communities in fiscal years 1988–1989 alone. In 1994 the annual cost to clean the 31 miles of beaches (19 beaches) along Los Angeles County was \$4,157,388.”

The Trash TMDL also discusses the costs of various types of compliance measures, and explains the “cost of implementing this TMDL will range widely, depending on the method that the Permittees select to meet the Waste Load Allocations. Arguably, enforcement of existing litter ordinances could be used to achieve the final Waste Load Allocations at minimal or no additional cost. The most costly approach in the short-term is the installation of full-capture structural treatment

devices on all discharges into the river. However, in the long term this approach would result in lower labor costs and may be less expensive than some other approaches.”

The Trash TMDL defines catch basin inserts as “the least expensive structural treatment device in the short term,” at a cost of approximately \$800 each. It cautions, however, that because catch basin inserts “are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping.” The Trash TMDL estimates that if the approximately 150,000 catch basins throughout the watershed were retrofitted with inserts, capital costs would be \$120 million over 10 years, maintenance and operation costs would be \$330 million over 10 years, and maintenance and operation costs after full implementation would be \$60 million per year.

Further, the Trash TMDL discusses the full capture vortex separation system (VSS), which “diverts the incoming flow of storm[ ]water and pollutants into a pollutant separation and containment chamber. Solids within the separation chamber are kept in continuous motion, and are prevented from blocking the screen so that water can pass through the screen and flow downstream. This is a permanent device that can be retrofitted for oil separation as well. Studies have shown that VSS [units] remove virtually all of the trash contained in treated water. The cost of installing a VSS is assumed to be high, so limited funds will place a cap on the number of units which can be installed during any single fiscal year.”

\*1417 The Trash TMDL estimates the retrofitting of the entire Los Angeles River watershed with low capacity VSS units would be \$945 million in capital costs and \$813 million in operation and maintenance costs over 10 years, and \$148 million in annual operation and maintenance costs after full implementation. The installation of large capacity VSS units would run \*\*390 approximately \$332 million in capital costs and \$41 million in operation and maintenance costs over 10 years, and \$7.4 million per year in operation and maintenance costs after full implementation. The yearly cost of servicing one VSS unit is estimated to be \$2,000. The Trash TMDL explains that “outfitting a large drainage with a number of large VSS [units] may be less costly than using a larger number of small VSS [units]. Maintenance costs decrease dramatically as the size of the system increases.” The Trash TMDL also contains a cost comparison of catch basin inserts and low capacity and large capacity VSS units.

Additionally, the Trash TMDL estimates the costs for end-of-pipe nets at between \$10,000 and \$80,000, depending on

the length of the pipe network. It explains that “‘[r]elease nets’ are a relatively economical way to monitor trash loads from municipal drainage systems. However, in general they can only be used to monitor or intercept trash at the end of a pipe and are considered to be partial capture systems, as nets are usually sized at a 1/2# to 1# mesh.”

The Cities assert that “a ‘consideration’ of economics should have included a discussion of the economic *impacts* associated with the vortex separation systems. Alternatively, the Water Boards could have analyzed other methods of compliance, such as a series of [best management practices], including increased street sweeping, catch basin inserts, release nets, or some other combination of [best management practices] that should have been evaluated for purposes of allowing the municipalities to be in deemed compliance with the zero [Trash] TMDL.” (Italics added.) As stated, though, the Trash TMDL does include the estimated costs of several types of compliance methods and a cost comparison of capital costs and costs of operation and maintenance. The Cities cite no authority for the proposition that a consideration of economic factors under Water Code section 13241 must include an analysis of every conceivable compliance method or combinations thereof or the fiscal impacts on permittees.

Given the lack of any definition for “economic considerations” as used in Water Code section 13241, and our deference to the Water Boards’ expertise, we conclude the Trash TMDL’s discussion of compliance costs is adequate \*1418 and does not fulfill the arbitrary or capricious standard. Accordingly, the Trash TMDL is not invalid on this ground. 10

10 The Cities also assert that under federal law an economic analysis is a prerequisite to the adoption of a TMDL. They rely on 40 Code of Federal Regulations, part 130.6(c)(4), but it pertains to nonpoint sources of pollution that need not be addressed in a TMDL, as discussed further below. The portion of the regulation covering TMDLs does not mention economics (*id.*, § 130.6(c)(1)). Parts 130.6(5) and (6) of 40 Code of Federal Regulations discuss economics, but in the context of the area wide planning process under section 208(b)(2) of the Clean Water Act (33 U.S.C. § 1288(b)(2)), which is inapplicable here. According to the Water Boards, the Southern California Association of Governments is the designated area-wide planning agency.

IV

### Los Angeles River Estuary

12 Additionally, the Water Boards challenge the court's finding they abused their discretion by attempting to include the Estuary in the Trash TMDL, as the Estuary is not on the state's 1998 303(d) list of impaired waters. The Water Boards contend a water body's formal listing on the state's 303(d) list is not a prerequisite to formulating a TMDL for it. Rather, an agency may simultaneously submit to the EPA the *identification* of a <sup>\*\*391</sup> water body as impaired and a corresponding TMDL.

The Clean Water Act provides: "Each state shall identify those waters within its boundaries for which the effluent limitations ... are not stringent enough to implement any water quality standards applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters." (33 U.S.C. § 1313(d)(1)(A).) Further, it provides that "[e]ach state shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load...." (*Id.* at § 1313(d)(1)(C).) These provisions do not prohibit a regional board from identifying a water body and establishing a TMDL for it at essentially the same time, or indicate that formal designation on a state's 303(d) list is a prerequisite to a TMDL.

Further, 33 United States Code section 1313(d)(2) provides: "Each State shall submit to the [EPA] Administrator from time to time, ... for his [or her] approval the waters identified *and* the loads established under paragraphs (1)(A) [and] ... (1) (C) ... of this subsection. The [EPA] Administrator shall either approve or disapprove such identification *and* load not later than thirty days after the date of submission." (Italics added.) This clarifies that a regional board may simultaneously identify an impaired water body and establish a TMDL for it.

<sup>\*1419</sup> In *San Francisco BayKeeper v. Whitman*, *supra*, 297 F.3d 877, 884–885, the court held an agency has no *duty* to submit a TMDL at the same time it identifies an impaired water body, noting the development of a TMDL "to correct the pollution is obviously a more intensive and time-consuming project than simply identifying the polluted waters, as the EPA has indicated." (*Id.* at p. 885.) The Water Boards assert the case does not deprive an agency from exercising its *discretion* to simultaneously submit to the EPA the identification of an impaired water body and a TMDL for it. Given the plain language of 33 United States Code section

1313(d)(2), we agree. Moreover, "[s]tates remain at the front line in combating pollution" (*City of Arcadia II*, *supra*, 411 F.3d at p. 1106), and "[s]o long as the [s]tate does not attempt to adopt more *lenient* pollution control measures than those already in place under the [Clean Water] Act, [it] does not prohibit state action." (*Id.* at p. 1107.)

13 Alternatively, the Cities complain the Regional Board did not sufficiently identify the Estuary as being impaired and included in the Trash TMDL until after its adoption and approval by the State Board and Office of Administrative Law and the completion of all public hearings. On July 29, 2002, the Regional Board sent the EPA a memorandum "to provide clarification on specific aspects" of the Trash TMDL. It stated that a "TMDL was established for the reaches of the Los Angeles River, tributaries and lakes listed on the [state's] 1998 303(d) list," and "[i]n addition, a TMDL was established for the Los Angeles River [E]stuary in the City of Long Beach. As described on page 12, paragraph 2 of the [staff] report, staff found that the impairment in the [E]stuary due to trash is 'even more acute in Long Beach where debris flushed down by the upper reaches collects.' [¶] The impairment in the [E]stuary was well documented during TMDL development," and it "would have been included in the 1998 303(d) list if the attached photographic evidence had been available at the time of the listing."

The Trash TMDL lists the reaches of the Los Angeles River "that are impaired by trash, and listed on the [state's] 303(d) <sup>\*\*392</sup> list." The list does not include the Estuary. The Water Boards assert that even so, it was always obvious the Estuary is impaired and included in the Trash TMDL. The Trash TMDL states it is "for the Los Angeles River Watershed," and "watershed" is defined as "a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water." (Merriam-Webster's Collegiate Dict. (10th ed.1996) p. 1336.) "Estuary" is defined as "a water passage where the tide meets a river current," especially "an arm of the sea at the lower end of a river." (*Id.* at p. 397.)

The Trash TMDL describes the watershed as beginning at the "western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach," and it also states the watershed continues from "Willow Street all <sup>\*1420</sup> the way through the [E]stuary." An amici curiae brief by Santa Monica BayKeeper, Inc., Heal the Bay, Inc., and Natural Resources Defense Council, Inc. (collectively BayKeeper), asserts Queensway Bay is the site of the Estuary, and no party has challenged the assertion. Further, the Trash TMDL lists

and discusses the beneficial uses of the Estuary, including habitat for many species of birds, some endangered, and fish. It also states beneficial uses "are impaired by large accumulations of suspended and settled debris throughout the river system," and in particular "estuarine habitat" is impaired. Further, the administrative record contains several pictures of trash deposited in the Estuary during high flows, depicting "the variety of ways through which trash ... becomes an integral part of wildlife, affecting all plant and animal communities in the process."

The Trash TMDL's identification of the Estuary as impaired could have been clearer, but we conclude it was sufficient to put all affected parties on notice, and does not meet the arbitrary-and-capricious standard. Further, although the identification of impaired water bodies requires a priority ranking (33 U.S.C. § 1313(d)(2)), and the Trash TMDL does not prioritize the Estuary's need for a TMDL, we agree with amici BayKeeper that any error in the Water Boards' procedure was not prejudicial because the Trash TMDL shows amelioration of the trash problem in the entire Los Angeles River watershed is highly important, and it is unlikely the Water Boards would single out the Estuary for lower priority or that inclusion of the Estuary would disturb their existing priorities.

## V

### CEQA

14 The Water Boards challenge the sufficiency of the evidence to support the trial court's finding that the amendment adding the Trash TMDL to the 1994 Basin Plan does not comport with CEQA. The court found the Regional Board's environmental checklist was deficient and there is sufficient evidence of a fair argument that the project may have a significant effect on the environment, thus necessitating an EIR or its functional equivalent. We conclude the court was correct.

## A

### General Legal Principles

"CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the \*1421 imposition of feasible mitigation measures or through the selection of feasible

alternatives." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233, 32 Cal.Rptr.2d 19, 876 P.2d 505.) CEQA mandates that public agencies refrain from approving projects with significant environmental effects if \*\*393 there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

15 16 17 CEQA is implemented through initial studies, negative declarations and EIR's. (*Sierra Club v. State Bd. of Forestry, supra*, 7 Cal.4th at p. 1229, 32 Cal.Rptr.2d 19, 876 P.2d 505.) "CEQA requires a governmental agency [to] prepare an [EIR] whenever it considers approval of a proposed project that 'may have a significant effect on the environment.'" (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, supra*, 29 Cal.App.4th at p. 1601, 35 Cal.Rptr.2d 470.) "If there is no substantial evidence a project 'may have a significant effect on the environment' or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. [Citations.] However, the Supreme Court has recognized that CEQA requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.' [Citations.] Thus, if substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified." (*Id.* at pp. 1601-1602, 35 Cal.Rptr.2d 470.)

"'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (Cal.Code Regs., tit. 14, § 15382.)

## B

### Certified Regulatory Program

18 "State regulatory programs that meet certain environmental standards and are certified by the Secretary of the California Resources Agency are exempt from CEQA's requirements for preparation of EIRs, negative declarations, and initial studies. [Citations.] Environmental review documents prepared by certified programs may be used instead of environmental documents that CEQA would otherwise require. [Citations.] Certified regulatory \*1422 programs remain subject, however, to other CEQA requirements." (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2005) § 21.2, p. 1076; Pub. Resources Code, § 21080.5.) Documents prepared by certified programs are considered the "functional equivalent" of documents CEQA would otherwise require. (*Mountain Lion Foundation v. Fish & Game Com.*, *supra*, 16 Cal.4th at p. 113, 65 Cal.Rptr.2d 580, 939 P.2d 1280; 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 21.10, p. 1086 ["the documentation required of a certified program essentially duplicates" that required for an EIR or negative declaration].)

An "agency seeking certification must adopt regulations requiring that final action on the proposed activity include written responses to significant environmental points raised during the decisionmaking process. [Citation.] The agency must also implement guidelines for evaluating the proposed activity consistently with the \*\*394 environmental protection purposes of the regulatory program. [Citation.] The document generated pursuant to the agency's regulatory program must include alternatives to the proposed project and mitigation measures to minimize significant adverse environmental effects [citation], and be made available for review by other public agencies and the public [citation]." (*Mountain Lion Foundation v. Fish & Game Com.*, *supra*, 16 Cal.4th at p. 127, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

19 The guidelines for implementation of CEQA (Cal.Code Regs., tit. 14, § 15000 et seq.) do not directly apply to a certified regulatory program's environmental document. (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 21.10, p. 1086.) However, "[w]hen conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA." (*Ibid.*)

In a certified program, an environmental document used as a substitute for an EIR must include "[a]lternatives to the activity and mitigation measures to avoid or reduce

any significant or potentially significant effects that the project might have on the environment," and a document used as a substitute negative declaration must include a "statement that the agency's review of the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion." (Cal.Code Regs., tit. 14, § 15252, subd. (a).)

The basin planning process of the State Board and regional boards is a certified regulatory program (Cal.Code Regs., tit. 14, § 15251, subd. (g)), and \*1423 the regulations implementing the program appear in the California Code of Regulations, title 23, sections 3775 to 3782. A regional board's submission of a plan for State Board approval must be accompanied by a brief description of the proposed activity, a completed environmental checklist prescribed by the State Board, and a written report addressing reasonable alternatives to the proposed activity and mitigation measures to minimize any significant adverse environmental impacts. (*Id.*, § 3777, subd. (a).)

## C

### *Environmental Documentation*

The Regional Board's environmental documentation in lieu of documents CEQA ordinarily requires consists of a checklist and the Trash TMDL. The checklist asked a series of questions regarding whether implementation of the Trash TMDL would cause environmental impacts, to which the Regional Board responded "yes," "maybe" or "no." "Yes" or "maybe" answers required an explanation. The checklist described beneficial impacts pertaining to plant and animal life, water quality and recreation. The checklist denied the project would have any environmental impact on land, including soil displacement, air, noise, natural resources or traffic, and thus it included no discussion of those factors. The checklist concluded "the proposed Basin Plan amendment [adding the Trash TMDL] could not have a significant effect on the environment."

The Regional Board obviously intended its documentation to be the functional equivalent of a negative declaration. Nonetheless, on appeal the Water Boards claim for the first time that the Regional \*\*395 Board's environmental

review process is tiered, and its documentation meets the requirements of a first tier EIR under Public Resources Code section 21159. They assert the court's criticism of the checklist is baseless "because it ignores the concept of tiered environmental review and specific provisions for pollution control performance standards."

" 'Tiering' refers 'to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately *site-specific* EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is: [¶] ... [f]rom a general plan, policy, or program EIR to a ... site-specific EIR.' " (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 285, 126 Cal.Rptr.2d 615.) "[C]ourts have allowed first tier EIR's to defer detailed analysis to subsequent project EIR's." (*Friends of \*1424 Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 532, 98 Cal.Rptr.2d 334.)

Public Resources Code section 21159, which allows expedited environmental review for mandated projects, provides that an agency "shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance.... The environmental analysis shall, at a minimum, include, all of the following: [¶] (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance. [¶] (2) An analysis of reasonably foreseeable mitigation measures. [¶] (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation." (Pub. Resources Code, § 21159, subd. (a).) The Water Boards submit they complied with the statute, and the "tier two environmental review is the responsibility of the local agencies who will determine how they intend to comply with the performance standards" of the Trash TMDL.

Issues not presented to the trial court are ordinarily waived on appeal. (*Royster v. Montanez* (1982) 134 Cal.App.3d 362, 367, 184 Cal.Rptr. 560.) In any event, we conclude the checklist and Trash TMDL are insufficient as either the functional equivalent of a negative declaration<sup>11</sup> or a tiered EIR. Moreover, an EIR is required since the Trash TMDL itself presents substantial evidence of a fair argument that significant environmental impacts may occur. "Because a negative declaration ends environmental review, the fair

argument test provides a low threshold for requiring an EIR." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 399, 10 Cal.Rptr.3d 451.)

11 A negative declaration may not be based on a "bare bones" approach in a checklist. (*Sharled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793, 797, fn. 2, 88 Cal.Rptr.2d 455, and cases cited therein.) A "certified program's statement of no significant impact must be supported by documentation *showing* the potential environmental impacts that the agency examined in reaching its conclusions," and "[t]his documentation would be similar to an initial study." (2 *Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, supra*, § 21.11, pp. 1088-1089, italics added.) Because we conclude an EIR is required, we need not expand on how the checklist and Trash TMDL fail to satisfy negative declaration requirements or their functional equivalent.

**\*\*396** The Trash TMDL discusses various compliance methods or combinations thereof that permittees may employ, including the installation of catch basin inserts and VSS units. The Trash TMDL estimates that if the catch basin method is used exclusively, approximately 150,000 catch basins throughout the watershed would require retrofitting at a cost of approximately \$120 million. It explains, however, that the "ideal way to capture trash deposited into a storm[ ] drain system would be to install a VSS unit. This device diverts **\*1425** the incoming flow of storm[ ] water and pollutants into a pollution separation and containment chamber." Only VSS units or similar full-capture devices will be deemed fully compliant with the zero trash target. The Trash TMDL estimates the cost of installing low capacity VSS units would be \$945 million and the cost of installing large capacity VSS units would be \$332 million.

The checklist and the Trash TMDL, however, ignore the temporary impacts of the construction of these pollution controls, which logically may result in soils disruptions and displacements, an increase in noise levels and changes in traffic circulation. Further, the Trash TMDL explains that since catch basin inserts "are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping." The checklist and the Trash TMDL also ignore the effects of increased street sweeping on air quality, and possible impacts caused by maintenance of catch basin inserts, VSS units and other compliance methods.

Indeed, the County of Los Angeles wrote to the Regional Board that "cleanout of structural controls, such as [catch basin inserts] and VSSs, naturally will increase existing noise levels due to vehicle and vacuuming noises." The City of Los Angeles advised that the Trash TMDL would result in increased maintenance vehicle traffic and "substantial air emissions or deterioration of ambient air quality," increased noise, increased use of natural resources and adverse impacts on existing transportation systems.

The Water Boards contend those comments are merely "unsubstantiated opinion and speculation by biased project opponents." Substantial evidence is not "[a]rgument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly inaccurate or erroneous." (Pub. Resources Code, § 21082.2, subd. (c).) However, letters and testimony from government officials with personal knowledge of the anticipated effects of a project on their communities "certainly supports a fair argument that the project may have a significant environmental impact." (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 542, 230 Cal.Rptr. 867.) Again, however, the Trash TMDL itself satisfies the fair argument criterion.

Even if the Water Boards had relied on Public Resources Code section 21159 at the trial court, the environmental documents do not meet its minimum requirements. Neither the checklist nor the Trash TMDL includes an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures, and in fact the Water Boards develop no argument as to how they ostensibly complied with the statute. While we agree a tiered environmental analysis is appropriate here, the Regional Board did not prepare a first-level EIR or its functional equivalent. We reject the Water Boards' argument the Regional Board did all it \*1426 could because there "is no way to examine project level impacts that are entirely dependent upon the speculative possibilities of how subsequent \*\*397 decision[ ]makers may choose to comply" with the Trash TMDL. Tier two project-specific EIR's would be more detailed under Public Resources Code section 21159.2, but the Trash TMDL sets forth various compliance methods, the general impacts of which are reasonably foreseeable but not discussed.

As a matter of policy, in CEQA cases a public agency must explain the reasons for its actions to afford the public and other agencies a meaningful opportunity to participate in the environmental review process, and to hold it accountable

for its actions. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles, supra*, 126 Cal.App.4th 1180, 1198, 24 Cal.Rptr.3d 543.) The Water Boards' CEQA documentation is inadequate, and remand is necessary for the preparation of an EIR or tiered EIR, or functional equivalent, as substantial evidence raises a fair argument the Trash TMDL may have significant impacts on the environment. The court correctly invalidated the Trash TMDL on CEQA grounds.<sup>12</sup>

- 12 The Water Boards also contend the trial court erred by staying the implementation schedule for the Trash TMDL pending this appeal. The matter is moot given our holding on the CEQA issue.

## VI

### Declaratory Relief

20 In its statement of decision, the trial court explained the Cities "contend [the Water Boards] improperly attempted to control the watershed including the 'entire 584 square miles' of incorporated and unincorporated areas of the County [of Los Angeles], and nowhere in the [Trash] TMDL or the [1994] Basin Plan Amendment did [they] assert that the numeric Waste Load Allocations ... are to apply to the entire 584 square miles of watershed." The court, however, explained the Water Boards "concede the [Trash] TMDL only applies to navigable waters by asserting [they] didn't intend to control non-navigable waters," and it found "the parties are in agreement that the trash load allocations apply to the portion of the subject watershed as defined on pages 3575 and 3584 of the Administrative Record [pages of the Trash TMDL] and the Waste Load Allocations do not apply to non-waters."

The statement of decision nonetheless states the court granted the Cities' "relief as requested" as to "regulation of non-waters." In their third cause of action, the Cities sought a judicial declaration that the amendment to the 1994 Basin Plan and the Trash TMDL are invalid because they violate federal and state law. The judgment declared unenforceable a July 29, 2002, letter from \*1427 the Regional Board to the EPA that stated the "Waste Load Allocations apply to the entire urbanized portion of the watershed.... The urbanized portion of the watershed was calculated to encompass 584 square miles of the total watershed."

21 "The fundamental basis of declaratory relief is the existence of an *actual, present controversy*." (5 Witkin, *Cal. Procedure, supra*, Pleadings, § 817, p. 273.) Because the parties agreed during this proceeding there was no

present controversy, the judgment should not have included declaratory relief on the nonwaters issue.

### CITIES' APPEAL

#### I

#### Concepts of "Maximum Extent Practicable" and "Best Management Practices"

22 The Cities contend a zero target for trash in the Los Angeles River is unattainable, \*\*398 and thus the Trash TMDL violates the law by not deeming compliance through the federal "maximum extent practicable" and "best management practices" standards, which are less stringent than the numeric target of zero. The Cities rely on 33 United States Code section 1342(p)(3)(B)(iii), under which an NPDES permit for a municipal discharge into a storm drain "shall require controls to reduce the discharge of pollutants to the *maximum extent practicable*, including management practices, control techniques and system, design and engineering methods, and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." (Italics added.)<sup>13</sup> "Best management practices" are generally pollution control measures set forth in NPDES permits. (*BIA, supra*, 124 Cal.App.4th at p. 877, 22 Cal.Rptr.3d 128.)

13 The Clean Water Act and applicable regulations do not define the maximum extent practicable standard. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 889, 22 Cal.Rptr.3d 128 (*BIA*)). In *BIA*, the NPDES permit at issue defined the standard as "a highly flexible concept that depends on balancing numerous factors." (*Ibid.*)

The Cities assert that "as the [r]ecord reflects, compliance with the 'zero' [Trash] TMDL ... is impossible," and the Water Boards "themselves recognize that 'zero' is an impossible standard to meet." Contrary to the Cities' suggestion, the Water Boards made no implied finding or concession of impossibility. Rather, the record shows that members of the Water Boards questioned whether a zero trash target is actually attainable. A zero limit on \*1428 trash within the meaning of the Trash TMDL is attainable because there are methods of deemed compliance with the limit. The record does not show the limit is unattainable, and the burden was on the Cities as opponents of the Trash TMDL

to establish impossibility. Further, the impossibility issue is not germane at this juncture, as the matter is at the planning stage with an interim goal of a 50 percent reduction in trash, a goal everyone agrees is necessary and achievable.

In any event, the trial court found 33 United States Code section 1342(p)(3)(B)(iii) inapplicable to the adoption of a TMDL. The court also found state and federal laws authorize regional boards to "use water quality, and not be limited to practicability as the guiding principle for developing limits [in a TMDL] on pollution." Further, the court noted the Cities presented no authority for their proposition the Regional Board is required to adopt a storm water TMDL that is achievable.

We agree with the court's assessment. The statute applicable to establishing a TMDL, 33 United States Code section 1313(d)(1)(C), does not suggest that practicality is a consideration. To the contrary, a regional board is required to establish a TMDL "at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety." (33 U.S.C. § 1313(d)(1)(C).) The NPDES permit provision, 33 United States Code 1342(p)(3)(B), is inapplicable because, again, we are only considering the propriety of the Trash TMDL, a precursor to NPDES permits implementing it. Under the Trash TMDL, the numeric target will be reconsidered after several years when a reduction in trash of 50 percent is achieved, and thus it is presently unknown whether compliance with a trash limit of zero will ever actually be mandated.

23 To bolster their position the Cities rely on \*\*399 33 United States Code section 1329(a)(1)(C)). It provides, however, that in a state's assessment report for a *nonpoint* source management program, the state must "describe[ ] the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source." (*Ibid.*) In *BIA, supra*, 124 Cal.App.4th at page 887, 22 Cal.Rptr.3d 128, we rejected the argument the statute shows Congress intended to apply a maximum extent practicable standard to point source discharges as well as nonpoint discharges. The Cities say they disagree with *BIA*, but they develop no argument revealing any flaw in the opinion. "[P]arties are required \*1429 to include argument and citation to authority in their briefs, and the absence of these necessary elements

allows this court to treat appellant's ... issue as waived." (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448, 37 Cal.Rptr.2d 126.)

The Cities' reliance on *Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159, for the proposition that municipalities, unlike private companies, may not be required to strictly comply with numeric discharge limits is likewise misplaced. *Defenders of Wildlife v. Browner* involves a challenge to an NPDES permit, not the adoption of a TMDL. Further, the court there rejected the argument that "the EPA [or authorized regional or state board] may not, under the [Clean Water Act], require strict compliance with state water-quality standards, through numerical limits or otherwise." (*Id.* at p. 1166.) The court explained: "Although Congress did not require municipal storm-sewer discharges to comply strictly with [numerical effluent limitations], [section] 1342(p)(3)(B)(iii) [of United States Code, title 33] states that '[p]ermits for discharges from municipal storm sewers ... shall require ... such other provisions as the [EPA] Administrator ... determines appropriate for the control of such pollutants.' (Emphasis added.) That provision gives the EPA discretion to determine what pollution controls are appropriate.... [¶] Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards.... Under 33 United States Code section 1342(p)(3)(B)(iii), the EPA's choice to include either management practices or numeric limitations in the permits was within its discretion." (*Id.* at pp. 1166–1167.)

In *BIA*, this court similarly held that 33 United States Code section 1342(p)(3)(B)(iii) does not divest a regional board's discretion to impose an NPDES permit condition requiring compliance with state water quality standards more stringent than the maximum-extent-practicable standard. (*BIA, supra*, 124 Cal.App.4th at pp. 871, 882–885, 22 Cal.Rptr.3d 128; see also *Wat.Code*, § 13377 [waste discharge requirements shall meet federal standards and may also include "more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance"].) Thus, even if the analysis in *Defenders of Wildlife v. Browner* or *BIA* arguably has any application to a TMDL, the opinions do not help the Cities.

Additionally, the Cities' reliance on a November 2002 EPA memorandum on establishing TMDLs and issuing NPDES \*\*400 permits is misplaced, as it postdates the

Regional Board's adoption of the Trash TMDL and its approval by the State Board and the EPA. Further, the memorandum states it \*1430 is not binding, and "indeed, there may be other approaches that would be appropriate in particular situations. When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by applicable requirements of the [Clean Water Act] and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation."

## II

### *Nonpoint Sources of Pollution*

24 The Cities contend the court should have invalidated the Trash TMDL on additional grounds, including the Water Boards' failure to identify load allocations and implementation measures for nonpoint sources of trash discharge. The Cities assert the Water Boards are required to adopt implementation measures "for the homeless and aerial sources of trash, [and] also for the other nonpoint sources of trash consisting of State and federal facilities, and other facilities not yet subject to NPDES Permits." The Cities submit that the Clean Water Act does not allow the Water Boards "to effectively impose the burden of the load allocation from all nonpoint sources solely on municipalities."

The Cities further claim the Water Boards acted arbitrarily and capriciously by imposing a trash target of zero on municipalities, but imposing a "de minimus" requirement on non-point source discharges." The Cities cite the July 29, 2002, letter from the Regional Board to the EPA, clarifying that it identified nonpoint sources of trash pollution "as wind blown trash and direct deposit of trash into the water," but "as the non-point sources were determined to be de-minimus, we did not believe it necessary to outline a reduction schedule for non-point sources." Contrary to the Cities' position, the Regional Board did not adopt a "de minimus" load allocation for nonpoint sources. Rather, as the trial court found, the Regional Board found the trash pollution from nonpoint sources is de minimus compared to trash pollution from point sources. The TMDL states the "major source of trash in the [Los Angeles River] results from litter, which is intentionally or accidentally discarded in the watershed drainage areas."

In arguing the Trash TMDL is required to include a specific load allocation for nonpoint sources of pollution, the Cities rely on the 2000 EPA Guidance, which provides: "Load allocations for nonpoint sources *may* be expressed as specific allocations for specific discharges or as 'gross allotments' to nonpoint source discharger categories. Separate nonpoint source allocations *should* be established for background loadings. Allocations may be based on a variety \*1431 of technical, economic, and political factors. The methodology used to set allocations *should* be discussed in detail." (Italics added.)

The 2000 EPA Guidance, however, states it does not impose legally binding requirements. Further, the load allocation for nonpoint sources is implicitly zero for trash. Federal regulations define a TMDL as the sum of waste load allocations for point sources, load allocations for nonpoint sources and natural backgrounds. (40 C.F.R. § 130.2(i) (2003).) Since "a TMDL defines the specified maximum amount of a pollutant which can be discharged into a body of water from all sources combined" \*\*401 (*American Wildlands v. Browner* (10th Cir.2001) 260 F.3d 1192, 1194), and the Trash TMDL specifies a zero numeric target for trash in Los Angeles River, load allocations are necessarily zero as well as waste load allocations.

Additionally, the Cities cite no authority for the proposition the Water Boards are required to identify an implementation program for nonpoint pollution sources. Again, "[w]here a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, 86 Cal.Rptr. 906, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3, 98 Cal.Rptr. 217, 490 P.2d 537; *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1693, fn. 2, 44 Cal.Rptr.2d 575.)

In any event, although the Clean Water Act focuses on both point and nonpoint sources of pollution, it is settled that the measure "does not require states to take regulatory action to limit the amount of non-point water pollution introduced into its waterways. While the [Clean Water Act] requires states to designate water standards and identify bodies of water that fail to meet these standards, 'nothing in the [Clean Water Act] demands that a state adopt a regulatory system for nonpoint sources.'" (Defenders of Wildlife v. EPA, *supra*, 415 F.3d at pp. 1124-1125, citing *American Wildlands v. Browner, supra*, 260 F.3d 1192, 1197 ["In the [Clean Water] Act, Congress has chosen not to give the EPA the authority

to regulate nonpoint source pollution"]; *Appalachian Power Co. v. Train* (4th Cir.1976) 545 F.2d 1351, 1373 ["Congress consciously distinguished between point source and nonpoint source discharges, giving EPA authority under the [Clean Water] Act to regulate only the former"]; *City of Arcadia I, supra*, 265 F.Supp.2d at p. 1145 ["For nonpoint sources, limitations on loadings are not subject to a federal nonpoint source permitting program, and therefore any nonpoint source reductions can be enforced ... only to the extent that a state institutes such reductions as regulatory requirements pursuant to state \*1432 authority"].) "Nonpoint sources, because of their very nature, are not regulated under the NPDES [program]. Instead, Congress addressed nonpoint sources of pollution in a separate portion of the [Clean Water] Act which encourages states to develop areawide waste treatment management plans." (*Pronsolino v. Marcus, supra*, 91 F.Supp.2d at p. 1348, citing 33 U.S.C. § 1288; see also 33 U.S.C. § 1329.)

We conclude the court correctly ruled on this issue.

### III

#### *Uses To Be Made of Watershed*

25 The Cities next contend the Trash TMDL is invalid because the Water Boards "improperly relied on nonexistent, illegal and irrational 'uses to be made' of the [Los Angeles] River." (Emphasis omitted.) The Cities complain that the Trash TMDL states a purported beneficial use of one of numerous reaches of the river on the state's 303(d) list is "recreation and bathing, in particular by homeless people who seek shelter there," and the State Board chairman questioned the legality of such uses. The Cities also assert there is no evidence to support the Trash TMDL's finding that swimming is an actual use of the river in any location.

The Cities rely on section 303(d)(1)(A) of the Clean Water Act (33 U.S.C. § 1313(d)(1)(A)), which provides that in identifying impaired waters for its 303(d) list, states "shall establish a priority ranking for such waters, taking into account the severity of the pollution and the *uses to be made* of such waters." (Italics added.) \*\*402 The Cities assert "an 'illegal' use cannot be a 'use to be made' for the water body."

Additionally, the Cities cite Water Code section 13241, which requires regional boards to establish water quality objectives in water quality control plans by considering a variety of factors, including "[p]ast, present, and probable

future beneficial uses of water.” (Wat.Code, § 13241, subd. (a).) They assert the “Water Boards acted contrary to law by basing the [Trash] TMDL on any uses of the [Los Angeles] River other than the actual ‘uses to be made’ of the River.” (Emphasis omitted.)

The Cities, however, make no showing of prejudice. Swimming and bathing by the homeless are only two among numerous other beneficial uses that the Cities do not challenge, and there is no suggestion the numeric target of zero trash in the Los Angeles River would have been less stringent without consideration of the factors the Cities raise.

\*1433 IV

*Scientific Methodology*

26 Further, the Cities contend the Trash TMDL is invalid on the additional ground that before adopting and approving it the Water Boards failed to comply with the requisite data collection and analysis. The Cities rely on a federal regulation providing that “[s]tates must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, groundwaters.” (40 C.F.R. § 130.4(a) (2003).) “The State’s water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data” in developing, among other things, TMDLs. (*Id.*, § 130.4(b).)

The trial court rejected the Cities’ position, finding they failed to establish the Water Boards’ scientific data is inadequate or scientifically invalid. The court explained the Water Boards “have not failed to conduct ongoing studies, as they say, how else would [they] know the River is impaired by trash[?] And the Record reveals studies relied upon by the Boards.”

This argument is a variation on the assimilative capacity study issue, and we similarly reject it. As the Water Boards point out, “trash is different than other pollutants.... The complex modeling and analytical effort that may be necessary for typical pollutants that may be present in extremely low concentrations have no relevance to calculating a trash TMDL.” Further, the Trash TMDL does discuss sources of trash in the Los Angeles River. It states the “City of Los Angeles conducted an Enhanced Catch Basin Cleaning Project in compliance with a consent decree between the [EPA], the State of California, and the City of Los Angeles.

The project goals were to determine debris loading rates, characterize the debris, and find an optimal cleaning schedule through enhancing basin cleaning. The project evaluated trash loading at two drainage basins[.]” It goes on to discuss the amounts and types of trash collected in the drainage basins between March 1992 and December 1994. The Cities cite no authority for the notion the Water Boards may not rely on data collected by another entity.

The Trash TMDL also states “[s]everal studies conclude that urban runoff is the dominant source of trash. The large amounts of trash conveyed by the urban storm water to the Los Angeles River is evidenced by the amount of ... trash that accumulates at the base of storm drains.”

\*\*403 \*1434 Alternatively, the Cities contend a TMDL is not suitable for trash calculation. They rely on 33 United States Code section 1313(d)(1)(C), which provides: “Each State shall establish for [impaired] waters ... the total maximum daily load, for those pollutants which the [EPA] Administrator identifies ... as *suitable for such calculation*. Such load shall be established at a level *necessary* to implement the applicable water quality standards with seasonal variations and a margin of safety.” (Italics added.)

The Cities also cite a 1978 EPA regulation that states a TMDL is “suitable for ... calculation” only under “proper technical conditions.” (43 Fed.Reg. 60662, 60665 (Dec. 28, 1978) (italics omitted).) “Proper technical conditions” require “the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL.” (*Id.* at p. 60662.) The Cities assert the proper technical conditions do not exist, referring to the Trash TMDL’s comment that “[e]xtensive research has not been done on trash generation or the precise relationship between rainfall and its deposition in waterways.”

The Cities ignore the EPA’s determination that a TMDL *may* be calculated for trash as a pollutant. It approved the Regional Board’s Trash TMDL, and had previously approved a trash TMDL for the East Fork of the San Gabriel River. (See Cal.Code Regs., tit. 23, § 3933.) Thus, the Cities’ view that the 1978 EPA regulation prohibits a TMDL for trash is unfounded. TMDL’s for trash are relatively new, and there is no evidence that in 1978 the EPA contemplated their establishment.

We find irrelevant the Cities’ discussion of the EPA’s proposed July 2000 TMDL “rule,” as their federal register citation is not a regulation and merely concerns the 2003 withdrawal of a rule that never took effect. (68 Fed.Reg.

13608, 13609 (Mar. 19, 2003) ["The July 2000 rule was controversial from the outset".] In August 2001 the EPA delayed implementation of the July 2000 rule for further consideration, noting that some local government officials argued "some pollutants are not suitable for TMDL calculation." (66 Fed.Reg. 41817, 41819 (Aug. 9, 2001).) Nothing is said, however, about whether a trash TMDL is unsuitable for calculation, and again, the EPA has approved such TMDLs. The withdrawal of the proposed July 2000 rule left the existing rule regarding the establishment of a TMDL in place. (33 U.S.C. § 1313(d)(1)(C).)

V

*APA Requirements*

Lastly, the Cities contend the trial court erred by finding the Water Boards did not violate the APA. They assert the July 29, 2002, "clarification \*1435 memorandum" from the Regional Board to the EPA makes substantive changes to the Trash TMDL regulation—the inclusion of the Estuary in the Trash TMDL and designating an allocation of zero for nonpoint pollution sources—violates the notice and hearing provisions of the APA. The Cities also contend the Trash TMDL and the clarification memorandum "establish[ ] a regulation in violation of the APA's elements of 'clarity,' 'consistency,' and 'necessity,' as defined in [Government] Code section 11349."

The APA (Gov.Code, §§ 11340 et seq., 11370) "establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action [citations]; issue a complete text of the proposed regulation with a statement of the reasons for it [citation]; give interested parties an opportunity to comment on \*\*404. the proposed regulation [citation]; respond in writing to public comments [citations]; and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law [citation], which reviews the regulation for consistency with the law, clarity, and necessity [citations]." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568, 59 Cal.Rptr.2d 186, 927 P.2d 296.) "One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law's requirements so that they can conform their conduct

accordingly [citation]." (*Id.* at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)

The APA does not apply to "the adoption or revision of state policy for water quality control" unless the agency adopts a "policy, plan, or guideline, or any revision thereof." (Gov.Code, § 11353, subs.(a), (b)(1).) The Water Boards contend that while the Trash TMDL and amendment adding it to the 1994 Basin Plan are policies or plans covered by the APA, the clarification memorandum is not because it does not revise the terms of the Trash TMDL.

We are not required to reach the issue, because assuming the APA is applicable the Cities' position lacks merit. As to the Estuary, we have determined the Trash TMDL sufficiently notified affected parties of its inclusion in the document as an impaired water body. Further, we have determined the load allocation for nonpoint sources of trash pollution is also necessarily zero, and the Trash TMDL is not required to include implementation measures for nonpoint sources. Accordingly, the clarification memorandum is not germane.<sup>14</sup>

14 We deny the Water Boards' June 16, 2005, request for judicial notice.

**\*1436 DISPOSITION**

The judgment is affirmed insofar as it is based on the Trash TMDL's violation of CEQA, and on a rejection of each of the issues the Cities raised in their appeal. The judgment is reversed insofar as it is based on the Trash TMDL's lack of an assimilative capacity study, inclusion of the Estuary as an impaired water body, and a cost-benefit analysis under Water Code section 13267 or the consideration of economic factors under Water Code section 13241, and also insofar as it grants declaratory relief regarding the purported inclusion of non-navigable waters in the Trash TMDL.

The court's postjudgment order staying the Trash TMDL's implementation schedule is affirmed. The parties are to bear their own costs on appeal.

WE CONCUR: McINTYRE and IRION, JJ.

Parallel Citations

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# **ATTACHMENT 46**



108 P.3d 862

Supreme Court of California

CITY OF BURBANK, Plaintiff and Appellant,

v.

STATE WATER RESOURCES CONTROL  
BOARD et al., Defendants and Appellants.

City of Los Angeles, Plaintiff and Respondent,

v.

State Water Resources Control Board  
et al., Defendants and Appellants.

Nos. S119248, B151175, B152562. April 4,  
2005. Rehearing Denied June 29, 2005. \*

\* Brown, J., did not participate therein.

### Synopsis

**Background:** Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960, Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

**Holdings:** The Supreme Court, Kennard, J., held that:

1 regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and

2 when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

### Attorneys and Law Firms

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### Opinion

KENNARD, J.

**\*618** **\*\*864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic **\*\*865** factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

### **\*619** I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

#### A. California Law

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.)<sup>1</sup> Its goal is "to attain the highest water **\*\*\*307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).<sup>2</sup>

1 Further undesignated statutory references are to the Water Code.

2 The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages." (§ 13200, subd. (d).)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be

consistent with "state policy for water quality control." (§ 13240.)

### B. Federal Law

1 In 1972, Congress enacted amendments (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean \*620 Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'" (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology*, *supra*, 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter-Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act." (§ 13372.)

\*\*866 Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'" 33 U.S.C. § 1251(a). Toward \*\*\*308 this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.<sup>3</sup> See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See §

1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

3 A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

\*621 "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia*, that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma*, *supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma*, *supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

## II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles-Glendale Water Reclamation Plant (Los Angeles-Glendale Plant), which

processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles–Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Burbank, \*\*\*309 serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

\*622 All three plants, which together process hundreds of millions of gallons of sewage \*\*867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.<sup>4</sup> The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: “All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.” The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.<sup>5</sup>

4 This opinion uses the terms “narrative criteria” or descriptions, and “numeric criteria” or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, “no toxic pollutants in toxic amounts” would be a narrative description. This contrasts with numeric

criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.

- 5 For example, the permits for the Tillman and Los Angeles–Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be too costly when considered in light of the potential benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter–Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional \*623 board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed \$50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over \$9 million annually, a nearly 100 percent increase above its \$9.7 million annual budget for wastewater treatment.

\*\*\*310 The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter–Cologne Act required a regional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions

for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings <sup>\*\*868</sup> to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases. <sup>6</sup>

<sup>6</sup> Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

### <sup>\*624</sup> III. DISCUSSION

#### A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter-Cologne Act. (See 26 Cal.Rptr.3d pp. 306-307, 108 P.3d p. 865, *ante*.) Section 13263 provides in relevant part: "*The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge [of wastewater]. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.*" (§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it

is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

<sup>\*\*\*311</sup> "(a) Past, present, and probable future beneficial uses of water.

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

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

"(d) *Economic considerations.*

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

"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

<sup>2</sup> <sup>\*625</sup> Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge <sup>\*\*869</sup> permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

#### B. Statutory Construction

3 When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra*, at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter-Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter-Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. \*\*\*312 (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. But unlike the former two statutes, section 13377 was \*626 not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive water quality policy for the nation.

4 Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those

before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.<sup>7</sup> Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's \*\*870 declaration in section 13377 that all discharged wastewater must satisfy federal standards.<sup>8</sup> This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is "without effect." (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this \*627 state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations \*\*\*313 that would exceed the mandates of federal law.

7 The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that meet the clean water standards in more cost-effective and economically efficient ways." (Conc. Opn. of Brown, J., *post*, 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)

8 As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more

stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” We do not here decide how this provision would affect the cost-consideration requirements of sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account “economic considerations,” such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

### C. Other Contentions

The Cities argue that requiring a regional board at the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is consistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal “*wherever attainable*,” an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters’ “*use and value for navigation*” when revising or adopting a “water quality standard.” (Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

5 At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the

states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to “enforce any effluent limitation” that is not “*less stringent*” than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit \*628 a state—when imposing effluent limitations that are *more stringent* than required by federal law—from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a “navigable water” of the \*\*871 United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 [“The term ‘navigable’ has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.”].) It is unclear when the Cities first raised this issue. The Court of Appeal did not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See \*\*\*314 Cal. Rules of Court, rule 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

### CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles–Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that exceeded the

federal requirements. This is an issue of fact to be resolved by the trial court.

\*\*\*315 \*\*872 I. Federal Law

### DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this \*629 matter to the trial court to decide whether any numeric limitations, as described in the permits, are “more stringent” than required under federal law and thus should have been subject to “economic considerations” by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.

Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because “the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require.” (Maj. opn., ante, 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law—which purports to be an example of cooperative federalism—would decree such a result. I do not think the majority’s reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

“In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA ‘prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]’ ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California’s. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA’s NPDES permit program, the states are required to develop *water quality standards*. [Citations.] A water quality standard ‘establish[es] the desired condition of a waterway.’ [Citation.] A water quality standard for any \*630 given waterway, or ‘water body,’ has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water quality criteria can be either *narrative* or *numeric*. [Citation.]” (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092–1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, “a polluter must comply with *effluent limitations*. The CWA defines an effluent limitation as ‘any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.’ [Citation.] ‘Effluent limitations are a means of *achieving* water quality standards.’ [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA’s NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations*, which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL’s) where applicable. In the CWA, Congress ‘supplemented the “technology-based” effluent limitations with “water quality-based” limitations “so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling

below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd.*, *supra*, 109 Cal.App.4th at pp. 1093–1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Comms. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.) "Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork." \*\*\*316 (*American Paper Institute, Inc. v. U.S. Env'tl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349 (*American Paper* ).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if \*631 necessary, revise those initial standards at least once every three years." (*American Paper*, at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper*, at p. 350.) Accordingly, it appears that in most instances, \*\*873 state water quality standards are identical to the federal requirements for NPDES permits.

## II. State Law

In California, pursuant to the Porter–Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter–Cologne Act), the regional water quality control boards establish water quality standards—and therefore federal requirements for NPDES permits—through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors—including economic factors—set forth in Water Code section 13241.

In addition, as one court observed: "The Porter–Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits

governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter–Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.) [¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter–Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides that "[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act]." [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

\*632 Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)—the body responsible to enforce the statutory framework—failed to comply with its statutory mandate.

\*\*\*317 For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha"

by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, “[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years—a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they ‘protect the public health or welfare, enhance the quality of water and serve the purposes’ of the Act. [Citation.] Additionally, the CWA \*\*874 directs states to consider a variety of competing policy concerns during these reviews, including a waterway’s ‘use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.’ ” (*American Paper*, *supra*, 996 F.2d at p. 349.)

According to the Cities, “[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994.” The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion—including economic considerations—at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

\*633 Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante*, 26 Cal.Rptr.3d at pp. 311–312, 108 P.3d at pp. 869–870.) The majority then bifurcates the issue when it orders the Court of Appeal “to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are ‘more stringent’ than required under federal law and thus should have been subject to ‘economic considerations’ by the Los Angeles Regional Board before inclusion in the permits.” (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board’s basin plan under the description “no toxins in toxic amounts.” As far as I can determine, NPDES permits \*\*\*318 designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state’s basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.<sup>1</sup> In light of the Board’s initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority’s decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.<sup>2</sup> In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

1 (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95–4, Sept. 21, 1995) 1995 WL 576920.)

2 Indeed, given the fact that “water quality standards” in this case are composed of broadly worded components (i.e., a narrative criteria and “designated beneficial uses of the water body”), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board’s past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

\*634 Accordingly, I cannot conclude that the majority’s decision is wrong. The analysis \*\*875 may provide a reasonable accommodation of conflicting provisions.

**City of Burbank v. State Water Resources Control Bd., 35 Cal.4th 613 (2005)**

108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Env'tl. L. Rep. 20,071...

However, since the Board's actions "make me wanna holler and throw up both my hands,"<sup>3</sup> I write separately to set forth my concerns and concur in the judgment—*dubitante*.<sup>4</sup>

3 Marvin Gaye (1971) "Inner City Blues."

4 I am indebted to Judge Berzon for this useful term.  
(See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J).)

Parallel Citations

35 Cal.4th 613, 108 P.3d 862, 60 ERC 1470, 35 Env'tl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

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# **ATTACHMENT 47**



View National Reporter System version  
64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754,  
63 Cal. Comp. Cases 733, 98 Cal. Daily Op.  
Serv. 4644, 98 Daily Journal D.A.R. 6559

CITY OF RICHMOND, Plaintiff and Appellant,

v.

COMMISSION ON STATE MANDATES,  
Defendant and Respondent; DEPARTMENT OF  
FINANCE, Real Party in Interest and Respondent.

No. C026835.

Court of Appeal, Third District, California.

May 28, 1998.

### SUMMARY

A city filed an administrative mandamus action against the Commission on State Mandates, seeking a determination that an amendment to Lab. Code, § 4707, making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, was a state mandate to which the city was entitled to reimbursement under Cal. Const., art. XIII B, § 6, which applies when a state law establishes a new program or higher level of service payable by local governments. The amendment eliminated local safety members of PERS from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby survivors of a local safety member of PERS who are killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. The trial court denied the petition, finding that the amendment created an increased cost but not an increased level of service by local governments. (Superior Court of Sacramento County, No. 96CS03417, James Timothy Ford, Judge.)

The Court of Appeal affirmed. The court held that although the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did the amendment impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. Local entities are not entitled to reimbursement

for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. The court also held that assembly bill analyses stating that the amendment was a reimbursable state mandate (Cal. Const., art. XIII B, § 6), were irrelevant to the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review, and has provided that the initial determination by Legislative Counsel is not binding on the commission. (Opinion by Morrison, J., with Puglia, P. J., and Nicholson, J., concurring.)

### HEADNOTES

#### Classified to California Digest of Official Reports

(1) Administrative Law § 138--Judicial Review and Relief--Appellate Court-- Standard--Decision of Commission on State Mandates.

Under Gov. Code, § 17559, a proceeding to set aside a decision of the Commission on State Mandates on a claim may be commenced on the ground that the commission's decision was not supported by substantial evidence. Where the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, review on appeal is generally the same. However, the appellate court independently reviews the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. The question of whether a law is a state-mandated program or a higher level of service under Cal. Const., art. XIII B, § 6, is a question of law that is reviewed de novo.

(2a, 2b, 2c) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Workers' Compensation Death Benefits Payable to Local Safety Members.

An amendment to Lab. Code, § 4707, to eliminate local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby the survivors of a local safety member of PERS who is killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter, did not mandate a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under Cal. Const., art. XIII B, § 6. Although

the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did it impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as applicable to local governments as they are to private employers.

(3a, 3b) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Purpose.

Cal. Const., art. XIII B, § 6, which requires a subvention of funds to reimburse local governments when a state law mandates a new program or higher level of service on local governments, was intended to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123A.]

(4) Statutes § 43--Construction--Aids--Legislative Analysis--Reimbursement for State Mandates--Legislative Intent.

Assembly bill analyses of an amendment to Lab. Code, § 4707, making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, stating that it was a reimbursable state mandate (Cal. Const., art. XIII B, § 6), were irrelevant to the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review (Gov. Code, §§ 17500, 17559) and has provided that the initial determination by legislative counsel is not binding on the commission (Gov. Code, § 17575).

#### COUNSEL

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Daniel J. McHugh, City Attorney (Redlands), Jeffrey G. Jorgensen, City Attorney (San Luis Obispo), Brian Libow, City Attorney (San Pablo), Howard, Rice, Nemerovski, Canady & Falk and Richard C. Jacobs as Amici Curiae on behalf of Plaintiff and Appellant.

Gary D. Hori and Shawn D. Silva for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Linda A. Cabatic, Assistant Attorney General, Marsha Bedwell and Shelleyanne W. L. Chang, Deputy Attorneys General, for Real Party in Interest and Respondent. \*1193

#### MORRISON, J.

Chapter 478 of the Statutes of 1989 (chapter 478) amended Labor Code section 4707 to eliminate local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS. As a result, the survivors of a local safety member of PERS who is killed in the line of duty receives both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. This proceeding presents the question whether chapter 478 mandates a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under article XIII B section 6 of the California Constitution. We conclude that chapter 478 is not a state mandate requiring reimbursement and affirm the judgment.

#### Factual and Procedural Background

The workers' compensation system provides for death benefits payable to the deceased employee's survivors. (Lab. Code, § 4700 et seq.) There are also preretirement death benefits under PERS. (Gov. Code, § 21530 et seq.) There is a special death benefit under PERS if the death was industrial and the deceased was a patrol, state peace officer/firefighter, state safety officer, state industrial, or local safety member. (Gov. Code, § 21537.) Labor Code section 4707 provides a coordination or offset for workers' compensation death benefits when the special death benefit under PERS is payable. In such cases, no workers' compensation death benefit, other than burial expenses, is payable, except that if the PERS special death benefit is less than the workers' compensation death benefit, the difference is paid as a workers' compensation death benefit. The total death benefit is equal to the greater of the PERS special death benefit or the workers' compensation benefit, not the combination of the two death benefits.

Prior to 1989, Labor Code section 4707 provided in part: "No benefits, except reasonable expenses of burial ... shall be awarded under this division on account of the death of an employee who is a member of the Public Employees' Retirement System unless it shall be determined that a special death benefit ... will not be paid by the Public Employees' Retirement System to the widow or children under 18 years of age, of the deceased, on account of said death, but if the total death allowance paid to said widow and children shall be less than the benefit otherwise payable under this division such widow and children shall be entitled, under this division, to the difference." (Stats. 1977, ch. 468, § 4, pp. 1528-1529.)  
\*1194

Chapter 478 amended Labor Code section 4707 to make technical changes, to provide the death benefit is payable to the surviving spouse rather than to the widow, and to add subdivision (b). Subdivision (b) of Labor Code section 4707 reads: "The limitation prescribed by subdivision (a) shall not apply to local safety members of the Public Employees' Retirement System." (Stats. 1989, ch. 478, § 1, p. 1689.)

In 1992, David Haynes, a police officer for the City of Richmond (Richmond), was killed in the line of duty. Officer Haynes was a local safety member of PERS. His wife and children received the PERS special death benefit; they also received a death benefit under workers' compensation.

Richmond filed a test claim with the Commission on State Mandates (the Commission), contending chapter 478 created a state-mandated local cost.<sup>1</sup> Richmond sought reimbursement of the cost of the workers' compensation death benefit, estimated to be \$295,432. As part of its test claim, Richmond included legislative history of chapter 478, purporting to show a legislative intent to create a reimbursable state mandate.

The Commission denied the test claim. It found that chapter 478 dealt with workers' compensation benefits and case law held that workers' compensation laws are laws of general application and not subject to section 6 of article XIII B of the California Constitution. It noted the legislative history containing analyses that chapter 478 was a state mandate had been prepared before the issuance of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522].

Richmond filed a petition for a writ of administrative mandate under Code of Civil Procedure section 1094.5, seeking to compel the Commission to approve its claim. Both the

Commission and the Department of Finance, as real parties in interest, responded. The court denied the petition, finding chapter 478 created an increased cost but not an increased level of service by local governments.

## Discussion

### I

(1) Under Government Code section 17559, a proceeding to set aside the Commission's decision on a claim may be commenced on the ground that the Commission's decision is not supported by substantial evidence. Where \*1195 the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, our review on appeal is generally the same. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304].) However, we independently review the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].) The question of whether chapter 478 is a state-mandated program or higher level of service under article XIII B, section 6 of the California Constitution is a question of law we review de novo. (45 Cal.App.4th at p. 1810.)

With certain exceptions not relevant here, "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 program or increased level of service ...." (Cal. Const. art. XIII B, § 6, (hereafter referred to as section 6).)

In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202], the Supreme Court considered whether laws increasing the amount employers, including local governments, had to pay in certain workers' compensation benefits were a reimbursable "higher level of service" under section 6. The court looked to the intent of the voters in adopting the constitutional provision by initiative. (43 Cal.3d at p. 56.) Noting that the phrase "higher level of service" is meaningless alone, the court found it must be read in conjunction with the phrase "new program." The court concluded, "that the drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on

local governments and do not apply generally to all residents and entities in the state." (*Ibid.*)

(2a) Richmond contends chapter 478 meets both tests to qualify as a program under section 6. Richmond contends increased death benefits are provided to generate a higher quality of local safety officers and thus provide the public with a higher level of service. Richmond argues that providing increased death benefits to local safety workers is analogous to providing protective clothing and equipment for fire fighters. In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], executive orders requiring updated protective clothing and equipment for firefighters were found to be reimbursable state mandates under section 6. The executive orders applied only to fire protection, a peculiarly governmental function. The court noted that police and fire \*1196 protection are two of the most essential and basic functions of local government. (190 Cal.App.3d at p. 537.) Richmond urges that since chapter 478 applies only to local safety members, it is also a state mandate directed to a peculiarly local governmental function.

In *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d 521, the executive order required updated equipment for the fighting of fires. The use of this equipment would result in more effective fire protection and thus would provide a higher level of service to the public. Here chapter 478 addresses death benefits, not the equipment used by local safety members. Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public. (*City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484 [235 Cal.Rptr. 101] [temporary increase in PERS benefit to retired employees which resulted in higher contribution rate by local government was not a program or service under section 6].) In *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, the increase in certain workers' compensation benefits resulted in an increase in the cost to local governments of providing services. Nonetheless, the Supreme Court found no "higher level of service" under section 6. Similarly, a new requirement for mandatory unemployment insurance for local government employees, an increase in the cost of providing services, was not a "new program" or "higher level of service" in *City of Sacramento v. State of California, supra*, 50 Cal.3d 51, 66-70. Chapter 478 fails to meet the first test of a "program" under section 6.

Richmond urges chapter 478 meets the second test of a program under section 6 because it imposed a unique requirement on local governments that was not applicable to all residents and entities within the state. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56.) Richmond argues that only local governments have "local safety members" and chapter 478 required double death benefits, both PERS and workers' compensation, for this specific group of employees. By requiring double death benefits for local safety members, chapter 478 imposed a unique requirement on local government.

The Commission takes a different view of chapter 478. First, it argues that chapter 478 addresses an aspect of workers' compensation law, which, under *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, is a law of general application to which section 6 does not apply. The Commission argues chapter 478 imposes no unique requirement; it merely \*1197 eliminates the previous exemption from providing workers' compensation death benefits to local safety members. As such, chapter 478 simply puts local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit. That chapter 478 affects only local government does not compel the conclusion that it imposes a unique requirement on local government. The Commission contends Richmond's view of chapter 478 is too narrow; the law must be considered in its broader context. While Richmond's argument has surface appeal, we conclude the Commission's view is the correct one. Section 6 was designed to prevent the state from forcing programs on local government. (3a) "[T]he intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to 'force' programs on localities." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at pp. 56-57.) "The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. [Citation.] Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private

employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services. " (*Id.* at p. 61.)

Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. In *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, the Legislature enacted a statute requiring local governments to participate in the state's unemployment insurance system on behalf of their employees. Local entities made a claim for reimbursement. First, the Supreme Court found that like an increase in workers' compensation benefits, a requirement to provide unemployment insurance did not compel new or increased "service to the public" at the local level. (*Id.* at pp. 66-67.) The court next addressed whether the new law imposed a unique requirement on local governments.

"Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are \*1198 imposed on local governments 'unique[ly],' and not merely as an incident of compliance with general laws. State and local governments, and nonprofit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique.' [¶] The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by imposing new obligations on the public and private sectors *at the same time*. However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local governments, it would have to pay. This was not the intent of our recent decision." (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, 68-69, italics in original.)

Richmond argues that Labor Code section 4707, prior to chapter 478, was not an exemption from workers' compensation, relying on *Jones v. Kaiser Industries Corp.* (1987) 43 Cal.3d 552 [237 Cal.Rptr. 568, 737 P.2d 771]. In *Jones*, the plaintiff, a city police officer, was killed in a traffic accident while on duty. His survivors brought suit against the city, contending it has created and maintained a dangerous condition at the intersection where the accident

occurred. Plaintiffs argued their suit was not barred by the exclusivity provisions of workers' compensation because they did not receive a workers' compensation death benefit under Labor Code section 4707. The court rejected this argument. First, plaintiffs did receive a benefit under workers' compensation in the form of burial expenses. Further, Labor Code section 4707 was designed not to exclude plaintiffs from receiving workers' compensation benefits, but to assure they received the maximum benefit under either PERS or workers' compensation. (43 Cal.3d at p. 558.)

Under *Jones v. Kaiser Industries Corp.*, *supra*, 43 Cal.3d 552, one receiving a special death benefit under PERS rather than the workers' compensation death benefit is not considered exempt from workers' compensation for purposes of its exclusivity provisions, precluding a suit against the employer for negligence. This conclusion does not affect the analysis that chapter 478, by removing the offset provisions for employers of local safety members, merely makes local governments "indistinguishable in this respect from private employers." (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 58.)

(2b) Richmond's error is in viewing chapter 478 from the perspective of what the final result is, rather than from the perspective of what the law mandates. (3b) "We recognize that, as is made indisputably clear from \*1199 the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 [244 Cal.Rptr. 677, 750 P.2d 318].) (2c) While the result of chapter 478 is that local safety members of PERS now are eligible for two death benefits and local governments will have to fund the workers' compensation benefit, chapter 478 does not mandate double death benefits. Instead, it merely eliminates the offset provisions of Labor Code section 4707. In this regard, the law makes the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. It imposes no "unique requirement" on local governments.

Further, the view that the Legislature was proceeding by stages in enacting chapter 478 finds support in the history of the nearly identical predecessor to chapter 478, Assembly Bill No. 1097 (1987-1988 Reg. Sess.). Assembly Bill No. 1097 was passed in 1988, but was vetoed by the Governor. While the final version of Assembly Bill No. 1097 was virtually identical to chapter 478 in adding subdivision (b) to Labor

Code section 4707 (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended Mar. 22, 1988), the bill was very different when it began. The initial version of Assembly Bill No. 1097 repealed Labor Code section 4707 in its entirety. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) introduced Mar. 2, 1987.) The next version made Labor Code section 4707 applicable only to state members of PERS. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended June 15, 1987.) The final version left Labor Code section 4707 applicable to all but local safety members of PERS.

## II

(4) As part of its test claim, Richmond included portions of the legislative history of chapter 478 to show the Legislature intended to create a state mandate. This history includes numerous bill analyses by legislative committees that state the bill creates a state-mandated local program.

Government Code section 17575 requires the Legislative Counsel to determine if a bill mandates a new program or higher level of service under section 6. If the Legislative Counsel determines the bill will mandate a new program or higher level of service under section 6, the bill must contain a section specifying that reimbursement shall be made from the state mandate fund, that there is no mandate, or that the mandate is being disclaimed. (Gov. Code, § 17579.) The Legislative Counsel found that chapter 478 imposed \*1200 a state-mandated local program. The enacted statute provided: "Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund." (Stats. 1989, ch. 478, § 2, p. 1689.)

One analysis concluded this language was technically deficient because it does not contain a specific acknowledgment that the bill is a state mandate. Reimbursement could not be made until the Commission held a hearing on a test claim. The analysis concluded it "should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission."

Another analysis suggested including an appropriation to avoid the necessity of the Commission having to determine that the bill was a mandate.

Richmond argues this legislative history shows the Legislature intended chapter 478 to be a state mandate and that it should be considered in making that determination. Amici curiae submitted a brief urging that case law holding that legislative history is irrelevant to the issue of whether there is a state-mandated new program or higher level of service under section 6 is wrongly decided.<sup>2</sup> Amici curiae argue that the intent of the Legislature should control. They further note that the legislative history of chapter 478 shows that the initial opposition of the League of California Cities was dropped after the bill was amended to ensure reimbursement, and that the Governor signed the bill after he had vetoed a similar one that was not considered a state mandate. Amici curiae argue that to ignore the widespread understanding that the bill created a state mandate would undermine the legislative process.

In *County of Los Angeles v. Commission on State Mandates*, supra, 32 Cal.App.4th 805, plaintiff sought reimbursement for costs incurred under Penal Code section 987.9 for providing certain services to indigent criminal defendants. Plaintiff argued the Legislature's initial appropriation of funds to cover the costs incurred under Penal Code section 987.9 was a final and \*1201 unchallengeable determination that section 987.9 constituted a state mandate. The court rejected this argument. "The findings of the Legislature as to whether section 987.9 constitutes a state mandate are irrelevant." (32 Cal.App.4th at p. 818.)

The court, relying on *Kinlaw v. State of California* (1991) 54 Cal.3d 326 [285 Cal.Rptr. 66, 814 P.2d 1308], found the Legislature had created a comprehensive and exclusive procedure for implementing and enforcing section 6. (*County of Los Angeles v. Commission on State Mandates*, supra, 32 Cal.App.4th at pp. 818-819.) This procedure is set forth in Government Code section 17500 et seq. "[T]he statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed." (32 Cal.App.4th at p. 819.)

In *City of San Jose v. State of California*, supra, 45 Cal.App.4th 1802, 1817-1818, the court relied upon *County of Los Angeles v. Commission on State Mandates*, supra,

City of Richmond v. Commission on State Mandates, 64 Cal.App.4th 1190 (1998)

75 Cal.Rptr.2d 754, 63 Cal. Comp. Cases 733, 98 Cal. Daily Op. Serv. 4644...

32 Cal.App.4th 805, in rejecting the argument that the determination by Legislative Counsel that a bill imposed a state mandate was entitled to deference.

Amici curiae contend these cases are wrong because they ignore the cardinal rules of statutory construction that courts must construe statutes to conform to the purpose and intent of lawmakers and that the intent of the Legislature should be ascertained to effectuate the purpose of the law.

Amici curiae are correct that "the objective of statutory interpretation is to ascertain and effectuate legislative intent." [Citation.] (*Trope v. Katz* (1995) 11 Cal.4th 274, 280 [45 Cal.Rptr.2d 241, 902 P.2d 259].) Where such intent is not clear from the language of the statute, we may resort to extrinsic aids, including legislative history. (*People v. Coronado* (1995) 12 Cal.4th 145, 151 [48 Cal.Rptr.2d 77, 906 P.2d 1232].) Here, however, the issue is not the interpretation of Labor Code section 4707. The parties agree it requires that the survivors of local safety members killed due to an industrial injury receive both the special death benefit under PERS and the workers' compensation death benefit. Rather, the issue is whether section 6 requires reimbursement for the costs incurred by local governments

under chapter 478. The Legislature has entrusted that determination to the Commission, subject to judicial review. (Gov. Code, §§ 17500, 17559.) It has provided that the initial determination by Legislative Counsel is not binding on the Commission. (*Id.*, § 17575.) Indeed, the language of chapter 478 recognizes that the determination of whether the bill is a state mandate lies with ~~\*1202~~ the Commission. It reads, "if the Commission on State Mandates determines that this act contains costs mandated by the state, ..." (Stats. 1989, ch. 478, § 2, p. 1689, italics added.) While the legislative history of chapter 478 may evince the understanding or belief of the Legislature that chapter 478 created a state mandate, such understanding or belief is irrelevant to the issue of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th 805, 819.)

**Disposition**

The judgment is affirmed.

Puglia, P. J., and Nicholson, J., concurred.

Appellant's petition for review by the Supreme Court was denied August 19, 1998. \*1203

Footnotes

- 1 " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov. Code, § 17521.)
- 2 The California State Association of Counties, and the Cities of Carlsbad, Cudahy, Montebello, Monterey, Redlands, San Luis Obispo and San Pablo filed an amici curiae brief in support of Richmond.

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# **ATTACHMENT 48**



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59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal.  
Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255

KATHLEEN CONNELL, as  
Controller, etc., et al., Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO  
COUNTY, Respondent; SANTA MARGARITA  
WATER DISTRICT et al., Real Parties in Interest.

No. Co24295.

Court of Appeal, Third District, California.

Nov. 20, 1997.

### SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax.

Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

### HEADNOTES

#### Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment--Necessity For Further Orders.

A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--Appealable Judgment.

An appealable judgment or order is a jurisdictional prerequisite to an appeal.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14.]

(3) Appellate Review § 17--Decisions Appealable--Interlocutory Judgment.

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of

**Connell v. Superior Court, 59 Cal.App.4th 382 (1997)**

69 Cal.Rptr.2d 231, 97 Cal. Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255

judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

**(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.**

In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

**(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.**

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]

**(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.**

Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470).

Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

**(7) Statutes § 29--Construction--Language--Legislative Intent.**

In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.

**(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.**

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

**COUNSEL**

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

**SIMS, J.**

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of

irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6);<sup>1</sup> Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting \*386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate.<sup>2</sup> Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207-was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

#### Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, §§ 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313<sup>3</sup> of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. \*387

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD

also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system-the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of \$17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313<sup>4</sup> increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. \*388

On October 1, 1982, SMWD filed a "test claim"<sup>5</sup> with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231,<sup>6</sup> which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561<sup>7</sup>), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b)<sup>8</sup> defining "costs mandated by the state." (See now Gov. Code, § 17514.<sup>9</sup>) The test claim also cited section 6 (fn. 1, ante). \*389

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255,<sup>10</sup> submitted to the Legislature a statewide cost estimate of \$14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

In 1985, the Legislature included an appropriation of almost \$14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including \$945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state'" and (2) the State Treasurer to pay the Controller's warrant. \*390 At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's \*391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. & Tax. Code, § 2253.2, subd. (b)(4);<sup>11</sup> Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556<sup>12</sup>) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to

levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) \*392 the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California*, supra, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

## Discussion

### I. Appealability

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget<sup>13</sup> (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. \*393

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist. v. State of California*, supra, 190 Cal.App.3d 521-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as

an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante*.) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (*Morehart \*394 v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs—which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

## II. Standard of Review

(4) In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

## III. Collateral Estoppel

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. \*395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*)). On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather

than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The state was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) \*396

The Supreme Court also rejected the argument that res judicata applied. "Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations in general under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500.<sup>14</sup>) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 \*397 [20 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

#### IV. Authority to Levy Fees

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

.....  
“(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service.”<sup>15</sup> (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) \*398

The same provision is currently contained in Government Code section 17556.<sup>16</sup>

The facial constitutionality of this provision was upheld in *County of Fresno v. State of California* (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), “effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound.” (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which provides: “Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had \*399 “sufficient” authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it.<sup>17</sup> We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked “authority” to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made “To find a mandate and continue the issue regarding the claimant’s ability to levy a service charge, to the parameters and guidelines process.” There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: “Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge ....” The Board’s Parameters and Guidelines stated in part: “If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment.”

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD’s counsel stated at the hearing in the trial court: “The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn’t.”

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical \*400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [sic] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay ...."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear \*401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature ...." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action ...." (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" \*402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II, supra*, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal

limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. \*403

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

#### Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998. \*404

#### Footnotes

- 1 Section 6 provides: "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 program

- or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”
- 2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.
- 3 California Code of Regulations, title 22, section 60313, initially provided: “Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed.” (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)
- 4 Section 60313 of California Code of Regulations, title 22, as amended, provides: “(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.  
“(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample.”
- 5 At the time in question, “test claim” meant “the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district.” (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) “Estimated claims” and “reimbursement claims” were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)  
A similar structure, distinguishing between “test claims” and various “reimbursement claims” or “entitlement claims” continues presently in Government Code sections 17521-17522.  
At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)
- 6 Former Revenue and Taxation Code section 2231 provided in part: “(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207....” (Stats. 1982, ch. 1586, § 3, p. 6264.)
- 7 Government Code section 17561 provides in part: “(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514....”
- 8 Former Revenue and Taxation Code section 2207 provided in part: “'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program ....” (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)  
The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning “(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program.” (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them.
- 9 Government Code section 17514 provides: “'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order

implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 ....”

- 10 Former Revenue and Taxation Code section 2255 provided: “At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article.” (Stats. 1980, ch. 1256, § 20, p. 4255.)
- The current provision is contained in Government Code section 17600, which provides: “At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement.”
- 11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: “(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service.” (Stats. 1982, ch. 734, § 10, p. 2916.)
- 12 Government Code section 17556 provides in part: “The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”
- 13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.
- 14 Government Code section 17500 provides in part: “The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state’s responsibilities under Section 6 .... The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 ....”
- 15 This case presents no issue concerning any distinction between “service charges, fees or assessment,” as used in the statute. The parties on appeal frame the issue in terms of the authority to levy “fees.” We adopt their usage for the sake of simplicity.
- 16 Government Code section 17556 provides in part: “The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service....”
- 17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants’ brief. We therefore disregard the assertion.

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# **ATTACHMENT 49**



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43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38

COUNTY OF LOS ANGELES  
et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et  
al., Defendants and Respondents.

CITY OF SONOMA et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et  
al., Defendants and Respondents

L.A. No. 32106.

Supreme Court of California

Jan 2, 1987.

#### SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that Cal. Const., art. XIII B, § 6, requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted art. XIII B, § 6, their intent was not to require the state to provide subvention

whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by art. XIII B, § 6. Finally, the court held that no pro tanto repeal of Cal. Const., art. XIV, § 4 (workers' compensation), was intended or made necessary by the adoption of art. XIII B, § 6. (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

#### HEADNOTES

##### Classified to California Digest of Official Reports

(1) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.

When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2) Statutes § 18--Repeal--Effect--"Increased Level of Service."

The statutory definition of the phrase "increased level of service," within the meaning of Rev. & Tax. Code, § 2207, subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature, by deleting an express provision of a statute, intended a substantial change in the law.

[See *Am.Jur.2d*, Statutes, § 384.]

(3) Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the

voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4) Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."

The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

(5) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.

The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See Cal.Jur.3d, State of California, § 78.]

(6) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.

Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.

The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation.

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GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne

by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or \*50 increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

## I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning.<sup>1</sup>

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which \*51 employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from \$231 per week to \$262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from \$55,000 to \$75,000. No appropriation for increased state-mandated costs was made in this legislation.<sup>2</sup>

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207.<sup>3</sup> They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly \*52 excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from \$73.50 to \$168, and the maximum from \$262.50 to \$336. For permanent partial disability the weekly wage was raised from a minimum of \$45 to \$105, and from a maximum of \$105 to \$210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A \$10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from \$75,000 to \$85,000 for deaths in 1983, and to \$95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIII B of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.)<sup>4</sup>

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or \*53 section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy

doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and willful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

## II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service"<sup>5</sup> described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the \*54 definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].)<sup>6</sup> On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however,

was reversed and the matter "remanded" to the board for more adequate findings, with directions.<sup>7</sup>

### III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been \*55 included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975, ch. 486, §§ 6 & 7, p. 999.)<sup>8</sup> Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " "Increased level of service" means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (*Lake Forest Community Assn. v. County of Orange* (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also *Eu v. Chacon, supra*, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been \*56 aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

(4) Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term - programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not \*57 for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation

whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote.<sup>9</sup> Certainly no such intent is reflected in the language or history of article XIII B or section 6.

(5) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation \*58 benefits that employees of private individuals or organizations receive.<sup>10</sup> Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

#### IV

(6) Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article XIV, section 4,<sup>11</sup> gives the Legislature "plenary power, unlimited by any provision of \*59 this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the

Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural \*60 limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the

plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 effected a repeal *pro tanto* of any state constitutional provisions which conflicted with that \*61 amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power - the disciplining of attorneys - that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd.*, *supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended

or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in \*62 benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal - whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs

Footnotes

- 1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...

of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living \*63 adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing, was denied February 26, 1987. \*64

- The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."
- 2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation. Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of \$510 on which to base benefits, an unspecified appropriation was included.
- 3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.
- 4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.
- 5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.
- 6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (*Cf. California Employment Stabilization Co. v. Payne* (1947) 31 Cal.2d 210, 213-214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.
- The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)
- 7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)
- 8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (*County of Orange v. Flornoy* (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)
- 9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)
- 10 The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.
- 11 Section 4: "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A

complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

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# **ATTACHMENT 50**



2 Cal.Rptr.3d 419  
Court of Appeal, Second  
District, Division 7, California.

COUNTY OF LOS ANGELES,  
Plaintiff and Respondent,

v.

COMMISSION ON STATE  
MANDATES, Defendant and Appellant;  
Department of Finance, Real  
Party in Interest and Appellant.

No. B156870. July 28, 2003.

### Synopsis

**Background:** County petitioned for writ of mandate, seeking to vacate decision of the Commission on State Mandates which denied county's test claim for costs associated with statute requiring local law enforcement officers to participate in two hours of domestic violence training. The Superior Court, Los Angeles County, No. BS06497, Dzintra I. Janavs, J., granted the petition. Commission appealed.

**Holding:** The Court of Appeal, Muñoz (Aurelio), J., sitting by assignment, held that statute did not mandate any increased costs and thus Commission was not required to reimburse county for its costs.

Reversed with directions.

### Attorneys and Law Firms

\*\*422 \*1178 Paul M. Starkey, Camille Shelton, Sacramento, and Katherine Tokarski, for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Andrea Lynn Hoch, Senior Assistant Attorney General, Louis R. Mauro and Catherine M. Van Aken, Supervising Deputy Attorneys General and Geoffrey L. Graybill, Deputy Attorney General, for Real Party in Interest and Appellant Department of Finance.

Lloyd W. Pellman, County Counsel and Stephen R. Morris, Principal Deputy County Counsel, for Plaintiff and Respondent County of Los Angeles.

### Opinion

MU#NOZ (AURELIO), J.\*

\* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A 1995 amendment to Penal Code section 13519<sup>1</sup> requires local law enforcement officers to participate in two hours of domestic violence training. The issue on appeal is whether this amendment resulted in a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the time spent by local law enforcement officers in such domestic violence training, although such officers were already required to spend 24 hours in continuing education training and the domestic violence training could be included within this total.

1 Hereafter section 13519.

This administrative mandamus proceeding was commenced by the County of Los Angeles (County) on a "test claim" filed with and denied by the \*1179 Commission on State Mandates (Commission) for the County's costs incurred pursuant to section 13519. The trial court found that California Constitution article XIII B, section 6 required the state to reimburse the County for domestic violence training because the County's needs and priorities might be detrimentally affected when the state took away two hours of training by mandating that two specific hours of training occur. The trial court remanded the proceedings to the Commission to determine the amount of costs actually incurred by the County. We reverse.

### FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Article XIII B, section 6 of the California Constitution provides: "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 program or increased level of service...." (Cal. Const., art. XIII B, § 6.) The Commission is charged with hearing and deciding local agency claims of entitlement to reimbursement under article XIII B, section 6. (Gov.Code, § 17551, subd. (a).) Pursuit of such a claim is the exclusive remedy for this purpose (Gov.Code, § 17552), but the Commission's decisions are subject to review by administrative mandamus, under Code of Civil Procedure section 1094.5. (Gov.Code, § 17559, subd. (b).) A "test claim" is "the first claim, \*\*423 including claims joined or consolidated with the first

claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.” (Gov.Code, § 17521; see also *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 328–329, 331–333, 285 Cal.Rptr. 66, 814 P.2d 1308.)

In 1995, section 13519, subdivision (e) was amended to provide: “(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government.”<sup>2</sup>

- 2 The currently enacted version of this provision is found at section 13519, subdivision (g), and reads, “Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.” (Stats.1998, ch. 701, § 1, designated the paragraph following subd. (a) as subd. (b) and redesignated the remaining subdivisions accordingly; in redesignated subd. (c), inserted par. (5), listing the signs of domestic violence as an instruction topic, and redesignated pars. (5) to (16) as pars. (6) to (17).)

\*1180 Penal Code section 13510,<sup>3</sup> et seq. requires the State Commission on Peace Officer Standards and Training (POST) to promulgate regulations establishing minimum state standards relating to physical, mental, and moral fitness, and minimum training standards for law enforcement officers. Compliance with POST’s requirements is voluntary. (Pen.Code, § 13510 et seq.) POST has a certification program for peace officers specified in sections 13510 and 13522 and for the California Highway Patrol. (Pen.Code, §§ 13510.1, subds.(a)-(c), 13510.3.)

- 3 Penal Code section 13510, subdivision (a), provides in relevant part: “For the purpose of raising the level of competence of local law enforcement officers, [POST] shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff’s office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner’s office....”

On or about December 26, 1996, the County filed a “test claim”<sup>4</sup> pursuant to Government Code section 17522 with the Commission.<sup>5</sup> The test claim alleged that \*\*424 neither local police officers nor their agencies were given any choice with respect to compliance with section 13519. However, in order to implement the training, the County was required to redirect its officers from their normal work in order to attend the two-hour domestic violence training. The County alleged this substitution of the work agenda of the state for that of the local government violated California Constitution article XIII B, section 6. Furthermore, the County pointed to language in \*1181 Penal Code section 13519, subdivision (e), providing that, “The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.”

- 4 The test claim also challenged the incident-reporting requirements of Penal Code section 13730, which imposed a new program upon local law enforcement agencies to include in the domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence responses to the same address. The County did not contest the Commission’s outcome relating to this portion of the test claim, and therefore this issue is not before us on appeal.

- 5 In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of California Constitution article XII B, section 6. (See Gov.Code, § 17500 et seq.) The local agency files a test claim with the Commission, which holds a public hearing and determines whether the statute mandates a new program or increased level of service. (Gov.Code, §§ 17521, 17551, 17555.) If the Commission finds that a claim is reimbursable, it then determines the amount of reimbursement. (Gov.Code, § 17557.) The local agency then follows statutory procedures to

obtain reimbursement. (See Gov.Code, § 17558 et seq.) Where the Commission finds no reimbursable mandate, the local agency can challenge this finding by administrative mandate proceedings under Code of Civil Procedure section 1094.5. (See Gov.Code, § 17552 [these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6"].)

The test claim alleged that although POST bore the cost of producing two-hour telecourses on domestic violence, POST did not provide for any local law enforcement salary reimbursement for attendance at any type of POST-certified training, including the state-mandated costs for domestic violence training. Adherence to POST standards is voluntary by local law enforcement agencies, but POST requires a minimum of 24 hours of training every two years, to be chosen from a menu of available courses. POST does not dictate the courses that must be taken. POST courses include training in, among other things: interviewing techniques for detectives, defensive weapons, CPR, conflict resolution, bicycle patrol, ritual crime and hate group offenders, vehicle pullover and approach, confessions, courtroom demeanor, electronic vehicle recovery systems, vehicle theft investigation, and cultural awareness.

The POST program gives local law enforcement agencies flexibility in choosing training programs to meet their differing needs. In addition to domestic violence training, certain other programs are legislatively mandated: dealing with the developmentally disabled/mentally ill training (implemented July 1992); high speed vehicle pursuits (implemented November 1994); first aid/CPR (a 21-hour initial course, with a 12-hour refresher course every three years); missing persons (implemented January 1989); racial and cultural diversity (implemented August 1983); sexual harassment (implemented November 1994); and sudden infant death syndrome (implemented July 1990). The time requirements for these other required courses vary. Some elective courses require 40 hours to complete.

However, the County alleged because there were no existing resources available for the domestic violence training, the annual training costs of the County were increased as a result of section 13519. The County Sheriff's Department incurred costs of \$170,351.45 for domestic violence training for the fiscal year 1996-1997.

In support of its test claim, the County submitted legislative materials relating to section 13519. These included: A July

5, 1995 memorandum in which the Assembly Committee on Appropriations stated that Senate Bill No. 132, proposing the changes \*\*425 to 13519, understood the "training requirement could have significant costs to local law enforcement in terms of expense and public safety, as most departments will be forced to backfill for offices while the officers are being trained or will have to forego the \*1182 backfilling and have fewer offices on patrol. Any monetary costs incurred by local law enforcement for the officer backfilling would be state-reimbursable." The Committee noted that, "Although this bill states that the costs of the additional domestic violence training be absorbed by POST within existing resources, the reality is that this bill would create additional non-absorbable costs to POST since POST will be unable to exclude one type of training in favor of the domestic violence training, and instead will have to add this training to their current curriculum. The current curriculum of POST training is just as important to the maintaining of public safety as is the additional domestic violence training."

In addition, the Department of Finance recognized the fiscal impact of section 13519 on local law enforcement agencies, and opposed the adoption of Senate Bill No. 132. Diane M. Cummins, Deputy Director of the State Department of Finance, wrote to Senator Diane Watson on April 20, 1995, that, "This bill also specifies that training required pursuant to this measure 'shall be funded from existing resources', as specified. In so specifying, this bill would also require law enforcement agencies to modify existing training programs by increasing training requirements. Finance believes this bill contains a local mandate without providing necessary funding, thereby being in conflict with the California Constitution, which requires the state to fund local mandate costs. Although there is no specific information available regarding the level of additional costs which would be imposed on law enforcement agencies, the Department of Finance is opposed to legislation which would result in additional General Fund expenditures, given the State's ongoing fiscal constraints." The Department of Finance recognized that, "Adding mandatory domestic violence training requirement would result in an additional unknown cost for specified state and local law enforcement agencies...."

Furthermore, Gretchen Fretter, Chair of the California Academy Directors' Association (an organization of training center directors and police academy managers throughout the state) wrote Senator Watson on March 9, 1995, to express the association's concerns with Senate Bill No. 132. Fretter's analysis indicated that the mandate would incur a

\$300,000 price tag for each training cycle. The California State Sheriffs' Association also wrote to express concerns about Senate Bill No. 132, including that POST estimated the domestic violence training would add costs to local agencies of at least \$750,000 per year. Glen Fine, the Deputy Executive Director of POST, on July 11, 1997, wrote to the Department of Finance to inform it that POST understood that the author of Senate Bill No. 132 was aware of POST's training requirements of 24 hours every two years, and it was "the author's intent ... that domestic violence update training become a statutorily required priority for inclusion within this 24 hours of training every two years."

\*1183 POST issued a bulletin in February 1996 advising local law enforcement agencies of the new domestic violence training requirement.

The Department of Finance contended that the Legislature intended the domestic violence continuing education and training to be funded from existing resources. The department also contended that POST, which was charged with developing training \*\*426 standards for local law enforcement agencies, provided over \$21 million in existing state funds for domestic violence training. POST pointed out that the drafter of the statute recognized the 24 hours of continuing education every two years, and intended the domestic violence training to be a priority to be included within this 24-hour requirement.

At the hearing before the Commission on the test claim, representatives of the County testified that POST refused to pay for the programs, putting the burdens on local governments, and POST itself had estimated the annual cost of the program at \$750,000. A representative of the Sheriff's Department (Captain Dennis Wilson) testified that of the 24 hours required, any combination of courses could be used to meet the requirement. However, inclusion of the domestic violence training would take away two of those hours of training, resulting in only 22 hours. The Sheriff's Department would conduct domestic violence training even in the absence of the mandate; indeed, the Sheriff's Department actually conducted about 72 hours of training per officer per year. There was no funding for any of this training. The Sheriff's Department has 8,200 sworn officers, and two hours of training per officer adds up to 16,400 hours, which translates to 10 full-time officers for a year. Without funding for the domestic violence training, the Sheriff's Department therefore would lose the time equivalent of 10 officers for a year. Taking officers off the street impacts upon crime.

Martha Zavala testified on behalf of the County that the domestic violence training could not merely be subsumed within the 24 hours already required. With the training mandates already required by POST which exceed the 24-hour minimum, adding the domestic violence training only further exceeds the minimum 24 hours. There is no room to carve it out. Meeting POST requirements is not really an option. Thus, both the Sheriff's Department and the County agree they are seeking reimbursement of the costs of the training and the cost of replacing the officers on the street while in training.

A representative of POST testified that what POST provides in reimbursement to local law enforcement agencies is a small percentage of the real costs incurred. Where the training involved is through a telecourse, POST provides no reimbursement. There has been no increase in POST's budget since the amendment to section 13519. About 30 of the courses provided by POST are mandated training.

\*1184 A representative of the Department of Finance testified that the Department believed section 13519 did not create state-mandated reimbursable program because the legislation indicated it was the Legislature's intent not increase the training costs of local government, and the training could be fit within the existing 24-hour requirements.

The Commission's staff prepared an analysis in advance of the hearing which found against the County. The "Staff Analysis" pointed out that section 13519 was originally added by chapter 1609, Statutes of 1984.<sup>6</sup> Originally, the statute required \*\*427 that POST develop and implement a basic course of instruction for the training of law enforcement officers in the handling of domestic violence complaints, with local law enforcement agencies encouraged, but not required, to provide updates. These provisions of the 1984 version were the subject of a test claim filed by the City of Pasadena in 1990. That claim was denied because the original statute did not require local agencies to implement or pay for a domestic violence training program, did not increase the minimum basic training course hours or advanced officer training hours, and did not require local agencies to provide domestic violence training pursuant to the POST skills and knowledge standards.

6 The history of section 13519 is as follows: Added by Statutes 1984, chapter 1609, section 2, pages 5711-5713. Amended by Statutes 1985, chapter 281, section 1, pages 1305-1306, effective July 26, 1985; Statutes 1989, chapter 850, section 3; Statutes 1991, chapter

912 (Sen. Bill No. 421), section 1, pages 4086–4088; Statutes 1993, chapter 1098 (Assem. Bill No. 1268), section 8, pages 6162–6163; Statutes 1995, chapter 965 (Sen. Bill No. 132), section 1, pages 7377–7380; Statutes 1998, chapter 606 (Sen. Bill No.1880), section 13; Statutes 1998, chapter 701 (Assem. Bill No. 2172), section 1; Statutes 1999, chapter 659 (Sen. Bill No. 355), section 4. The 1995 amendment, at issue here, rewrote subdivision (e), which prior to amendment read: “(e) Forty thousand dollars (\$40,000) is appropriated from the Peace Officers Training Fund [POST] in augmentation of Item 8120–001–268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.” (Stats.1993, ch. 1098, § 8, p. 6188.)

Legally, the Staff Analysis pointed out that in order for a statute to impose a reimbursable state-mandated program, the statutory language must (1) direct or obligate an activity or task upon local government entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. (See, e.g., *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The Staff Analysis concluded that section 13519 did impose a new activity or program upon local law enforcement agencies. However, because the language of the statute requiring that the instruction be funded from existing resources, it was an open question whether the program imposed *mandated* costs. Because POST's minimum requirements remained at 24 hours before and after enactment of section 13519, there were no increased training hours and costs associated with the domestic violence training course. Instead, the course should be accommodated or absorbed by \*1185 local law enforcement agencies within their existing resources available for training. Thus, the Staff Analysis recommended denial of the test claim.

After the public hearings were held, the Commission adopted the findings of the Staff Analysis. The Commission issued its own statement of decision which substantially adopted the findings of the Staff Analysis.

Subsequently, the County filed a petition for writ of mandate with the trial court, seeking vacation of the Commission's decision. The County argued that the domestic violence training constituted a state-mandated reimbursable program because it (1) was mandatory, while the POST certification training was optional; and (2) the only way local agencies could avoid the costs of the new program would be to redirect their efforts from the training they were already providing

as part of POST training, thereby losing flexibility to design programs to suit their own needs.

The Commission argued that the County's focus on “redirected” manpower costs was misplaced. Instead, the focus should be on whether the local law enforcement agencies actually experience increased expenditure of their tax revenues. (See, e.g., *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283, 101 Cal.Rptr.2d 784.) In *County of Sonoma*, the court stated that California Constitution article XIII B, section 6 was designed to prevent the state from forcing programs on local governments, and such a forced program is one which results in “increased actual expenditures \*\*428 of limited tax proceeds that are counted against the local government's spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned with ‘costs’ incurred by local governments as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas.” (*County of Sonoma*, at p. 1284, 101 Cal.Rptr.2d 784.) Because section 13519 did not require the County to incur “actual increased costs” because the domestic violence training could be subsumed within the 24-hour POST training requirement, no state reimbursement was required.

The Commission also argued the state had not required the County to incur increased training costs for salaries of officers to receive the two-hour training. POST's requirements did not change as a result of section 13519, and indeed, shortly after the enactment of section 13519, POST forwarded a bulletin to local law enforcement agencies suggesting they include domestic violence training within the 24-hour continuing training requirement.

\*1186 The trial court heard argument, after which the trial court adopted its tentative statement of decision in which it noted that, “Although it may be reasonable in some or even most cases for a deputy to eliminate an unrequired two-hour elective in favor of the required domestic violence instruction, what about cases where the County's needs and priorities would be affected detrimentally, if two hours of electives were taken away? At what point would additional mandated courses result in increased costs? [¶] The record also shows that, for some deputies, other state-required training already amounts to 24 hours or more per two-year period. For these deputies, the two hours of mandated domestic violence training cannot be accommodated by giving up other training but must be added on, for added cost. It appears that, if domestic violence instruction is to be funded from existing

resources on a deputy-by-deputy basis, the County clearly does incur increased costs." The trial court granted the petition, and remanded the matter for consideration of the exact amount of increased costs.

## DISCUSSION

### I. STANDARD OF REVIEW.

1 2 3 The determination whether the statute here at issue established a mandate under California Constitution article XIII B, section 6, is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Under Government Code section 17559,<sup>7</sup> administrative mandamus is the exclusive means to challenge a decision of the Commission on a subvention claim. (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980, 64 Cal.Rptr.2d 270.) "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal ~~\*\*429~~ conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)

7 Government Code section 17559, subd. (b), provides: "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. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing."

### **\*1187 II. SECTION 13519'S IMPOSITION OF A DOMESTIC VIOLENCE TRAINING COURT IS NOT A STATE-MANDATED PROGRAM WITHIN THE MEANING OF CONSTITUTION ARTICLE XIII B, SECTION 6 BECAUSE IT DOES NOT CONSTITUTE AN "INCREASED LEVEL OF SERVICE."**

4 The Commission essentially makes two arguments. First, it contends that the County did not incur "increased costs." Reimbursement to the County under Constitution article XIII

B, section 6 is not required unless there is a showing of actual increased costs mandated by the state. (See, e.g., *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at pp. 54–55, 233 Cal.Rptr. 38, 729 P.2d 202; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66–67, 266 Cal.Rptr. 139, 785 P.2d 522.) In *City of Sacramento*, the court explained that the statutory concept of "costs mandated by the state" and the constitutional concept of article XIII B, section 6, are identical. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 67, fn. 11, 266 Cal.Rptr. 139, 785 P.2d 522.) Because of this limited, rather than broad definition, of "costs mandated by the state," article XIII B, section 6 does not provide reimbursement for every single increased cost. Thus, the trial court's finding that reimbursement was required where a statute results in a "redirection of local effort" or a "detrimental change in a local agency's needs and priorities" is not supported by the law. Rather, it constitutes an inappropriate injection of an equitable standard into the analysis.

Secondly, the Commission argues that no "mandate" exists. To the contrary, substantial evidence supports its finding that section 13519 does not result in *increased* costs because nothing in the statute requires the County, or any other local law enforcement agency, to incur actual increased costs. The total number of hours required (the 24 minimum hours of POST training) did not increase because of the domestic violence training; rather, POST still requires 24 hours and in fact after the passage of section 13519, POST forwarded a bulletin to law enforcement agencies recommending that they include domestic violence training within the 24-hour continuing professional training requirement. Because the POST standards are voluntary, if a local law enforcement agency adds two hours of domestic violence training to either the POST requirement or its own requirements, it is doing so at its own discretion.

In response, the County points out that the Commission's conclusion is based upon the erroneous premise that local law enforcement agencies could escape increased costs simply by dropping two hours of their existing POST training and substituting the new domestic violence training. However, the evidence in the legislative history indicates that this was not the intent of the Legislature when it was considering section 13519, nor was it the position of ~~\*1188~~ the Department of Finance. The County also contends that local law enforcement agencies incur costs when they sacrifice their existing training programs for the new domestic violence training. Although POST does not dictate those courses for which a local law enforcement agency must offer training

and POST does pay for much of the training material, most of the cost of POST training is borne by the local law enforcement agencies in the form of personnel costs while deputies spend 24 hours of work time receiving \*\*430 training. Furthermore, if a mere legislative directive to fund a new program with existing resources would let the state off the hook for reimbursement, then the constitutional rule of mandate reimbursement would be a nullity: any new state mandate can be funded by canceling other services. Because California Constitution article XIII B, section 6 was designed to prevent the elimination of the fiscal freedom of local governmental agencies to expend their limited available resources without being straightjacketed by state-mandated programs, the Commission's "within existing resources" rule would circumvent the purposes of article XIII B, section 6.

**A. The Purposes of California Constitution Article XIII B, Section 6 Guide Our Analysis.**

5 In 1978, the voters approved Proposition 13, which added article XIII A to the California Constitution. Article XIII A "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486, 280 Cal.Rptr. 92, 808 P.2d 235.) In 1979, Proposition 4 added article XIII B to the Constitution, which imposed a complementary limit on governmental spending. (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) These two constitutional provisions "work in tandem, together restricting California government's power both to levy and to spend for public purposes." (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.) Their goal is to protect citizens from excessive taxation and government spending. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61, 233 Cal.Rptr. 38, 729 P.2d 202.)

6 California Constitution article XIII B, section 6, provides in relevant part: "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 program or increased level of service." Article XIII B, section 6, prevents 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 of articles XIII A and XIII B. (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr.

92, 808 P.2d 235.) Section 6 thus requires the state "to pay for any new \*1189 governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577, 15 Cal.Rptr.2d 547.)

7 8 9 10 11 12 13 State mandate jurisprudence has established that in general, local agencies are not entitled to reimbursement of all increased costs mandated by state law, but only those resulting from a "new" program or an "increased level of service" imposed upon them by the state. (*Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) A "program" is defined as a program which carries out the "governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) A program is "new" if the local governmental entity had not previously been required to \*\*431 institute it. (*City of San Jose v. State of California, supra*, 45 Cal.App.4th at p. 1812, 53 Cal.Rptr.2d 521.) State mandates are requirements imposed on local governments by legislation or executive orders. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 50, 233 Cal.Rptr. 38, 729 P.2d 202.) Since the purpose of California Constitution article XIII B, section 6 is to avoid governmental programs from being forced on localities by the state, programs which are not unique to the government do not qualify; the programs must involve the provision of governmental services. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) Further, in order for a state mandate to be found, the local governmental entity must be required to expend the proceeds of its tax revenues. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra*, 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Lastly, there must be compulsion to expend revenue. (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 780, 783, 200 Cal.Rptr. 642 [revisions to Code of Civil Procedure required entities exercising the power of eminent domain to compensate businesses for lost goodwill did not create state mandate, because the power of eminent domain was discretionary, and need not be exercised at all]; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) In *Lucia Mar*, the court explained article XIII B, section 6. "The intent of the

section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIII B because the programs are not 'new.' ” (*Lucia Mar Unified School District v. Honig, supra*, 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

However, in spite of all of the above, “increased level of service” is not defined in California Constitution article XIII B, section 6 or in the ballot materials. \*1190 (*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449.) Furthermore, “Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.” (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197, 75 Cal.Rptr.2d 754.)

In *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802, 53 Cal.Rptr.2d 521, Government Code section 29550 authorized counties to charge cities and other local entities for costs of booking into county jails persons who had been arrested by employees of the cities and other entities. (45 Cal.App.4th at p. 1806, 53 Cal.Rptr.2d 521.) The State argued the measure merely reallocated booking costs, no shifting from state to local entities, therefore not within article XIII B, section 6. (45 Cal.App.4th at p. 1806, 53 Cal.Rptr.2d 521.) The city contended counties function as agents of the state, charged with enforcement of state's criminal laws; detaining and booking integral part of this process. (*Id.* at p. 1808, 53 Cal.Rptr.2d 521.) The Commission found maintenance of jails and detention of prisoners, had always been a local matter, and cities and counties were both forms of local government; therefore, there was no shift in costs between state and local entities.

Furthermore, the terms of Government Code section 29550 were discretionary, not mandatory. (*City of San Jose v. State of California, supra*, 45 Cal.App.4th at pp. 1808–1809, 53 Cal.Rptr.2d 521.) *City of San Jose* found no cost had been improperly transferred to the local government \*\*432 entities because the cost of capture, detention and housing of persons charged with crimes had traditionally been borne by the counties. (*Id.* at p. 1813, 53 Cal.Rptr.2d 521.) *City of San Jose* rejected the cities' argument that the county was acting as agent of the state because it was “not supported by recent case authority, nor does it square with definitions particular to subvention analysis.” (*Id.* at p. 1814, 53 Cal.Rptr.2d 521.) California Constitution article XIII B treated cities

and counties alike; Government Code section 17514 defines “costs mandated by the state” to mean any increased costs that a “local agency” is required to incur. Because both cities and counties were to be treated alike for purposes of subvention analysis, nothing in article XIII B, section 6 prohibits the shifting of costs between local government entities. (*City of San Jose, at p.* 1815, 53 Cal.Rptr.2d 521.)

In *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, Labor Code sections 4453, 4453.1 and 4460, increased the maximum weekly wage upon which temporary and permanent disability indemnity was computed from \$231 to \$262.50 per week. In addition, Labor Code section 4702 increased certain death benefits from \$55,000 to \$75,000. The trial court held that because the changes did not exceed costs of living changes, they did not create an “increased level of service.” (43 Cal.3d at p. 52, 233 Cal.Rptr. 38, 729 P.2d 202.) The County argued the terms of California Constitution article XIII B, section 6, do not contain an exception for increased costs which do not exceed the inflation rate. (43 Cal.3d at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) The County relied on certain repealed Revenue and \*1191 Taxation Code definitions which had equated any program which imposed “additional costs” as being within the constitutional provision of “increased level of service.” (*Id.* at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) *County of Los Angeles* rejected this interpretation. “If the Legislature had intended to continue to equate ‘increased level of service’ with ‘additional costs,’ then the provision would be circular: ‘costs mandated by the state’ are defined as ‘increased costs’ due to an ‘increased level of service,’ which, in turn, would be defined as ‘additional costs.’ ” (*Id.* at p. 55, 233 Cal.Rptr. 38, 729 P.2d 202.) An examination of the language of California Constitution article XIII B, section 6 shows that “by itself, the term ‘higher level of service’ is meaningless.” *Id.* at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202. Rather, it must be read in conjunction with the phrase “‘new program.’ ” *Ibid.* “Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs.’ ” (*Ibid.*) By “‘program,’ ” the voters meant “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, imposed unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*Ibid.*) 233 Cal.Rptr. 38, 729 P.2d 202.) The ballot materials provided that article XIII B, section 6 would “not allow the state government to force programs on local governments without the state paying for them.” (43 Cal.3d at p. 56, 233

Cal.Rptr. 38, 729 P.2d 202.) "Laws of general application are not passed by the Legislature to 'force' programs on localities." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) In light of this, "[t]he language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay \*\*433 for any incidental increase in local costs.... If the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word 'program' was being used in such a unique fashion." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) Therefore, there was no need to pay for increase in worker's compensation, because it is not a program administered by local agencies to provide service to the general public. Local government entities are indistinguishable in this respect from private employers. (*Id.* at pp. 57-58, 233 Cal.Rptr. 38, 729 P.2d 202.)

In *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, chapter 2 of Statutes of 1978 extended mandatory coverage under the state's unemployment insurance laws to include state and local governments and nonprofit organizations. *City of Sacramento* held there was no obligation on the part of the state to provide funds because there was no "unique" obligation imposed upon local governments, nor was there any requirement of new or increased governmental services. (50 Cal.3d at p. 57, 266 Cal.Rptr. 139, 785 P.2d 522.) As the court stated, the measure was adopted to conform California's system to federal laws. (*Id.* at p. 58, 266 Cal.Rptr. 139, 785 P.2d 522.) Because the measure required local governments to provide unemployment benefits to their own employees, the state had not compelled provision of a new or increased level of service to the public at the local level. Rather, it had merely required local government to provide the same benefits as private \*1192 employers. (*Id.* at p. 67, 266 Cal.Rptr. 139, 785 P.2d 522.) The purpose of California Constitution article XIII B, section 6 was to avoid governmental programs from being forced on localities by the state: Therefore, programs which are not unique to the government do not qualify. (50 Cal.3d at p. 67, 266 Cal.Rptr. 139, 785 P.2d 522.) The benefits at issue here have nothing to do with the provision of governmental services, and are therefore not within the scope of section 6. (50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.)

In *Lucia Mar Unified School District v. Honig*, *supra*, 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318, Education Code section 59300 required school districts to contribute part of the cost of educating pupils from the district at state

schools for the severely handicapped. *Lucia Mar* held section 59300 constituted a "new" program of higher level of service because cost of program had been shifted from the state to a local entity. "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of [California Constitution] article XIII B because the programs are not 'new.'" (44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

On the other hand, in *County of San Diego v. State of California*, *supra*, 15 Cal.4th 68, 61 Cal.Rptr.2d 134, 931 P.2d 312, pursuant to 1982 legislation, the state withdrew from counties Medi-Cal funding for medically indigent persons (MIP's). (*Id.* at pp. 79-80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) To offset this change in coverage, the state set up an account as a mechanism to transfer state funds to counties to pay for Medi-Cal expenses, and sufficient funds had been available in this account to enable the state to fully fund San Diego County's Medi-Cal costs. (*Id.* at p. 80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) However, in fiscal year 1990-1991, insufficient funds were available. (*Ibid.*) The state argued that no mandate for reimbursement existed because the counties had always borne the responsibility of paying for indigent medical care pursuant to Welfare & Institutions Code section 17000. (*County of San Diego*, at pp. 91-92, 61 Cal.Rptr.2d 134, 931 P.2d 312.) In finding \*\*434 reimbursement was mandated, the Supreme Court found that at the time California Constitution article XIII B, section 6 was enacted, the state was fully funding Medi-Cal for MIP's and the County bore no responsibility for those costs. (*County of San Diego*, at p. 93, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Thus, in enacting Medi-Cal, the Legislature had shifted the cost of indigent medical care from the counties to the state. (*Id.* at pp. 96-97, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Given this background, the Legislature excluded MIP's from Medi-Cal, knowing full well that it would trigger the counties' obligation to pay for medical care as providers of last resort. (*Id.* at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Therefore, the 1982 legislation "mandated a 'new program' on counties by 'compelling them to accept financial responsibility in whole or in part for a program,' i.e., medical care for adult MIP's, 'which was funded entirely by the state before the advent of article XIII B.'" (*County of San Diego v. State of California*, *supra*, 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312, citing *Lucia Mar Unified School District v. Honig*, *supra*, 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.) Otherwise, "County taxpayers would be forced

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to accept new taxes or see the county \*1193 forced to cut existing programs further....” (County of San Diego v. State of California, supra, 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

The Commission relies heavily on County of Sonoma v. Commission on State Mandates, supra, 84 Cal.App.4th 1264, 101 Cal.Rptr.2d 784. In County of Sonoma, the challenged legislation added section 97.03 to the Revenue and Taxation Code, and reduced the amount of property tax revenue to be allocated to local government pursuant to a formula, allocating an equal portion to a “Educational Revenue Augmentation Fund (ERAF)” for distribution to school districts. (84 Cal.App.4th at pp. 1269–1270, 1275, 101 Cal.Rptr.2d 784.) The net effect of the legislation was to decrease counties’ tax revenues, although school revenues remained stable, and satisfied the constitutional necessity of maintaining a minimum level of funding for schools pursuant to California Constitution article XIV, section 8. (84 Cal.App.4th at p. 1276, 101 Cal.Rptr.2d 784.) In County of Sonoma, the County argued that the reallocation of tax revenues constituted a state-mandated cost of a new program. (Id. at p. 1276, 101 Cal.Rptr.2d 784.) The court held that section 6 subvention was limited to “increases in actual costs.” Because none of the County’s tax revenues were expended, the legislation did not come within section 6. “Proposition 4 [the initiative enacting article XIII B] was aimed at controlling and capping government spending, not curbing changes in revenue allocations. Section 6 is an obvious [complement] to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned when ‘costs’ incurred by local government as a result of state-mandated programs, particularly with the costs of compliance with a new program restrict local spending in other areas.” (84 Cal.App.4th at pp. 1283–1284, 101 Cal.Rptr.2d 784 (emphasis added).)

County of Sonoma discerned a further requirement of California Constitution article XIII B, section 6: that the costs incurred must involve programs previously funded exclusively by the state. In imposing this limitation, County of Sonoma relied on language in \*\*435 County of San Diego v. State of California, supra, 15 Cal.4th 68, 61 Cal.Rptr.2d 134, 931 P.2d 312 that “section 6 prohibits the

state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6.” (County of San Diego v. State of California, supra, 15 Cal.4th 68 at p. 99, fn. 20, 61 Cal.Rptr.2d 134, 931 P.2d 312.) County of Sonoma determined that because the statute at issue only involved a reallocation of funds between entities already jointly responsible for providing a service (education), no state-mandated reimbursable program existed. (County of Sonoma v. Commission on State Mandates, supra, 84 Cal.App.4th at p. 1289, 101 Cal.Rptr.2d 784.)

14 15 16 \*1194 Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a “higher level of service.” In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, “costs” for purposes of California Constitution article XIII B, section 6, does not equal every increase in a locality’s budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

We agree that POST certification is, for all practical purposes, not a “voluntary” program and therefore the County must, in order to comply with section 13519, add domestic violence training to its curriculum. POST training and certification is ongoing and extensive, and local law enforcement agencies may chose from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST’s certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Furthermore, the state has not shifted from itself the cost of a program previously administered and funded by the state. Instead, the state is requiring certain courses to be placed within an already existing framework of training. This loss of “flexibility” does not, in and of itself, require the County to expend funds that previously had been expended on the POST program by the state. Instead, “[t]he purpose for which state subvention of funds was created, to protected local agencies from having the state transfer its cost of government from

itself to the local level, is therefore not brought into play” by a directive that POST-certified studies include domestic violence training. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates*, supra, 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Any increased costs are merely “incidental” to the cost of administering the POST certification.

domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by section 13519.

17 18 While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state-mandated reimbursable program (*Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 541, 234 Cal.Rptr. 795), our interpretation is supported by the hortatory statutory language that, “The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase \*\*436 the annual training costs of local \*1195 government entities.” (§ 13519.) Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state-mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing

#### DISPOSITION

The judgment of the trial court is reversed. The trial court is directed to enter a new and different judgment denying the County's petition for writ of mandate and reinstating the findings of the Commission.

We concur: PERLUSS, P.J., and WOODS, J.

#### Parallel Citations

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# **ATTACHMENT 51**



View National Reporter System version  
11 Cal.App.4th 1564, 15 Cal.Rptr.2d  
547, 79 Ed. Law Rep. 924

THOMAS WILLIAM HAYES, as  
Director, etc., Plaintiff and Respondent,

v.

COMMISSION ON STATE MANDATES,  
Defendant, Cross-defendant, and Respondent;  
DALE S. HOLMES, as Superintendent, etc.,  
Real Party in Interest, Cross-complainant  
and Appellant; WILLIAM CIRONE, as  
Superintendent, etc., Real Party in Interest  
and Respondent; STATE OF CALIFORNIA  
et al., Cross-defendants and Respondents.

No. C009519.  
Court of Appeal, Third District, California.  
Dec 30, 1992.

#### SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. The court held that to the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of

such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

#### HEADNOTES

##### Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs:Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

[See **Cal.Jur.3d**, State of California, § 78; 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 123, 124.]

(2) Schools § 4--School Districts--Relationship to State.

A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial

owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

(3) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Federally Mandated Costs. Pursuant to Rev. & Tax. Code, § 2271 (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

(4) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Costs Incurred Before Effective Date of Constitutional Provision.

Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

(5) Schools § 53--Parents and Students--Right or Duty to Attend--Handicapped Children--Federal Rehabilitation Act--Obligations Imposed on Districts.

Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation

upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

(6) Schools § 53--Parents and Students--Right or Duty to Attend--Handicapped Children--Education of the Handicapped Act.

The federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to establish a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

(7) Civil Rights § 6--Education--Handicapped--Scope of Federal Statute.

Congress intended the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Accordingly, where it is applicable, the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

(8a, 8b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education: Schools § 4--School Districts; Financing; Funds--Special Education Costs--Reimbursement by State.

The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented

the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

(9) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs.

The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

(10) Statutes § 28--Construction--Language--Consistency of Meaning Throughout Statute.

As a general rule and unless the context clearly requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

(11) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs--Subvention.

Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole

was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education--Applicable Criteria in Determining Whether Subvention Required.

In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits. The board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

(13) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--Opinion Elucidating Existing Law.

In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule

of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

#### COUNSEL

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Breon, O'Donnell, Miller, Brown & Dannis and Emi R. Uyehara as Amici Curiae on behalf of Real Party in Interest, Cross-complainant and Appellant.

No appearance for Real Party in Interest and Respondent.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian and Marsha A. Bedwell, Deputy Attorneys General, and Daniel G. Stone for Plaintiff and Respondent.

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Richard J. Chivaro and Patricia A. Cruz for Cross-defendants and Respondents.

#### SPARKS, Acting P. J.

This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that "[w]henver 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 program or increased level of service, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with

special education programs. After a lengthy administrative process, the Board of Control rendered a decision finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ. Proc., § 1094.5), directing the Commission on State Mandates (the successor to the Board of \*1571 Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522]; and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ. Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

#### I. The Parties

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov. Code, § 17525.) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov. Code, § 17630.) The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

The Santa Barbara County Superintendent of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the

1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and, although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year.

\*1572 Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross-defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

## II. Factual and Procedural Background

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750], at pages 71 and 72, we described these procedures as follows (with footnotes deleted): "Section 2250 [Revenue & Taxation Code] and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was

required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.) \*1573

"At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if

a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

“Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) ‘Costs mandated by the state’ are defined as ‘any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which \*1574 mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.’ (Gov. Code, § 17514.) The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; [Rev. & Tax. Code,] § 2239.)”

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the “mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child.” Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).<sup>1</sup> Santa Barbara's initial claim was for \$10,500 in state-mandated costs for the 1979-1980 fiscal year.

During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements:

(1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of “Individual Education Plans” (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of \$520,000 for the cost of these services during the 1979- 1980 fiscal year. \*1575

Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.)<sup>2</sup>

The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that “the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act.”

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of \$474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according to Riverside, “mandates a 10% cap on ratio of students served by special education and within that 10% mandates the ratio of students to be served by certain services.” Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already “locked into” providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae.<sup>3</sup>

The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of \*1576 Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of \$2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of \$7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985-1986 fiscal years failed to pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.)) A separate bill which would have appropriated funds to reimburse Riverside \*1577 for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 (1987-1988 Reg. Sess.))

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-

petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in City of Sacramento v. State of California, supra*, 50 Cal.3d 51, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258]. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates to set aside the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra*, 50 Cal.3d 51, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

### III. Principles of Subvention

(1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by \*1578 state law to provide to its residents. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 70.) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.) Reimbursement is required when

the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 188.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented the state from imposing the cost of new programs or higher levels of service upon local governments. (*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.)<sup>4</sup> The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

(2)(See fn. 5.) Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs.<sup>5</sup> (Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were \*1579 undergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.) In *Serrano*, the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.) A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano*. (Stats. 1972, ch. 1406, §§ 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest*

(1976) 18 Cal.3d 728, 736-737 [135 Cal.Rptr. 345, 557 P.2d 929].)<sup>6</sup>

The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. (Rev. & Tax. Code, § 2231, subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 \*1580 and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax. Code, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." (3) In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.)<sup>7</sup> The appropriations subject to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional

services or which unavoidably make the provision of existing services more costly.” (Cal. Const., art. XIII B, § 9, subd. (b).)

Like its statutory predecessor, the constitutional initiative measure includes a provision designed “to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.” (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 [244 Cal.Rptr. 677, 750 P.2d 318].) Section 6 of article XIII B of the state Constitution provides: “Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the \*1587 State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

Although article XIII B of the state Constitution requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. (Cal. Const., art. XIII B, § 10.) (4) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever “the Legislature or any State agency” mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state subvention is not required when the federal government imposes new costs on local governments. (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 188; see also *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 543 [234 Cal.Rptr. 795].) In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or

local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion,<sup>8</sup> the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73.) However, “certain regulatory standards imposed by the federal government: \*1582 under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense.” (*Id.* at pp. 73-74.) The test for determining whether there is a federal mandate is whether compliance with federal standards “is a matter of true choice,” that is, whether participation in the federal program “is truly voluntary.” (*Id.* at p. 76.) The court went on to say: “Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (*Ibid.*)

#### IV. Special Education

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of “landmark court cases” emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See *Smith v. Robinson* (1984) 468 U.S. 992, 1010 [82 L.Ed.2d 746, 763, 104 S.Ct. 3457].) Two federal district court cases, *Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa.* (E.D.Pa. 1972) 343 F.Supp. 279 (see also *Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa.* (E.D.Pa. 1971) 334 F.Supp. 1257), and *Mills v. Board of Education of District of Columbia* (D.D.C. 1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 180, fn. 2 [73 L.Ed.2d 690, 695, 102 S.Ct. 3034].)

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against

the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa.*, *supra*, 343 F.Supp. at p. 282.) The matter was assigned to a three-judge panel which heard evidence on the plaintiffs' due process and equal protection claims. (*Id.* at p. 285.) The parties then agreed to resolve the litigation by means of a consent \*1583 judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with placement decisions. (*Id.* at pp. 303-306.) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa.*, *supra*, 343 F.Supp. at p. 291.) The court said that it was convinced the due process and equal protection claims were colorable. (*Id.* at pp. 295-296.)

In the *Mills* case, an action was brought on behalf of a number of school-age children with exceptional needs who were excluded from the Washington, D.C., public school system. (*Mills v. Board of Education of District of Columbia*, *supra*, 348 F.Supp. at p. 868.) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.) The court said: "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, \*1584 shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...." (29 U.S.C. § 794, Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.)<sup>9</sup> Since federal assistance to education is pervasive (see, e.g., Ed. Code, §§ 12000-12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 by educational agencies.<sup>10</sup> The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex. 1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free \*1585 public education for the handicapped child." (*Doe v. Marshall*, *supra*, 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324,

1334; *Halderman v. Pennhurst State School & Hospital*, *supra*, 446 F.Supp. at p. 1323.)

(5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis*, *supra*, 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively and substantially. (442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990- 991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672, 105 S.Ct. 712].)

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate \*1586 the educational needs of the children in their districts. Section 504 would not appear to permit

local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate*, *supra*, 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis*, *supra*, 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." (*Alexander v. Choate*, *supra*, 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], *fn. omitted.*)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. (*N. M. Ass'n for Retarded Citizens v. State of N. M.*, *supra*, 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].)<sup>11</sup> We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action. \*1587

In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at

p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient states to adopt a goal of providing full educational opportunities to all handicapped children. (*Ibid.* [73 L.Ed.2d at pp. 695-696].) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. (*Ibid.* [73 L.Ed.2d at p. 696].)

Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) (6) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson, supra*, 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra*, 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme Court has noted that Congress intended the act to establish " 'a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.' " (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.)<sup>12</sup>

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local \*1588 educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children," and "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of

handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).)<sup>13</sup>

It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See *City of Sacramento v. State of California, supra*, 50 Cal.3d at pp. 73-74; *City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 195.) As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. §§ 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979-1980, the base year for Santa Barbara's claim, California received \$71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received \$79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. (7) Congress intended the act to serve as a means by which state and \*1589 local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson, supra*, 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].)<sup>14</sup>

As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson, supra*, 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra*, 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p. 698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. \*1590

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) 495 F.Supp. 391, a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.)<sup>15</sup> The court then considered the cause of action under section 504 and found that both the

state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. (495 F.Supp. at pp. 398-399.)

After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra*, 678 F.2d 847.) The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (678 F.2d at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (678 F.2d at p. 854.) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped \*1591 children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs

of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (*Ibid.*) Litigation was becoming so prevalent that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.)<sup>16</sup>

In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals*, supra, 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting Ed. Code, § 7001.) In 1977 the Legislature acted to further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed. Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed. Code, § 56000.)

As this history demonstrates, in determining whether to adopt the requirements of the Education of the Handicapped Act as amended in 1975, our \*1592 Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate

education for handicapped children. (5) In enacting the 1975 amendments to the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

(8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California*, supra, 50 Cal.3d at page 76. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

#### V. Subvention for Special Education

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California*, supra, 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general \*1593 application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

(9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former §§ 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which \*1594 is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state.

(20 U.S.C. §§ 1412, 1413.) (8b) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c), (d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the \*1595 extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d 182, and concluded that the Education of the

Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state's voluntary choice in its implementation of the federal program.

#### VI. Riverside's Objections

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different with respect to state subvention than with respect to taxing and spending limitations. (10) As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [285 Cal.Rptr. 777].) (11) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in \*1596 the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

(12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the

factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37 [196 Cal.Rptr. 704, 672 P.2d 110].) (13) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (*Ibid.* See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953-954 [148 Cal.Rptr. 379, 582 P.2d 970]; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680-681 [312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by state choice in the implementation of the federal program. The issues were not addressed by the parties or the Board of Control in this light. The \*1597 Commission on State Mandates is the entity with the responsibility for considering the issues in the first instance and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the

Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

### Disposition

The judgment is affirmed.

In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation-of-powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See *Carmel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at pp. 538- 541.)

Davis, J., and Scotland, J., concurred.

The petition of plaintiff and respondent for review by the Supreme Court was denied April 1, 1993. Lucas, C.J., Kennard, J., and Arabian, J., were of the opinion that the petition should be granted. \*1598

### Footnotes

- 1 Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, tit. I, §§ 119, 122(d)(2) (Nov. 6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; Pub.L. No. 99- 506, tit. I, § 103(d) (2)(B), tit. X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100-259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, tit. II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to title 29, United States Code, section 794.
- 2 The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, tit. IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, tit. IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.
- 3 The 1980 legislation required that a local agency adopt an annual budget plan for special education services. (Ed. Code, § 56200.) Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed. Code, §§ 56760, 56761.) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed. Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of 9 percent. (Ed. Code, § 56195.8.) The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.
- 4 In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (Gov. Code, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.)
- 5 A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control

- of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523-1524.)
- 6 After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34 48-56, 61-62 [36 L.Ed.2d 16, 42-43, 51-56, 59-60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (*Serrano v. Priest, supra*, 18 Cal.3d at pp. 761-766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest, supra*, 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed. Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff, supra*, 5 Cal.App.4th 1513.)
  - 7 As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff, supra*, 5 Cal.App.4th 1513.)
  - 8 The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60.)
  - 9 In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, 635-636 [79 L.Ed.2d 568, 577-578, 104 S.Ct. 1248].)
  - 10 HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)
  - 11 Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, *supra*, eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.
  - 12 Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)
  - 13 That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223 at pages 231 and 232 [105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

Hayes v. Commission on State Mandates, 11 Cal.App.4th 1564 (1992)

15 Cal.Rptr.2d 547, 79 Ed. Law Rep. 924

- 14 In *Smith v. Robinson, supra*, the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)
- 15 The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)
- 16 Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

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# **ATTACHMENT 52**



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55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal.

Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

REDEVELOPMENT AGENCY OF THE CITY  
OF SAN MARCOS, Plaintiff and Appellant,

v.

CALIFORNIA COMMISSION ON STATE  
MANDATES, Defendant and Respondent;

CALIFORNIA DEPARTMENT OF  
FINANCE, Intervener and Respondent.

No. D026195.

Court of Appeal, Fourth District, Division 1, California.

May 30, 1997.

### SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under Gov. Code, § 17550 et seq. (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under Cal. Const., art. XIII B, § 6. The trial court found that the source of funds used by the agency was exempt, under Health & Saf. Code, § 33678, from the scope of Cal. Const., art. XIII B, § 6. (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6. Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency

to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

### HEADNOTES

#### Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Subvention: Words, Phrases, and Maxims--Subvention. "Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2) State of California § 11--Fiscal Matters--Subvention--Judicial Rules.

Under Gov. Code, § 17559, review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, is a question of law. On appellate review, the following standards apply: Gov. Code, § 17559, governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions about the meaning and effect of constitutional and statutory provisions.

(3a, 3b) State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4) Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.

The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

(5) State of California § 11--Fiscal Matters--Subvention-- Purpose of Constitutional Provisions.

The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL

Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent. \*979

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

HUFFMAN, J.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov. Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code<sup>1</sup> sections 33334.2 and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1)(See fn. 2)The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6; all further references to articles are to the California Constitution).<sup>2</sup> (Cal. Const., art. XVI, § 16; § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (Code Civ. Proc., § 1094.5; Gov. Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the scope of section 6, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for low and moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. \*980

### I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (Gov. Code, § 17500 et seq.)<sup>3</sup> The Commission hearing consisted of oral argument on the points and authorities presented.

(2) Under Government Code section 17559, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

### II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: "Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to \*981 adopt and levy taxes. [Citation.] [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation

and government spending. [Citation.] [Citation.]" (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80-81.)

Section 6, part of article XIII B and the provision here at issue, requires that 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 program or increased level of service ...." (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here.<sup>4</sup>

In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California, supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation ( \*982 *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106 [211 Cal.Rptr. 133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as

follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf. Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)” (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].)<sup>5</sup> In *Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute “proceeds of taxes” subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency*, *supra*, at p. 1019).<sup>6</sup> This ruling was based on section 33678, providing in pertinent part: “This section implements and fulfills the intent ... of Article XIII B and \*983 Section 16 of Article XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ... or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*” (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined “proceeds of taxes” in this way: “Under article XIII B, with the exception of state

subventions, the items that make up the scope of 'proceeds of taxes' concern charges levied to raise *general revenues* for the local entity. 'Proceeds of taxes,' in addition to 'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service...' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*” (Italics added.)<sup>7</sup>

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a “cost” of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and \*984 accordingly we need not discuss the alternate grounds of decision stated by the Commission.<sup>8</sup>

### III. Housing Fund Allocations: Reimbursable Costs?

#### 1. Arguments

The Agency takes the position that the language of section 33678 is simply inapplicable to its claim for subvention of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See *fn. 4, ante.*) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, for purposes of appropriations limitations, tax increment financing is not deemed to be the “proceeds of taxes.” (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a “plain meaning” rule to section 6 (see, e.g., *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the

program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 “was designed to protect the tax revenues of local governments from state mandates that \*985 would require expenditure of such revenues.” (*County of Fresno v. State of California, supra*, at p. 487.) Based on the language and history of the measure, the court stated, “Article XIII B of the Constitution, however, was not intended to reach beyond taxation.” (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 “requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (*Ibid.*, original italics.) Interpreting section 6, the court stated: “Considered within its context, the section effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from sources other than taxes.” (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

## 2. Interpretation of Section 6

Here, the Agency contends the authority of *County of Fresno v. State of California, supra*, 53 Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining “costs” in this context read as mere dicta. It also continues to argue for a “plain meaning” reading of section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read section 6 in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California, supra*, 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California, supra*, 15 Cal.4th at p. 81.) A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68.) (3b) The related goals of these enactments require us to read the term “costs” in section 6 in light of the enactment as a whole. The “costs” for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the \*986 assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which section 6 was designed to protect? (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 487.)

## 3. Relationship of Appropriations Limitations and Subvention

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin, supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: “[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on ‘appropriations subject to limitation,’ which consists primarily of the authorization to expend during a fiscal year the ‘proceeds of taxes.’ (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute ‘proceeds of taxes.’”<sup>9</sup>

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues

for the local entity.” (*County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially \*987 responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].)<sup>10</sup>

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d

at pp. 1016-1020.) Section 6 “requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6. We therefore need not interpret any remaining portions of section 6.

#### Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.

Appellant's petition for review by the Supreme Court was denied September 3, 1997.

#### Footnotes

- 1 All further statutory references are to the Health and Safety Code unless otherwise noted.
- 2 “Subvention” generally means a grant of financial aid or assistance, or a subsidy. [Citation.]” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)
- 3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.
- 4 Section 6 lists the following exclusions to the requirement for subvention of funds: “(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov. Code, § 17514, definition of “costs mandated by the state,” using the same “new program or higher level of service” language of section 6.)
- 5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of low and moderate-income housing, as well as expanding employment opportunities and improving the social environment.
- 6 The term of art, “proceeds of taxes,” is defined in article XIII B, section 8, as follows: (c) “*Proceeds of taxes shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions.*” (Italics added.)
- 7 The issues before the court in *County of Placer v. Corin*, *supra*, 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. Section 6 is not discussed; the court's analysis of other concepts found in article XIII B is nevertheless instructive.
- 8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated “new program or higher level of service” under this section.

Redevelopment Agency v. Commission on State Mandates, 55 Cal.App.4th 976 (1997)

64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

- 9 The term of art, "appropriations subject to limitation," is defined in article XIII B, section 8, as follows: [¶] (b) "'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes." (Italics added.)
- 10 We disagree with respondents that the legislative history of sections 33334.2 and 33334.3 is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

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# **ATTACHMENT 53**



94 P.3d 589  
Supreme Court of California

SAN DIEGO UNIFIED SCHOOL  
DISTRICT, Plaintiff and Respondent,

v.

COMMISSION ON STATE  
MANDATES, Defendant and Appellant;  
California Department of Finance,  
Real Party in Interest and Appellant.

No. S109125. Aug. 2, 2004.

### Synopsis

**Background:** School district petitioned for writ of administrative mandate to require the Commission on State Mandates to approve test claim for costs of mandatory and discretionary expulsion of students. The Superior Court, San Diego County, No. GIC737638, Linda B. Quinn, J., granted the petition. Commission and Department of Finance appealed. The Court of Appeal affirmed. Review was granted, superseding opinion of Court of Appeal.

**Holdings:** The Supreme Court, George, C.J., held that:

1 all hearing costs incurred by district as result of mandatory actions related to expulsions for student's possession of firearm, at time relevant to this proceeding, constituted "higher level of service" within meaning of state constitutional provision, and thus were fully reimbursable, and

2 hearing costs incurred by district as result of actions related to discretionary expulsions did not constitute "new program or higher level of service," and, in any event, did not trigger right to reimbursement, as costs of procedures exceeding federal due process requirements were de minimis.

Affirmed in part and reversed in part.

Opinion, 122 Cal.Rptr.2d 614, superseded.

### Attorneys and Law Firms

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\*866 Steven M. Woodside, County Counsel (Sonoma) as Amicus Curiae on behalf of Plaintiff and Respondent.

### Opinion

\*\*591 GEORGE, C.J.

Article XIII B, section 6, of the California Constitution provides: "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 program or increased level of service..."<sup>1</sup> (Hereafter article XIII B, section 6.)

1 The provision continues: "except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (Cal. Const., art. XIII B, § 6.)

Plaintiff San Diego Unified School District (District), like all other public school districts in the state, is, and was at the time relevant in this proceeding, governed by statutes that regulate the expulsion of students. (Ed.Code, § 48900 et seq.) Whenever an expulsion recommendation is made (and before a student may be expelled), the District is required by Education Code section 48918 to afford the student a hearing with various procedural protections—including notice of the hearing and the right to representation by \*\*\*468 counsel, preparation of findings of fact, notices related to any expulsion and the right of appeal, and preparation of a hearing record. Providing these procedural protections requires the District to expend funds, for which the District asserts a right to reimbursement from the state pursuant to article XIII B,

section 6, and implementing legislation, Government Code section 17500 et seq.

We granted review to consider two questions: (1) Are the hearing costs incurred as a result of the *mandatory* actions related to expulsions that are compelled by Education Code section 48915 fully reimbursable—or are those hearing costs reimbursable only to the extent such costs are attributable to hearing procedures that exceed the procedures required by federal law? (2) Are any hearing costs incurred in carrying out expulsions that are *discretionary* under Education Code section 48915 reimbursable? After we granted review and filed our decision in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (*Kern High School Dist.*), we added the following preliminary question to be addressed: Do the Education Code \*867 statutes cited above establish a “new program” or “higher level of service” under article XIII B, section 6? Finally, we also asked the parties to brief the effect of the decision in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, on the present case.

We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a “higher level of service” under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law. In this respect, we shall affirm the judgment of the Court of Appeal.

We also conclude that *no* hearing costs incurred in carrying out those expulsions that are *discretionary* under Education Code section 48915—including costs related to hearing procedures claimed to exceed the requirements of federal law—are reimbursable. As we shall explain, to the extent that statute makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated, for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a

state mandate. Accordingly, we shall reverse the judgment of the Court of Appeal insofar as it compels reimbursement \*\*592 of any costs incurred pursuant to discretionary expulsions.

## I

### A. Education Code sections 48918 and 48915

We first describe the relevant provisions of two statutes—Education Code sections 48918 and 48915—pertaining to the expulsion of students from public schools.

Education Code section 48918 specifies the right of a student to an expulsion hearing and sets forth procedures that a school district must \*868 follow when conducting \*\*\*469 such a hearing. (Stats.1990, ch. 1231, § 2, pp. 5136–5139.)<sup>2</sup>

- 2 For purposes of our present inquiry, section 48918, at the time relevant here (mid-1993 through mid-1994) read essentially as it had for the prior decade, and as it has in the ensuing decade. That provision first was enacted in 1975 (see Stats.1975, ch. 1253, § 4, pp. 3277–3278) as Education Code, former section 10608. (This enactment apparently was a response to the United States Supreme Court's decision in *Goss v. Lopez* (1975) 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725 (*Goss*) [recognizing due process requirements applicable to public school students who are suspended for more than 10 days].) The statute was renumbered as Education Code, former section 48914 in 1976 (Stats.1976, ch. 1010, § 2, pp. 3589–3590) and was substantially augmented in 1977 (Stats.1977, ch. 965, § 24, pp. 2924–2926). After relatively minor amendments in 1978 and 1982, the section in 1983 was substantially restated, further augmented, and renumbered as Education Code section 48918 (Stats.1983, ch. 498, § 91, p. 2118). Amendments adopted in 1984 and 1988 made relatively minor changes, and further similar modifications were made in 1990, reflecting the version of the statute here at issue. Subsequent amendments in 1995, 1996, 1998, and 1999 made further changes that are irrelevant to the issue presented in the case now before us.

In identifying the right to a hearing, subdivision (a) of this statute declares that a student is “entitled” to an expulsion hearing within 30 days after the school principal determines that the student has committed an act warranting expulsion.<sup>3</sup> *In practical effect, this means that whenever a school principal makes such a determination and recommends to the*

school board that a student be expelled, an expulsion hearing is mandated.<sup>4</sup>

3 The provision reads: "The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900...." (Ed.Code, § 48918, subd. (a). (Subdivision (b) of § 48900 presently includes—as it did at the time relevant here—the offense of possession of a firearm.)

4 Of course, if a student does not invoke his or her entitlement to such a hearing, and instead waives the right to such a hearing, the hearing need not be held.

In specifying the substantive and procedural requirements for such an expulsion hearing, Education Code section 48918 sets forth rules and procedures, some of which, the parties agree, codify requirements of federal due process and some of which may exceed those requirements.<sup>5</sup> These rules and procedures govern, among other things, notice of a hearing and the right to representation by counsel, preparation of findings of fact, notices related to the expulsion and the right of appeal, and preparation of a hearing record. (See § 48918, subds. (a) through former subd. (j) (currently subd. (k).)

5 See *Goss, supra*, 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725; *Gonzales v. McEuen* (C.D.Cal.1977) 435 F.Supp. 460, 466–467 (concluding that former Education Code section 10608 [current § 48918] met federal due process requirements pertaining to expulsions from public schools); 7 Witkin, *Summary of California Law* (9th ed.1988), *Constitutional Law*, § 549, p. 754 (noting that Education Code section 48918 and related legislation were enacted in response to the decision in *Goss*).

\*869 The second statute at issue in this matter is Education Code section 48915. Discrete subdivisions of this statute address circumstances in which a principal *must* recommend to the school board that a student be expelled, and circumstances in which a principal *may* recommend that a student be expelled.

First, there is what the parties characterize as the "mandatory expulsion provision," Education Code section 48915, former subdivision (b). As it read during the time relevant in this proceeding (mid-1993 \*\*\*470 through mid-1994), this subdivision (1) compelled a school principal to *immediately suspend* any \*\*593 student found to be in possession of a

firearm at school or at a school activity off school grounds, and (2) mandated a *recommendation* to the school district governing board that the student be *expelled*. The provision further required the governing board, upon confirmation of the student's knowing possession of a firearm, either to expel the student or "refer" him or her to an alternative education program housed at a separate school site.<sup>6</sup> (Compare this former provision with *current* Ed.Code, § 48915, subds. (c) and (d).)<sup>7</sup>

6 An earlier and similar, albeit broader, version of the provision—extending not only to possession of firearms but also to possession of explosives and certain knives—existed briefly and was effective for approximately two and one-half months in late 1993. That initial statute, former section 48915, subdivision (b) (as amended Stats.1993, ch. 1255, § 2, pp. 7284–7285), which was effective only from October 11, 1993 through December 31, 1993, provided: "The principal or the superintendent of schools shall immediately suspend pursuant to Section 48911, and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds. The governing board shall expel that pupil or, as an alternative, refer that pupil to an alternative education program, whenever the principal or the superintendent of schools and the governing board confirm that: [¶] (1) The pupil was in knowing possession of the firearm, knife, or explosive. [¶] (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the school district. [¶] (3) There was no reasonable cause for the pupil to be in possession of the firearm, knife, or explosive."

As subsequently amended by Statutes 1993, chapter 1256, section 2, pages 7286–7287, effective January 1, 1994, Education Code section 48915, former subdivision (b), read: "The principal or the superintendent of schools shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior, or senior high school or housed at the schoolsite attended by the pupil at the time the expulsion was recommended to the school board, whenever the principal or superintendent of schools and the governing board

confirm the following: [¶] (1) The pupil was in knowing possession of the firearm. [¶] (2) An employee of the school district verifies the pupil's possession of the firearm.”

7 The current subdivisions of Education Code section 48915 set forth a list of mandatory expulsion conduct broader than that set forth in former subdivision (b), and require a school board both to *expel and refer* to other institutions all students found to have committed such conduct. The present subdivisions read: “(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts, at school or at a school activity off school grounds: [¶] (1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. [¶] (2) Brandishing a knife at another person. [¶] (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code. [¶] (4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900. [¶] (5) Possession of an explosive. [¶] (d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions: [¶] (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems. [¶] (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school. [¶] (3) Is not housed at the school site attended by the pupil at the time of suspension.” (Stats.2001, ch. 116, § 1.)

\*\*\*471 \*870 This provision, as it read at the time relevant here, did not mandate expulsion per se<sup>8</sup>—but it *did* require immediate suspension followed by a mandatory expulsion recommendation (and it provided that a student found by the governing board to have possessed \*\*594 a firearm would be removed from the school site by limiting disposition to either expulsion or “referral” to an alternative school). Moreover, as noted above, whenever expulsion is recommended a student has a right to an expulsion

hearing. Accordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing*. For convenience, we accept the parties' description of this aspect of Education Code section 48915 as constituting a “mandatory expulsion provision.”

8 As the Department of Finance observed in an August 22, 1994, communication to the Commission in this matter, “nothing in [Education Code section 48915] ... requires a district governing board or a county board of education to expel a pupil,” and even “unauthorized and knowing possession of a firearm, does not result in mandated expulsion. Section 48915 subdivision (b) provides for the choice of the governing board to either expel the pupil in possession of a firearm, or refer the pupil to an alternative program of study....”

The second aspect of Education Code section 48915 relevant here consists of what we shall call the “discretionary expulsion provision.” (*Id.*, former subd. (c), subsequently subd. (d), currently subd. (e).) During the period relevant in this proceeding (as well as currently), this subdivision of Education Code section 48915 recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing school property or private property, using or selling illicit drugs, receiving stolen property, possessing tobacco or drug paraphernalia, or engaging in disruptive behavior). The former provision (like the current provision) further specified that the school district governing board “may” order a student expelled upon finding that the \*871 student, while at school or at a school activity off school grounds, engaged in such conduct.<sup>9</sup>

9 Education Code, section 48915, former subdivision (c) (as amended Stats.1992, ch. 909, § 3, p. 4226; amended and redesignated as former subd. (d) by Stats.1993, ch. 1255, § 2, pp. 7284–7285; further amended Stats.1993, ch. 1256, § 2, p. 7287, and Stats.1994, ch. 1198, § 7, p. 7271) provided, at the time relevant here: “Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board *may* order a pupil expelled upon finding that the pupil violated subdivision (f), (g), (h), (i), (j), (k), or (l) of Section 48900, or Section 48900.2 or 48900.3, and either of the following: [¶] (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct. [¶] (2) That due to the nature of the violation, the presence

of the pupil causes a continuing danger to the physical safety of the pupil or others.” (Italics added.)

At the time relevant here, subdivisions (f) through (l) of section 48900 (as amended Stats.1992, ch. 909, § 1, pp. 4224–4225; Stats.1994, ch. 1198, § 5, pp. 7269–5270) provided: “A pupil shall *not* be suspended from school or recommended for expulsion *unless* the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has: [¶] ... [¶] (f) Caused or attempted to cause damage to school property or private property. [¶] (g) Stolen or attempted to steal school property or private property. [¶] (h) Possessed or used tobacco, or any products containing tobacco or nicotine products.... However, this section does not prohibit use or possession by a pupil of his or her own prescription products. [¶] (i) Committed an obscene act or engaged in habitual profanity or vulgarity. [¶] (j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. [¶] (k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. [¶] (l) Knowingly received stolen school property or private property.” (Italics added.)

At the time relevant here, section 48900.2 (Stats.1992, ch. 909, § 2, p. 4225) provided: “In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.[¶] For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.”

Section 48900.3 (Stats.1994, ch. 1198, § 6, p. 7270), at the time relevant here, provided: “In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened

to cause, or participated in an act of, hate violence, as defined in subdivision (e) of [former] Section 33032.5 [current section 233].”

In addition, section 48900.4 (Stats.1994, ch. 1017, § 1, p. 6196) provided, at the time relevant here: “In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment.”

(All of these current provisions—sections 48915, subdivision (e), 48900, 48900.2, 48900.3, and 48900.4—read today substantially the same as they did at the time relevant in the present case.)

**\*\*\*472 \*872 \*\*595 B. Proceedings  
under Government Code section 17500 et seq.**

Procedures governing the constitutional requirement of reimbursement under article XIII B, section 6, are set forth in Government Code section 17500 et seq. The Commission on State Mandates (Commission) (Gov.Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. (Gov.Code, § 17551.) Government Code section 17561, subdivision (a), provides that the “state shall reimburse each ... school district for all ‘costs mandated by the state,’ as defined in section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” to mean, in relevant part, “any increased costs which a ... school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” Finally, Government Code section 17556 sets forth circumstances in which there shall be no reimbursement, including, under subdivision (c), circumstances in which “[t]he statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or \*\*\*473 executive order

mandates costs which exceed the mandate in that federal law or regulation.”

In March 1994, the District filed a “test claim” with the Commission, asserting entitlement to reimbursement for the costs of hearings provided with respect to both categories of cases described above—that is, those hearings triggered by mandatory expulsion recommendations, and those hearings resulting from discretionary expulsion recommendations. (See Gov. Code, § 17521; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331–333, 285 Cal.Rptr. 66, 814 P.2d 1308.)<sup>10</sup> The District sought reimbursement for costs incurred between July 1, 1993, and June 30, 1994, under statutes effective through the latter date.

- 10 As observed by amicus curiae California School Boards Association, a “test claim is like a class action—the Commission’s decision applies to all school districts in the state. If the district is successful, the Commission goes to the Legislature to fund the statewide costs of the mandate for that year and annually thereafter as long as the statute is in effect.”

In August 1998, after holding hearings on the District’s claim (as amended in April 1995, to reflect legislation that became effective in 1994), the Commission issued a “Corrected Statement of Decision” in which it determined that Education Code section 48915’s requirement of suspension and a \*873 mandatory recommendation of expulsion for firearm possession constituted a “new program or higher level of service,” and found that because costs related to some of the resulting hearing provisions set forth in Education Code section 48918 (primarily various notice, right of inspection, and recording provisions) exceeded the requirements of federal due process, those additional hearing costs constituted reimbursable state-mandated costs.<sup>11</sup> As to the vast majority of the remaining \*\*596 hearing procedures triggered by Education Code section 48915’s requirement of suspension and a mandatory recommendation of expulsion for firearm possession—for example, procedures governing such matters as the hearing itself and the board’s decision; a statement of facts and charges; notice of the right to representation by counsel; written findings; recording of the hearing; and the making of a record of the expulsion—the Commission found that those procedures were enacted to comply with federal due process requirements, and hence fell within the exception set forth in Government Code section 17556, subdivision (c), and \*\*\*474 did not impose a reimbursable state mandate. The Commission further found that with respect to Education Code section 48915’s *discretionary* expulsions, there was

no right to reimbursement for costs incurred in holding expulsion hearings, because such expulsions do not constitute a new program or higher level of service, and in any event such expulsions are not *mandated* by the state, but instead represent a choice by the principal and the school board.

- 11 The Commission concluded that the costs incurred in providing the following state-mandated procedures under Education Code section 48918 exceeded federal due process requirements, and were reimbursable: (i) adoption of rules and regulations pertaining to pupil expulsions (§ 48918, first par. & *passim*); (ii) inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the District, (b) a notice of the parents’ obligation to notify a new school district, upon enrollment, of the pupil’s expulsion, and (c) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); (iii) allowing, upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing (§ 48918, subd. (b)); (iv) sending of written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the parent to notify a new school district, upon enrollment, of the pupil’s expulsion (§ 48918, former subd. (i), currently subd. (j)); (v) maintenance of a record of each expulsion, including the cause thereof (§ 48918, former subd. (j), currently subd. (k)); and (vi) the recording of expulsion orders and the causes thereof in the pupil’s mandatory interim record (and, upon request, the forwarding of this record to any school in which the pupil subsequently enrolls) (§ 48918, former subd. (j), currently subd. (k)).

In October 1999, the District brought this proceeding for an administrative writ of mandate challenging the Commission’s decision. The trial court issued a writ commanding the Commission to render a new decision finding (i) all costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations are reimbursable, and (ii) hearing costs associated with discretionary expulsions are reimbursable to the limited \*874 extent that required hearing procedures exceed federal due process mandates. The Commission (defendant) and the Department of Finance (real party in interest, hereafter Department) appealed, and the Court of Appeal affirmed the judgment rendered by the trial court.

## II

**A. Costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations**

**1. "New program or higher level of service"?**

We address first the issue that we asked the parties to brief: Does Education Code section 48915, former subdivision (b) (current subs. (c) & (d)), which mandated suspension and an expulsion recommendation for those students who possess a firearm at school or at a school activity off school grounds, and which also required a school board, if it found the charge proved, either to expel or to "refer" such a student to an alternative educational program housed at a separate school site, constitute a "new program or higher level of service" under article XIII B, section 6 of the state Constitution, and under Government Code section 17514?

We addressed the meaning of the Constitution's phrase "new program or higher level of service" in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202 (*County of Los Angeles*). That case concerned whether local governments are entitled to reimbursement for costs incurred in complying with legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide for their employees. We stated:

"Looking at the language of [article XIII B, section 6] then, it seems clear that by itself the term 'higher level of service' is meaningless. It must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in article XIII B. What programs \*\*597 then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term— [ (1) ] programs that carry out the governmental function of providing services to the public, or [ (2) ] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents \*\*\*475 and entities in the state." (*County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

\*875 We continued in *County of Los Angeles*: "The concern which prompted the inclusion of section 6 in article XIII B

was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: 'Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.' (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase 'to force programs on local governments' confirms that *the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.*" (*County of Los Angeles, supra*, 43 Cal.3d 46, 56–57, 233 Cal.Rptr. 38, 729 P.2d 202, italics added.)

It was clear in *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, that the law at issue did not meet the second test for a "program or higher level of service"—it did not implement a state policy by imposing unique requirements upon local governments, but instead applied workers' compensation contribution rules generally to all employers in the state. Nor, we held, did the law requiring local agencies to shoulder a general increase in workers' compensation benefits amount to a reimbursable "program or higher level of service" under the first test described above. (*Id.*, at pp. 57–58, 233 Cal.Rptr. 38, 729 P.2d 202.) The law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public.

We reaffirmed and applied the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, in *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318 (*Lucia Mar*). The state law at issue in *Lucia Mar* required local school districts to pay a portion of the cost of educating pupils in state schools for the severely handicapped—costs that the state previously had paid in full.

We determined that the contributions called for under the law were used to fund a "program" within both definitions of that term set forth in *County of Los Angeles, supra*, 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) We stated: "[T]he education of handicapped children is clearly a governmental function providing a service to the

public, and the [state law] imposes requirements on school districts not imposed on all the states residents. Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are \*876 concerned, since at the time [the state law] became effective they were not required to contribute to the education of students from their districts at such schools. [ ] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B.... Section 6 was intended to preclude the state from shifting to local \*\*\*476 agencies the financial responsibility for providing public services in view of ... restrictions on the taxing and spending power of the local entities.” (*Lucia Mar, supra*, 44 Cal.3d 830, 835–836, 244 Cal.Rptr. 677, 750 P.2d 318; see also \*\*598 *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 98, 61 Cal.Rptr.2d 134, 931 P.2d 312 [legislation excluding indigents from Medi-Cal coverage transferred obligation for such costs from state to counties, and constituted a reimbursable “new program or higher level of service”].)

We again applied the alternative tests set forth in *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*). In that case we considered whether a state law implementing federal “incentives” that encouraged states to extend unemployment insurance coverage to all public employees constituted a program or higher level of service under article XIII B, section 6. We concluded that it did not because, as in *County of Los Angeles*, (1) providing unemployment compensation protection to a city's own employees was not a service to the public; and (2) the statute did not apply uniquely to local governments—indeed, the same requirements previously had been applied to most employers, and extension of the requirement (by eliminating a prior exemption for local governments) merely placed local government employers on the same footing as most private employers. (*City of Sacramento, supra*, 50 Cal.3d at pp. 67–68, 266 Cal.Rptr. 139, 785 P.2d 522.)

Subsequently, the Court of Appeal in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754 (*City of Richmond*), following *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, and *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, concluded that requiring local

governments to provide death benefits to local safety officers, under both the Public Employees Retirement System and the workers' compensation system, did not constitute a higher level of service to the public. The Court of Appeal arrived at that determination even though—as might also have been argued in *County of Los Angeles* and *City of Sacramento*—such benefits may “generate a higher quality of local safety officers” and thereby, in a general and indirect sense, provide the public with a “higher level of service” by its employees. (*City of Richmond, supra*, 64 Cal.App.4th 1190, 1195, 75 Cal.Rptr.2d 754.)

Viewed together, these cases (*County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and *City of Richmond, supra*, \*877 *supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754) illustrate the circumstance that simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting “service to the public” under article XIII B, section 6, and Government Code section 17514.<sup>12</sup>

12 Indeed, as the court in *City of Richmond, supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754, observed: “Increasing the cost of providing services cannot be equated with requiring an increased level of service under [article XIII B,] section 6.... A higher cost to the local government for compensating its employees is not the same as a higher cost of providing [an increased level of] services to the public.” (*Id.*, at p. 1196, 75 Cal.Rptr.2d 754; accord, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, 235 Cal.Rptr. 101 [temporary increase in PERS benefit to retired employees, resulting in higher contribution rate by local government, does not constitute a higher level of service to the public].)

\*\*\*477 By contrast, Courts of Appeal have found a reimbursable “higher level of service” concerning an existing “program” when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537–538, 234 Cal.Rptr. 795 (*Carmel Valley*), for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the

mandate evidently was intended to produce a higher level of service to the public, thereby satisfying the first alternative test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. Similarly, in *\*\*599 Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449 (*Long Beach*), an executive order required school districts to take specific steps to measure and address racial segregation in local public schools. The appellate court held that this constituted a “higher level of service” to the extent the order’s requirements exceeded federal constitutional and case law requirements by mandating school districts to undertake defined remedial actions and measures that were merely advisory under prior governing law.

1 The District and the Commission assert that the “mandatory” aspect of Education Code section 48915, insofar as it compels suspension and mandates an expulsion recommendation for firearm possession (and thereafter restricts the board’s options to expulsion or referral to an off-site alternative school), carries out a governmental function of providing services to the public and hence constitutes an increased or higher level of service concerning an existing program under the first alternative test of *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. They argue, in essence, that the present matter is more analogous to the latter cases *\*878 (Carmel Valley, supra*, 190 Cal.App.3d 521, 234 Cal.Rptr. 795, and *Long Beach, supra*, 225 Cal.App.3d 155, 275 Cal.Rptr. 449)—both of which involved measures designed to increase the level of governmental service provided to the public—than to the former cases (*County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and *City of Richmond, supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754)—in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased. As we shall explain, we agree with the District and the Commission.

The statutory requirements here at issue—immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral)—reasonably are viewed as providing a “higher level of service” to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of Statutes of 1993, chapters 1255 (Assem. Bill No. 342 (1993–1994 Reg. Sess.)

(Assembly Bill No. 342)) and 1256 (Senate Bill *\*\*\*478* No. 1198 (1993–1994 Reg. Sess.) (Senate Bill No. 1198)); and (ii) the requirements were intended to provide an enhanced service to the public—*safer schools for the vast majority of students* (that is, those who are not expelled or referred to other school sites). In other words, the legislation was premised upon the idea that by removing potentially violent students from the general school population, the safety of those students who remain thereby is increased. (See, e.g., Stats.1993, ch. 1255, § 4, pp. 7285–7286 [“In order to ensure public safety on school campuses ... it is necessary that this act take effect immediately”]; Sen. Com. on Ed. (Apr. 28, 1993), Analysis of Assem. Bill No. 342, p. 2 [noting legislative purpose to enhance public safety]; see also Assem. Com. on Ed. (July 14, 1993), Analysis of Sen. Bill No. 1198, p. 1 [noting legislative purpose to remove those who possess firearms from the general school population by increasing the frequency of expulsion for such conduct].)

In challenging this conclusion, the Department relies upon *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 263 Cal.Rptr. 351 (*Department of Industrial Relations*). In that case, the state enacted enhanced statewide safety regulations that governed all public and private elevators, and thereafter the County of Los Angeles sought reimbursement for the costs of complying with the new regulations. The Court of Appeal found that the regulations constituted neither a new program nor a higher level of service concerning an existing program under either of the two alternative tests set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. The court concluded that the elevator regulations did not meet the first alternative test, because the regulations did not carry out a governmental function of providing services to the public; the court found instead that *\*879* “[p]roviding elevators equipped with fire and earthquake *\*\*600* safety features simply is not a ‘government function of providing services to the public.’ ” (*Department of Industrial Relations, supra*, 214 Cal.App.3d at p. 1546, 263 Cal.Rptr. 351.) Moreover, the court found, the second (“uniqueness”) test was not met—the regulation applied to all elevators, not only those owned or operated by local governments.

The Department asserts that *Department of Industrial Relations, supra*, 214 Cal.App.3d 1538, 263 Cal.Rptr. 351, is analogous, and argues that the “service” afforded by mandatory suspensions followed by a required expulsion recommendation, etc., is “not qualitatively different from the safety regulations at issue in [*Department of Industrial Relations*]. School districts carrying out such expulsions

are not providing a service to the public....” We disagree. Providing public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public. Moreover, here, unlike the situation in *Department of Industrial Relations*, the law implementing this state policy applies uniquely to local public schools. We conclude that *Department of Industrial Relations* does not conflict with the conclusion that the mandatory suspension and expulsion recommendation requirements, together with restrictions placed upon a district’s resolution of such a case, constitute an increased or higher level of service to the public under the constitutional provision and the implementing statutes.

Of course, even if, as we have concluded above, a statute effectuates an increased or higher level of governmental service to the public concerning an existing program, this “does not necessarily lead to the conclusion that the program is a state mandate \*\*\*479 under California Constitution, article XIII B, section 6.” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304, italics added (*County of Los Angeles II*)). We turn to the question whether the hearing costs at issue, flowing from compulsory suspensions and mandatory expulsion recommendations, are mandated by the state.

## 2. Are the hearing costs state mandated?

As noted above, a compulsory suspension and a mandatory recommendation of expulsion under Education Code section 48915 in turn trigger a mandatory expulsion hearing. All parties agree that any such resulting expulsion hearing must comply with basic federal due process requirements, such as notice of charges, a right to representation by counsel, an explanation of the evidence supporting the charges, and an opportunity to call and cross-examine witnesses and to present evidence. (See *ante*, fn. 5.) But as also noted above, article XIII B, section 6, and the implementing statutes \*880 (Gov.Code, § 17500 et seq.), by their terms, provide for reimbursement only of state-mandated costs, not *federally* mandated costs. The Commission and the Department assert that this circumstance raises the question: Do all or some of a district’s costs in complying with the mandatory expulsion provision of Education Code section 48915 constitute a nonreimbursable federal mandate?

In the absence of the operation of Education Code section 48915’s mandatory provision (specifically, compulsory immediate suspension and a mandatory expulsion recommendation), a school district would not automatically

incur the due process hearing costs that are mandated by federal law pursuant to *Goss, supra*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, and related cases, and codified in Education Code section 48918. Instead, a district would incur such hearing costs only if a school principal first were to exercise discretion to recommend expulsion. Accordingly, in its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.

The Department and the Commission agree to a point, but argue that a district’s costs incurred in complying with this state mandate are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process. In support, they rely upon \*\*601 Government Code section 17556, which—in setting forth circumstances in which the Commission shall *not* find costs to be mandated by the state—provides that “[t]he commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.”<sup>13</sup>

- 13 Government Code section 17556 reads in full: “The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph. [¶] (b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts. [¶] (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

[¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. [¶] (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. [¶] (f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election. [¶] (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

\*\*\*480 \*881 We agree with the District and the Court of Appeal below that, as applied to the present case, it cannot be said that Education Code section 48915's mandatory expulsion provision “*implemented a federal law or regulation.*” (Italics added.) Education Code section 48915, at the time relevant here, did not implement any federal law; as explained below, federal law did not *then* mandate an expulsion recommendation—or expulsion—for firearm possession.<sup>14</sup> Moreover, although the Department argues that in this context Government Code section 17556, subdivision (c)'s phrase “the statute” should be viewed as referring not to Education Code section 48915's mandatory expulsion recommendation requirement, but instead to the mandatory due process hearing under Education Code section 48918 that is triggered by such an expulsion recommendation, it still cannot be said that section 48918 itself required the District to incur any costs. As noted above, Education Code section 48918 sets out requirements for expulsion hearings that must be held when a district seeks to expel a student—but neither section 48918 nor federal law requires that any such expulsion recommendation be made in the first place, and hence section 48918 does not implement any federal mandate that school districts hold such hearings and incur such costs whenever a student is found in possession of a firearm. Accordingly, we conclude that the so-called exception to reimbursement described in Government Code section 17556, subdivision (c), is inapplicable in this context.

14 Subsequent amendments to federal law may alter this conclusion with regard to future test claims concerning Education Code section 48915's mandatory expulsion provision—see *post*, 16 Cal.Rptr.3d pages 481–482, 94 P.3d pages 602–603.

Because it is state law (Education Code section 48915's mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, contrary to the view of the Commission and the Department, that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude \*\*602 that under the statutes existing at the time of the test claim in this case (state legislation in effect through \*\*\*481 mid-1994), *all* such hearing costs—those designed to satisfy the minimum requirements of federal due process, and those that may exceed \*882 those requirements—are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.<sup>15</sup>

15 In Exhibit No. 1 to its claim, the District presented the declaration of a San Diego Unified School District official, estimating that in order to process “350 proposed expulsions” during the period spanning July 1, 1993, to June 30, 1994, the District would incur approximately \$94,200 “in staffing and other costs”—yielding an average estimated cost of approximately \$270 per hearing during the relevant period. It is unclear from the record how many of these 350 hearings would be triggered by Education Code section 48915's mandatory expulsion provision (and constitute state-mandated costs subject to reimbursement under article XIII B, section 6), and how many of these 350 hearings would be triggered by Education Code section 48915's discretionary provision (and, as explained *post*, in part II.B, constitute a nonreimbursable *federal* mandate).

We note that in the proceedings below, the Commission did not confine reimbursement only to those matters as to which the district on its own initiative would not have sought expulsion in the absence of the statutory requirement that it seek expulsion—and the Department has not raised that point in the trial court or on appeal.

Against this conclusion, the Department, in its supplemental briefing, offers a wholly new theory, not advanced in any of the proceedings below, in support of its belated claim that *all* hearing costs triggered by Education Code section 48915's mandatory expulsion provision are in fact nonreimbursable *federal* mandates, and not, as we have concluded above, reimbursable state mandates. As we shall explain, we reject the Department's contention, as applied to the test case here at issue (involving state statutes in effect through mid-1994).

The Department cites 20 United States Code section 7151, part of the federal No Child Left Behind Act of 2001, which provides, as relevant here: "Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing."<sup>16</sup>

<sup>16</sup> "Firearm," as defined in 18 United States Code section 921, includes guns and explosives.

The Department further asserts that more than \$2.8 billion in federal funds under the No Child Left Behind Act are included "for local use" in the 2003–04 state budget. (Cal. State Budget, 2003–04, Budget Highlights, p. 4.) The Department argues that in light of the requirements set forth in 20 United States Code section 7151, and the amount of federal program funds at issue under the No Child Left Behind Act, the financial consequences to the state and to the school districts of failing to comply with 20 United States Code section 7151 are such that as a practical matter, <sup>\*883</sup> Education Code section 48915's mandatory expulsion provision in reality constitutes an implementation of federal law, and hence resulting costs are nonreimbursable except to the extent they exceed the requirements of federal law. (See Govt.Code, § 17556, subd. (c); see also *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 749–751, 134 Cal.Rptr.2d 237, 68 P.3d 1203; *City of Sacramento*, *supra*, 50 Cal.3d 51, 70–76, 266 Cal.Rptr. 139, 785 P.2d 522.) Moreover, the Department asserts, to the extent school districts are <sup>\*\*\*482</sup> compelled by federal law, through Education Code section 48915's mandatory expulsion provision, to hold hearings pursuant to section 48918 in cases of firearm possession on school grounds, under 20 United States Code section 7164 (defining prohibited uses of program funds), *all* costs of such hearings properly may be paid out of federal program funds, and hence we should "view the ... provision of program funding as satisfying, in advance, any reimbursement requirement." (*Kern High School Dist.*, *supra*, 30 Cal.4th 727, 747, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

<sup>\*\*603</sup> Although the Department asserts that this federal law and program existed at the time relevant in this matter

(that is, through mid–1994), our review of the statutes and relevant history suggests otherwise. Title 20 of the United States Code, section 7151, and the remainder of the No Child Left Behind Act, became effective on January 8, 2002. The predecessor legislation cited by the Department—the Gun-Free Schools Act of 1994 (former 20 U.S.C. § 8921(a)), although containing a substantially identical mandatory expulsion provision (*id.*, § 8921(b)(1))<sup>17</sup>—was not effective until July 1, 1995 (108 Stat. 3518, § 3). In turn, the predecessor legislation to *that* Act cited by the Department, the Elementary and Secondary Education Act of 1965 (former 20 U.S.C. § 6301 et seq.)—as it existed at the time relevant here (July 1, 1993, through June 30, 1994)—contained no such mandatory expulsion provision. Accordingly, it appears that despite the Department's late discovery of 20 United States Code section 7151, at the time relevant here (regarding legislation in effect through mid–1994), neither 20 United States Code section 7151, nor either of its predecessors, compelled states to enact a law such as Education Code section 48915's mandatory expulsion provision. Therefore, we reject the Department's assertion that, during the time period at issue in this case, Education Code section 48915's mandatory expulsion provision constituted an implementation of a federal, rather than a state, mandate.

<sup>17</sup> The prior law stated: "Except as provided in paragraph (3), each State receiving Federal funds under this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis." (Pub.L. No. 103–382, § 14601(b)(1) (Oct. 20, 1994) 108 Stat. 3518.)

Although we conclude that all hearing costs triggered by Education Code section 48915's mandatory expulsion provision constitute reimbursable state-mandated expenses under the statutes as they existed during the period <sup>\*884</sup> covered by the District's present test claim, we do not foreclose the possibility that 20 United States Code section 7151 or its predecessor, 20 United States Code section 8921, may lead to a different conclusion when applied to versions of Education Code section 48915 effective in years 1995 and thereafter. Indeed, we note that at least one subsequent test

claim that has been filed with the Commission may raise the federal statutory issue advanced by the Department.<sup>18</sup>

- 18 See Pupil Expulsions II (4th Amendment), CSM No. 01-TC-18 (filed June 3, 2002). This claim, filed by the San Juan Unified School District, asserts reimbursable state mandates with respect to, among numerous other statutes, Education Code section 48915, as amended effective in 2002.

**B. Costs associated with hearings triggered by discretionary expulsion recommendations**

2 We next consider whether reimbursement is required for the costs associated \*\*\*483 with hearings triggered under discretionary expulsion provisions. Again, we address first the issue that we asked the parties to brief: Does the discretionary expulsion provision of Education Code section 48915 (former subd. (c), thereafter subd. (d), currently subd. (e)), which, as noted above, recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing property, using or selling illicit drugs, possessing tobacco or drug paraphernalia, etc.), and further specified that the school district governing board “may” order a student expelled upon finding that the student, while at school or at a school activity off school grounds, engaged in such conduct, constitute a “new program or higher level of service” under article XIII B, section 6 of the state Constitution, and under Government Code section 17514?

We answer this question in the negative. The discretionary expulsion provision of Education Code section 48915 does not constitute a “new” program or higher level of service, because provisions recognizing discretion to suspend or expel were set forth in statutes predating 1975. (See Educ.Code, former \*\*604 § 10601, Stats.1959, ch. 2, § 3, p. 860 [providing that a student may be suspended for good cause]; *id.*, former § 10602 (Stats.1970, ch. 102, § 102, p. 159 (defining “good cause”); *id.*, former section 10601.6 (Stats.1972, ch. 164, § 2, p. 384 (further defining “good cause”))).<sup>19</sup> Accordingly, the discretionary expulsion provision of Education Code section 48915 is not a “new” program under article XIII B, section 6, and the implementing statutes, \*885 nor does it reflect a higher level of service related to an existing program. (*County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

- 19 As the Commission observed in its Corrected Statement of Decision in this matter: “The authorization for

governing boards to expel pupils from school for inappropriate behaviors has been in existence since before 1975. The behaviors defined as inappropriate under current law, subdivisions (a) though (l) of section 48900, 48900.2, and 48900.3, meet prior laws’ definitions of ‘good cause’ and ‘misconduct’ as reasons for expulsion.” (Italics deleted.)

The District maintains, nevertheless, that once it elects to pursue expulsion, it is obligated to abide by the procedural hearing requirements of Education Code section 48918 and accordingly is mandated by that section to incur costs associated with such compliance. The District asserts that in this respect, *section 48918* constitutes a “new program or higher level of service” related to an existing program under article XIII B, section 6 and under Government Code section 17514. We shall assume for analysis that this is so.<sup>20</sup>

- 20 The requirements of Education Code section 48918 would appear to be “new” for purposes of the reimbursement provisions, in that they did not exist prior to 1975 and were enacted in that year and subsequently. (See *ante*, fn. 2.) The requirements also would appear to meet both alternative tests set forth in *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202—that is, by implementing procedures that direct and guide the process of expulsion from public school, the statute appears to carry out a governmental function of providing services to public school students who face expulsion; or, it would seem, section 48918 constitutes a law that, to implement state policy, imposes unique requirements on local governments.

The District recognizes, of course, that under Government Code, section 17556, subdivision (c), it is not entitled to reimbursement to the extent Education Code section 48918 merely implements federal due process law, but the District argues that it has a right to reimbursement for its costs of complying with section 48918 to \*\*\*484 the extent those costs are attributable to hearing procedures that *exceed* federal due process requirements. (See Govt.Code, § 17556, subd. (c).) The District asserts that its costs in complying with various notice, right of inspection, and recording requirements (see *ante*, fn. 11) fall into this category and are reimbursable.

The Department and the Commission argue in response that any right to reimbursement for hearing costs triggered by discretionary expulsions—even costs limited to those procedures that assertedly exceed federal due process hearing

requirements—is foreclosed by virtue of the circumstance that when a school pursues a discretionary expulsion, it is not acting under compulsion of any law but instead is exercising a choice. In support, the Department and the Commission rely upon *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, and *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642 (*City of Merced*).

In *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, school districts asserted that costs incurred in complying with statutory notice and agenda requirements for committee meetings concerning various state and federally funded educational programs constituted a reimbursable state mandate, because once \*886 school districts *elected* to participate in the underlying state and federal programs, the districts had no option but to hold program-related committee meetings and abide by the challenged notice and agenda requirements. (*Id.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) We rejected the school districts' position, reasoning in part that because the districts' participation in the underlying programs was voluntary, the notice and agenda costs incurred as a result of that voluntary participation were not the product of legal compulsion and did not constitute a reimbursable state mandate on that basis.

\*\*605 (*Id.*, at p. 745, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)<sup>21</sup>

21 We also proceeded to hold that in any event, because the school districts were free to use program funds to pay for the challenged increased costs, the districts had, in practical effect, already been given funds by the Legislature to cover the challenged costs. (*Kern High School Dist.*, *supra*, 30 Cal.4th at pp. 748–754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In reaching that conclusion in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we discussed *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642. In that case, the city wished either to purchase or to condemn, pursuant to its eminent domain authority, certain privately owned real property. The city elected to proceed by eminent domain, under which it was required by then recent legislation (Code Civ. Proc., § 1263.510) to compensate the property owner for loss of “business goodwill.” The city so compensated the property owner and then sought reimbursement from the state, arguing that the new statutory requirement that it compensate for business goodwill amounted to a reimbursable state mandate. (*City of Merced*, *supra*, 153 Cal.App.3d at p. 780, 200 Cal.Rptr. 642.) The Court of Appeal concluded that the city's increased costs

flowing from its election to condemn the property did not constitute a reimbursable state mandate. (*Id.*, at pp. 781–783, 200 Cal.Rptr. 642.) The court reasoned: “[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is \*\*\*485 exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.*” (*Id.*, at p. 783, 200 Cal.Rptr. 642, italics added.)

Summarizing this aspect of *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we stated: “[T]he core point articulated by the court in *City of Merced* is that *activities undertaken at the option or discretion of a local government entity* (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) *do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.*” (*Kern High School Dist.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203, italics added.)

The Department and the Commission argue that in the present case the District, like the claimants in *Kern High School Dist.*, errs by focusing upon \*887 the final result—a school district's legal obligation to comply with statutory hearing procedures—rather than focusing upon whether the school district has been *compelled* to put itself in the position in which such a hearing (with resulting costs) is required.

The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.<sup>22</sup>

22 Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part

of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [hearing] costs [under Education Code section 48918] cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [Education Code section 48915's discretionary provision] for damaging or stealing school or private property, using or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."

Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), no expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in Education Code section 48915's discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."

**\*\*606** Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement **\*\*\*486** under **\*888** article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514<sup>23</sup> and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley*, *supra*, 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an

executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537–538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.

23 As we observed in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751–752, 134 Cal.Rptr.2d 237, 68 P.3d 1203, "article XIII B, section 6's 'purpose 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.'"

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis. As we shall explain, we conclude, regarding the reimbursement claim that we face presently, that *all* hearing procedures set forth in Education Code section 48918 properly should be considered to have been adopted to implement a federal due process mandate, and hence that all such hearing costs are nonreimbursable under article XIII B, section 6, and Government Code section 17557, subdivision (c).

In this regard, we find the decision in *County of Los Angeles II*, *supra*, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, to be instructive. That case concerned Penal Code section 987.9, which requires counties to provide indigent criminal defendants with defense funds for ancillary investigation services related to capital trials and certain other trials, and further provides related procedural protections—namely, the confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge,

and the right to an in camera hearing on the request. The county in that case asserted that funds expended under the statute constituted reimbursable \*\*607 state mandates. The Court of Appeal disagreed, finding instead that the Penal Code section merely implements the requirements of federal constitutional law, and that “even in the \*889 absence of \*\*\*487 [Penal Code] section 987.9, ... counties would be responsible for providing ancillary services under the constitutional guarantees of due process ... and under the Sixth Amendment...” (32 Cal.App.4th at p. 815, 38 Cal.Rptr.2d 304.) Moreover, the Court of Appeal concluded, the procedural protections that the Legislature had built into the statute—requirements of confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request—were merely incidental to the federal rights codified by the statute, and their “financial impact” was de minimis. (*Id.*, at p. 817, fn. 7, 38 Cal.Rptr.2d 304.) Accordingly, the Court of Appeal concluded, the Penal Code section, in its entirety—that is, *even those incidental aspects of the statute that articulated specific procedures, not expressly set forth in federal law, for the filing and resolution of requests for funds*—constituted an implementation of federal law, and hence those costs were nonreimbursable under article XIII B, section 6.

We conclude that the same reasoning applies in the present setting, concerning the District's request for reimbursement for procedural hearing costs triggered by its discretionary decision to seek expulsion. As in *County of Los Angeles II*, *supra*, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence

nonreimbursable under Government Code, section 17556, subdivision (c). We reach the same conclusion here.

Indeed, to proceed otherwise in the context of a reimbursement claim would produce impractical and detrimental consequences. The present case demonstrates the point. The record reveals that in the extended proceedings before the Commission, the parties spent numerous hours producing voluminous pages of analysis directed toward determining whether various provisions of Education Code section 48918 exceeded federal due process requirements. That task below was complicated by the circumstance that this area of federal due process law is not well developed. The Commission, which is not a judicial body, did as best it could and concluded that in certain \*890 respects the various provisions (as observed *ante*, footnote 11, predominantly concerning notice, right of inspection, and recording requirements) “exceeded” the requirements of federal due process.

Even for an appellate court, it would be difficult and problematic in this setting to categorize the various notice, right of inspection, and recording requirements here at issue as falling either within or without the general federal due process mandate. The difficulty results not only from the circumstance that, as noted, the case law \*\*\*488 in the area of due process procedures concerning expulsion matters is relatively undeveloped, but also from the circumstance that when such an issue is raised in an action for reimbursement, as opposed to its being raised in litigation challenging an actual expulsion on the ground of allegedly inadequate hearing procedures, the issue inevitably is presented in the abstract, without any factual context that might help frame the legal issue. In such circumstances, courts are—and should be—\*\*608 wary of venturing pronouncements (especially concerning matters of constitutional law).

In light of these considerations, we agree with the conclusion reached by the Court of Appeal in *County of Los Angeles II*, *supra*, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304: for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the underlying federal mandate.

Applying that approach to the case now before us, we conclude there can be no doubt that the assertedly “excessive due process” aspects of Education Code section 48918 for which the District seeks reimbursement in connection with

hearings triggered by discretionary expulsions (see *ante*, footnote 11—primarily, as noted, various notice, right of inspection, and recording rules) fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost. Accordingly, for purposes of the District's reimbursement claim, all hearing costs incurred under Education Code section 48918, triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable under Government Code section 17556, subdivision (c).<sup>24</sup>

24 We do not foreclose the possibility that a local government might, under appropriate facts, demonstrate that a state law, though codifying federal requirements in part, also imposes more than "incidental" or "de minimis" expenses in excess of those demanded by federal law, and thus gives rise to a reimbursable state mandate to that extent.

\*891 III

The judgment of the Court of Appeal is affirmed insofar as it provides for full reimbursement of all costs related to hearings triggered by the mandatory expulsion provision of Education Code section 48915. The judgment of the Court of Appeal is reversed insofar as it provides for reimbursement of any costs related to hearings triggered by the discretionary provision of section 48915. All parties shall bear their own costs on appeal.

WE CONCUR: KENNARD, BAXTER, WERDEGAR, CHIN, BROWN, and MORENO, JJ.

Parallel Citations

33 Cal.4th 859, 94 P.3d 589, 190 Ed. Law Rep. 636, 04 Cal. Daily Op. Serv. 6945, 2004 Daily Journal D.A.R. 9404

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**Los Angeles Water Board  
and  
State Water Board  
Documents**

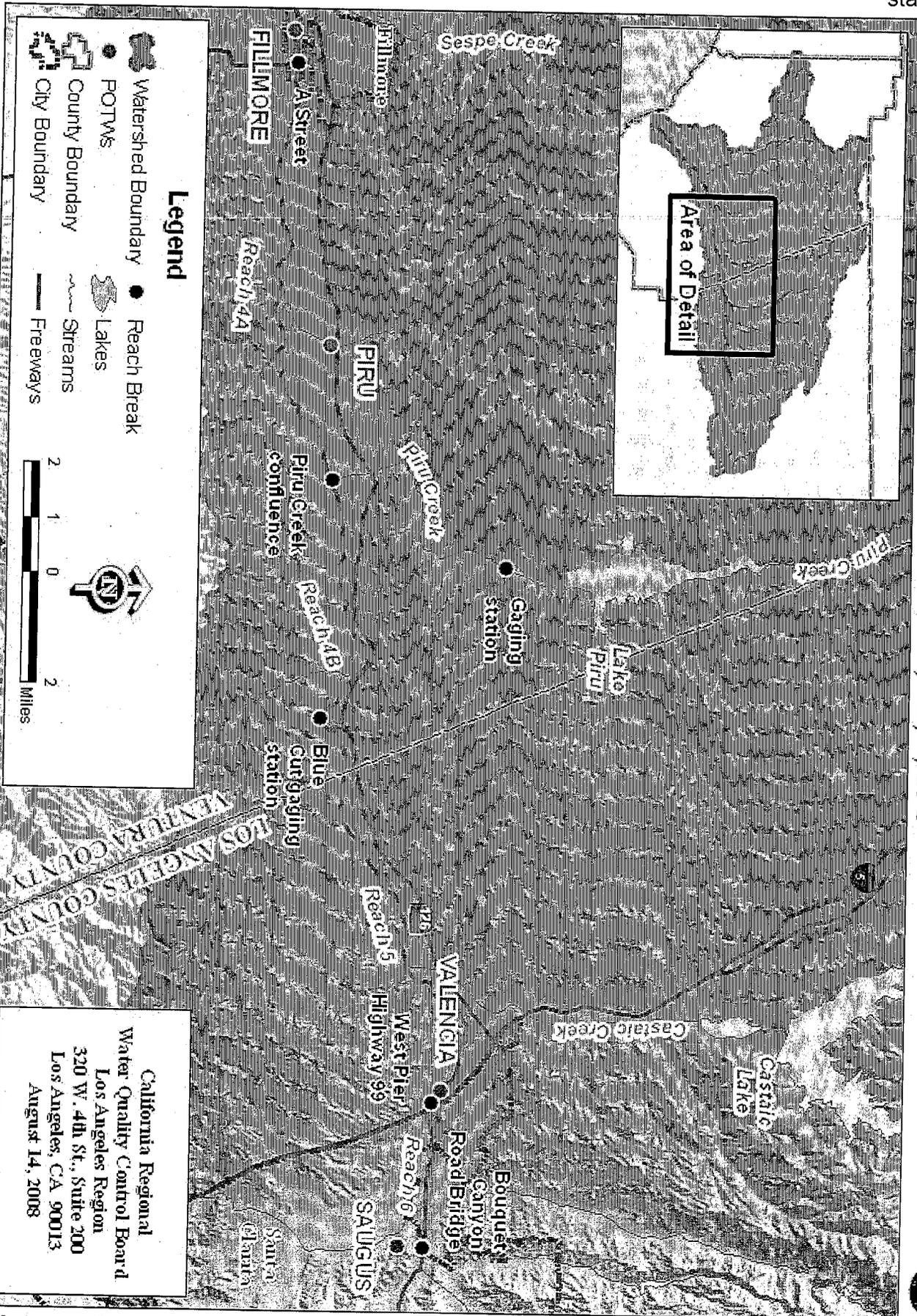


# **ATTACHMENT 54**





Santa Clara River Watershed  
 Reaches 4A, 4B, 5, & 6



California Regional  
 Water Quality Control Board  
 Los Angeles Region  
 320 W. 4th St., Suite 200  
 Los Angeles, CA 90013  
 August 14, 2008



# **ATTACHMENT 55**



*RETURN TO PLANNING*

# Water Quality Control Plan Report



**SANTA CLARA RIVER BASIN (4A)**

**STATE WATER RESOURCES CONTROL BOARD**

**REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION (4)**

**Part I, PART II, VOL. I**

***March 1975***

TABLE 4-1  
 MINERAL QUALITY OBJECTIVES FOR SURFACE WATERS  
 Objectives (mg/l)a/

Stream/Stationb/	TDS	Sulfate	Chloride	Boron Nitrogenc/	SERd/ e/
<u>Ventura River:</u>					
At Matilija Hot Spring	600	300	50	1.0	5
At Casitas Vista Road	800	300	60	1.5	5
At Shell Road	1,500	600	600	1.5	10
<u>Santa Clara River:</u>					
At West Pier Highway 99	900	450	80	1.5	10
At Los Angeles and Ventura County Line	1,100	550	90	1.5	5
At A Street, Fillmore	1,300	650	80	1.5	5
Santa Paula Bridge	1,300	650	80	1.5	5
At Saticoy Diversion Dam	1,100	550	60	1.5	5
At United States Highway 101	800	400	60	1.5	5
<u>Santa Paula Creek:</u>					
At Santa Paula Water Works- Diversion Dam	600	300	60	1.0	5
<u>Sespe Creek:</u>					
(500 feet downstream from Little Sespe Creek, at gaging station)	800	400	60	1.5	5
<u>Piru Creek:</u>					
(at gaging station below Santa Felicia Dam)	950	500	50	1.5	5
<u>Calleguas Creek:</u>					
At Potrero Road	850	400	50	1.0	5

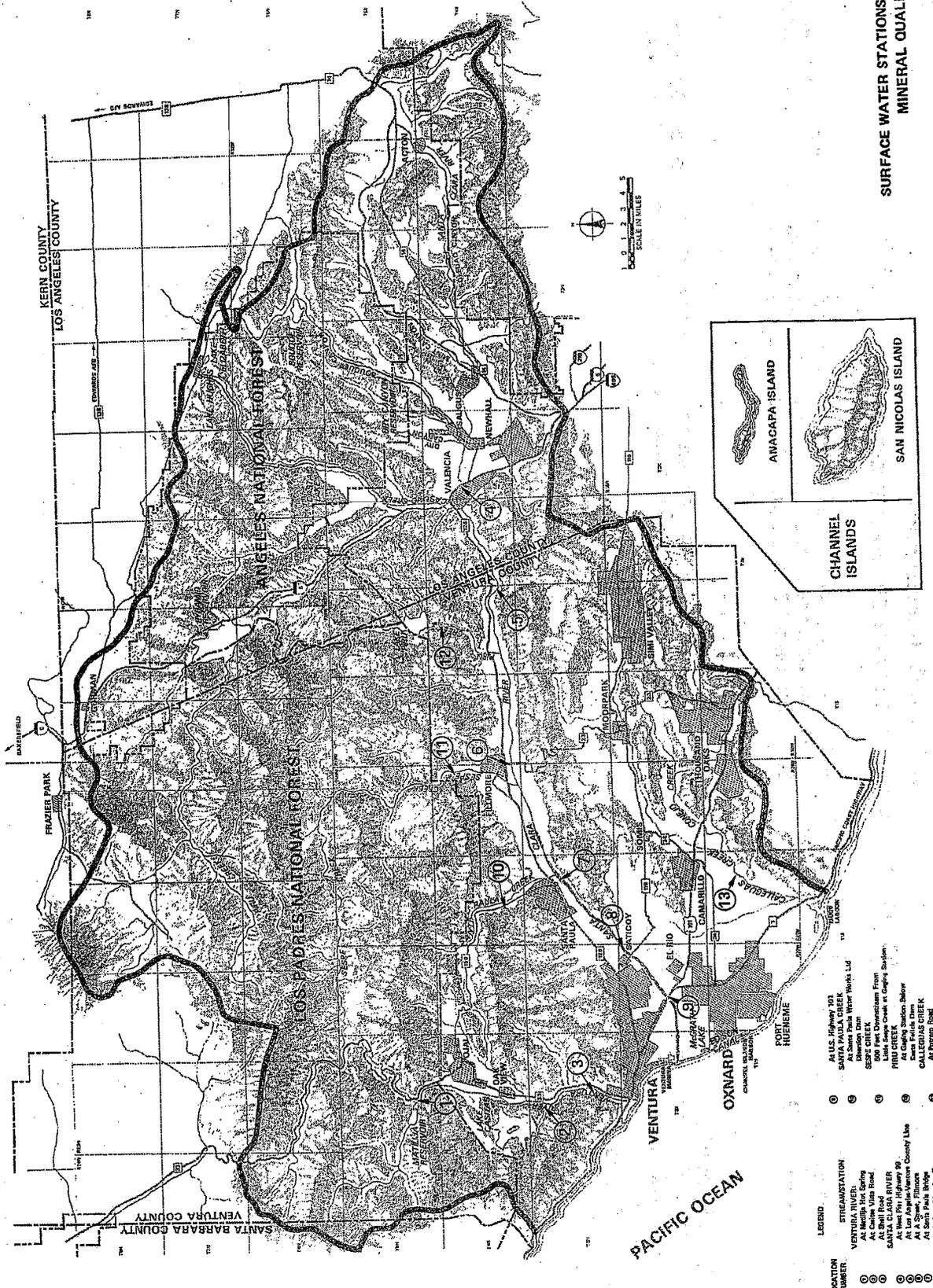
TABLE 4-1 (Continued)

MINERAL QUALITY OBJECTIVES FOR SURFACE WATERS

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral and nutrient constituents where sufficient information is presently not available for the establishment of such objectives.

- a/ The objective at each station is of the weighted annual average. Samples shall be collected at monthly intervals preferably but at least at quarterly intervals. Flow rate shall be determined at the time of sampling.
- b/ See Figure 4-1 for location.
- c/ Nitrate-N plus Nitrite-N.  
Eutrophication problems have not impaired the beneficial use of surface waters in the basin. The eutrophication of the basin is described starting on page II-14-1. The lack of phosphorus data precluded the establishment of meaningful numerical objectives for phosphorus.
- d/ Sodium Equivalent Ratio
- e/ No data available

**FIGURE 4-1**  
**SURFACE WATER STATIONS FOR SAMPLING**  
**MINERAL QUALITY OBJECTIVES**  
 I-4-13



- LEGEND**
- |   |                  |   |                     |
|---|------------------|---|---------------------|
| ① | STATION NUMBER   | ① | AT U.S. Highway 101 |
| ② | VENTURA RIVER    | ② | SANTA PAULA CREEK   |
| ③ | At Santa Barbara | ③ | At Santa Paula      |
| ④ | At Santa Barbara | ④ | At Santa Paula      |
| ⑤ | At Santa Barbara | ⑤ | At Santa Paula      |
| ⑥ | At Santa Barbara | ⑥ | At Santa Paula      |
| ⑦ | At Santa Barbara | ⑦ | At Santa Paula      |
| ⑧ | At Santa Barbara | ⑧ | At Santa Paula      |
| ⑨ | At Santa Barbara | ⑨ | At Santa Paula      |
| ⑩ | At Santa Barbara | ⑩ | At Santa Paula      |
| ⑪ | At Santa Barbara | ⑪ | At Santa Paula      |
| ⑫ | At Santa Barbara | ⑫ | At Santa Paula      |
| ⑬ | At Santa Barbara | ⑬ | At Santa Paula      |
| ⑭ | At Santa Barbara | ⑭ | At Santa Paula      |
| ⑮ | At Santa Barbara | ⑮ | At Santa Paula      |
| ⑯ | At Santa Barbara | ⑯ | At Santa Paula      |

TABLE 4-2  
 WATER QUALITY OBJECTIVES FOR GROUNDWATER BASINS

Area	Objective (mg/l)			
	TDS	Sulfate	Chloride	Boron
<u>Rincon Creek Hydro Unit h/</u>	None Specified			
<u>Ventura River Hydro Unit</u>				
Ojai Subunit				
Upper Ojai Subarea				
West of Sulphur Mountain Road	1,000	300	200	1
East of Sulphur Mountain Road	700	50	100	1
Ojai Subarea b/				
West of San Antonio-Senior Canyon Creeks	1,000	300	200	0.5
East of San Antonio-Senior Canyon Creeks	600	200	50	0.5
Upper Ventura River Subunit				
San Antonio Creek Area	1,000	300	100	1
Remainder of groundwater basin	800	300	100	0.5
Lower Ventura River Subunit a/	None Specified			
<u>Santa Clara-Calleguas Hydro Unit</u>				
Upper Santa Clara Subunit				
Acton Subarea	600	150	100	1.0
Eastern Subarea				
Above Bouquet Canyon b/	800	150	150	1.0
Above Castaic Creek to c/ Bouquet Canyon	900	300	150	1.0
South Fork of Santa Clara River Area	1,300	800	100	0.5
Placerita Canyon Area	700	150	100	0.5
Castaic Creek to Blue Cut d/	1,500	700	150	1.0
Bouquet Subarea	400	50	30	0.5
Mint Canyon Subarea	700	150	100	0.5

TABLE 4-2 (Continued)  
 WATER QUALITY OBJECTIVES FOR GROUNDWATER BASINS

Area	Objective (mg/l)			
	TDS	Sulfate	Chloride	Boron
Sierra Pelona Subarea	600	100	100	0.5
Piru Subunit				
Piru Subarea				
East of Piru Creek <u>e/</u>	2,500	1,200	200	1.5
West of Piru Creek <u>f/</u>	1,200	600	100	1.5
Upper Piru Subarea	1,100	400	200	2
Hungry Valley Subarea	500	150	50	1.0
Stauffer Subarea	1,000	400	100	2.0
Sespe Subunit				
Fillmore Subarea				
Pole Creek Fan underlying City of Fillmore	2,000	800	100	1.0
South Side of Santa Clara River	2,000	800	100	1.5
Remainder of groundwater basin	1,200	600	100	1.0
Sespe Subarea	900	350	30	2.0
Santa Paula Subunit				
Santa Paula Subarea				
Easterly of Peck Road	1,200	600	100	1.0
Westerly of Wells Road and Los Angeles Ave.	1,000	400	100	1.0
Remainder of groundwater basin	2,000	800	200	1.5
Sisar Subarea	700	250	100	0.5
Oxnard Plain Subunit				
Oxnard Subarea				
Oxnard Forebay	1,200	600	150	1.5
Deep Aquifers underlying pressure area	1,200	600	150	1.5
Semiperched Aquifer <u>g/</u>		None Specified		

FIGURE 4-2  
 GROUNDWATER BASINS  
 AND SUB-BASINS WITH ESTABLISHED  
 WATER QUALITY OBJECTIVES

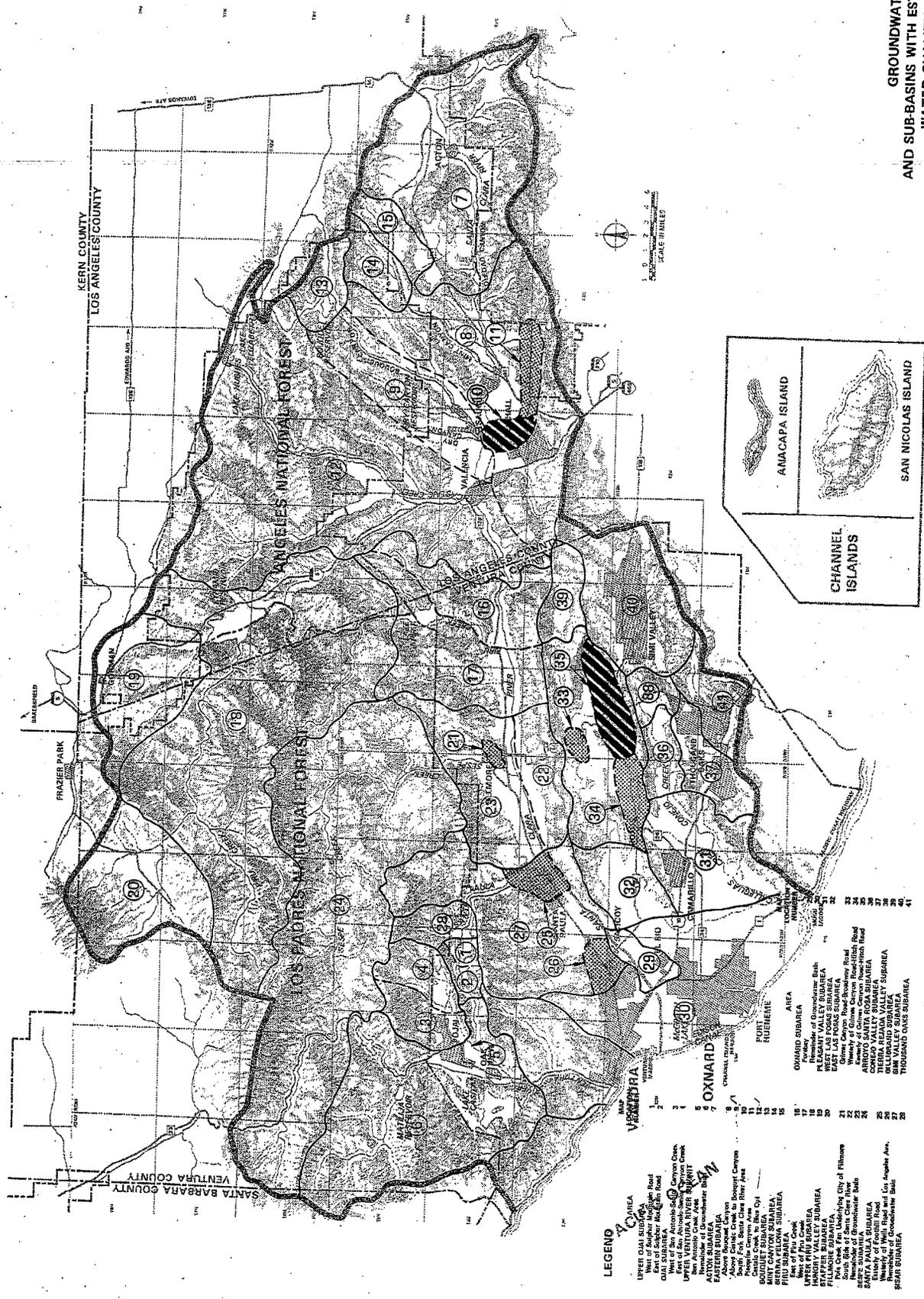


TABLE 4-2 (Continued)

WATER QUALITY OBJECTIVES FOR GROUNDWATER BASINS

Area	Objective (mg/l)			
	TDS	Sulfate	Chloride	Boron
Pleasant Valley Subarea	1,200	600	150	1.5
Deep Aquifers	1,200	600	150	1.5
Shallow Aquifer <u>h/</u>		None Specified		
Calleguas-Conejo Subunit				
West Las Posas Subarea	900	350	150	1.0
East Las Posas Subarea				
Isolated basin vicinity of Grimes Canyon Road and Broadway Road	250	30	30	0.2
Westerly of Grimes Canyon Road and Hitch Blvd.	700	300	100	0.5
Easterly of Grimes Canyon Road and Hitch Blvd.	2,500	1,200	400	3.0
Remainder of area	1,000	400	150	1.0
Arroyo Santa Rosa Subarea	700	150	150	1.0
Conejo Valley Subarea	800	250	150	1.0
Tierra Rejada Valley Subarea	700	250	100	0.5
Gillibrand Subarea	900	350	50	1.0
Simi Valley Subarea				
Deep Aquifers	800	300	150	1.0
Shallow Aquifer <u>h/</u>		None Specified		
Thousand Oaks Subarea	1,400	700	150	1.0

a/ Shallow alluvial aquifer is of very poor quality and not used. Water quality in shallow aquifer shall be maintained existing levels in accordance with the "non-degradation" policy. This is to be accomplished on case-by-case basis as part of the requirements imposed upon dischargers to the shallow aquifer. Deeper San Pedro aquifers recharged from Oxnard Forebay and consequently its quality is dependent on the quality of replenishment water in Oxnard Forebay. Objective for deeper San Pedro Aquifers identical to that for deeper aquifers beneath the Oxnard pressure area.

- b/ Excludes aquifer in Bouquet Canyon and tributaries.
- c/ Includes aquifer in Bouquet Canyon and tributaries but excludes aquifer in Castaic Creek and the South Fork of Santa Clara River and tributaries.
- d/ Includes aquifer in Castaic Creek and tributaries.
- e/ Includes aquifer in Piru Creek and tributaries.
- f/ Excludes aquifer in Piru Creek and tributaries.
- g/ Semi-perched aquifer is of very poor quality and not used for domestic, agricultural, or industrial water supply in any significant quantity. Water quality in shallow aquifer shall be maintained existing levels in accordance with the "non-degradation" policy. This is to be accomplished on case-by-case basis as part of the requirements imposed upon dischargers to the shallow aquifer.
- h/ Shallow aquifers are of very poor quality and not used for domestic, agricultural, or industrial water supply in any significant quantity. Water quality in shallow aquifer shall be maintained existing levels in accordance with the "non-degradation" policy. This is to be accomplished on a case-by-case basis as part of the requirements imposed upon dischargers to the shallow aquifer.



# **ATTACHMENT 56**



MINERAL QUALITY OBJECTIVES FOR SURFACE WATERS

Objectives (mg/l) a/

SAR<sup>b</sup>

Stream/Station<sup>b/</sup> TDS Sulfate Chloride Boron Nitrogen<sup>c/</sup> SER<sup>d/</sup>

Ventura River:

At Matilija Hot Spring  
At Casitas Vista Road  
At Shell Road

Santa Clara River:

At West Pier Highway 99  
At Los Angeles and Ventura  
County Line  
At A Street, Fillmore  
Santa Paula Bridge  
At Saticoy Diversion Dam  
At United States Highway 101

Santa Paula Creek:

At Santa Paula Water Works-  
Diversion Dam

Sespe Creek:

Above gaging station,  
500 feet downstream from  
Little Sespe Creek, at  
gaging station

Piru Creek:

Above  
(at gaging station below Santa  
Felicia Dam)  
Calleguas Creek:  
Above  
At Potrero Road

600	300	50	1.0	5	e/
800	300	60	1.5	5	e/
1,500	600	600	1.5	10	5.0
900	450	80	1.5	10	5.0
1,100	550	90	1.5	5	10.0
1,300	650	80	1.5	5	5.0
1,300	650	80	1.5	5	5.0
1,100	550	60	1.5	5	5.0
800	400	60	1.5	5	5.0
600	300	60	1.0	5	5.0
800	400	60	1.5	5	5.0
950	500	50	1.5	5	5.0
850	400	50	1.0	5	e/

*revised  
revisions  
on next*

00034

Ventura River

Above Camino Cielo Road  
Reach bounded by Camino Cielo Road and  
Casitas Vista Road  
Reach bounded by Casitas Vista Road and  
Oak View STP  
Below Oak View STP to Main Street

Santa Clara River

Above Lang  
Reach bounded by Lang and West Pier  
Highway 99  
Reach bounded by West Pier Highway 99  
and Los Angeles-Ventura County Line  
Reach bounded by Los Angeles-Ventura  
County Line and A Street, Fillmore and  
Reach bounded by A Street, Fillmore and  
Santa Paula Bridge  
Reach bounded by Santa Paula Bridge and  
Saticoy Diversion Dam

<u>TDS</u>	<u>Sulfate</u>	<u>Chloride</u>	<u>Boron</u>	<u>Nitrogen</u>	<u>SAR</u>
700	300	50	1.0	5	5.0
800	300	60	1.5	5	5.0
1,000	300	60	1.5	5	5.0
1,500	600	600	1.5	10	5.0
600	100	50	0.5 <sup>(f)</sup>	5	5.0
1,200	450	100	1.5	10	5.0
1,200	550	100	1.5	5	10.0
1,300	650	100	1.5	5	5.0
1,300	650	80	1.5	5	5.0
1,300	650	80	1.5	5	5.0

00035

REGIONAL WATER QUALITY CONTROL BOARD  
SANTA CLARA REGION



BROADWAY, SUITE 4027  
SANTA CLARA, CALIFORNIA 95052  
620-4460

February 6, 1978

TO: Interested Persons

RE: Public Hearing for the Adoption of Revisions to the  
Water Quality Control Plan - Basin 4A

Gentlemen:

Reference is made to our letter dated February 3, 1978, which transmitted tentative revisions to the Water Quality Control Plan for the Santa Clara River Basin (4A).

Enclosed are revised pages 00036 and 00043 of the originally transmitted material; a note has been added to each page.

If you have any questions please call us.

Very truly yours,

A handwritten signature in cursive script that reads "Raymond M. Hertel".

RAYMOND M. HERTEL  
Executive Officer

MINERAL QUALITY OBJECTIVES FOR SURFACE WATERS

As part of the State's continuing planning process, data will be collected and numerical water quality objectives will be developed for those mineral and nutrient constituents where sufficient information is presently not available for the establishment of such objectives.

a/ The objective at each station is of the weighted annual average. Samples shall be collected at monthly intervals preferably but at least at quarterly intervals. Flow rate shall be determined at the time of sampling.

b/ See Figure 4-1 for location.

c/ Nitrate-N plus Nitrite-N. Eutrophication problems have not impaired the beneficial use of surface waters in the basin. The eutrophication of the basin is described starting on page II-14-1. The lack of phosphorus data precluded the establishment of meaningful numerical objectives for phosphorus.

Sodium Adsorption Ratio

d/ Sodium Equivalent-Ratio

e/ No data available

f/ Where naturally occurring boron results in concentration higher than the stated objective requirements should be set on a case by case basis.

Note: In cases where revisions were proposed to raise certain numerical objectives, these were made to correct errors in the Basin Plan made by the original Contractor and/or to reflect existing quality based on more, newer, and better data. This does not in any way represent a relaxation of standards.

Page: 34 | Santa Clara River above Lang

Recommended Change:

New Station added @ Lang  
Objectives: TDS = 600 mg/L  
SO<sub>4</sub> = 100 mg/L  
Cl = 50 mg/L  
B = 0.5 mg/L  
N = 5 mg/L

Justification: Affords better break-down of former reach and sampling data available @ Lang. No point source discharges above Lang. Water Quality represents natural flow conditions.

see also Table 2 attached

Page: 34 | Reach bounded by Lang and West Pier Hwy 99

Recommended Change:

Change TDS objective from 900 to 1200 mg/L  
change Cl objective from 80 to 100 mg/L

The proposed changes to the surface water objectives correct some inconsistencies in the Basin Plan objectives between surface and ground water. There are two controllable point source discharges to this reach. They are the LACSD WRPs No. 26 and No. 32. The total volume of these discharges is 5.3 mgd (1977 average). The primary use of this wastewater is for incidental groundwater recharge; however, the natural inflow and outflow in this reach are far in excess of the total discharge volume. The Santa Clara River is largely an underground river in this reach. Analysis of groundwaters in this reach shows that TDS averages around 1200 mg/L; the proposed objectives would conform with the quality of the natural inflow and outflow. Assessment work has shown no adverse effects on beneficial uses and the proposed small increases in mineral objectives will not have a significant effect on downstream beneficial uses.

See also Table 2 attached

Page: 34 | Reach bounded by West Pier Hwy 99 and L.A.-Ventura County Line

Recommended Change:

change TDS objective from 1100 to 1200 mg/l

change Cl objective from 90 to 100 mg/l

Justification:

No significant point sources in this reach.  
This reflects water quality conditions found to exist at  
West Pier Hwy 99 and at L.A.-Ventura County Line.

see also Table 2 attached

Page: 34 | Reach bounded by L.A.-Ventura County Line and A Street, Fillmore

Recommended Change:

change Cl objective from 80 to 100 mg/l

Justification:

No significant point-source discharges in this reach.  
This reflects current water quality and conforms  
w/ the reach immediately upstream.

see also Table 2 attached

TABLE 2

Santa Clara River

Station	Parameter	mg/l		mg/l	
		1970-1974	1975-1977	1970-1974	1975-1977
		Range High	Arithmetic Ave	Range High	Arithmetic Ave
Above Lang (Samples @ Lang)	TDS	495	482 <sup>(6)</sup>	503	467 <sup>(9)</sup>
	SO <sub>4</sub>	-	-	100	91 <sup>(8)</sup>
	Cl	-	-	45	39 <sup>(8)</sup>
	B	-	-	0.36	0.3 <sup>(2)</sup>
	N	-	-	0.61	0.26 <sup>(5)</sup>
Reach bounded by Lang and West Pier Hwy 99 (Samples @ Hwy 99)	TDS	1255	991 <sup>(12)</sup>	1367	1171 <sup>(5)</sup>
	Cl	99	68 <sup>(38)</sup>	121	101 <sup>(12)</sup>
Reach bounded by West Pier Hwy 99 and L.A.-Ventura County line (Samples @ L.A.-Ventura Co. line)	TDS	-	-	1450	1172 <sup>(23)</sup>
	Cl	95	72 <sup>(2)</sup>	110	87 <sup>(20)</sup>
Reach bounded by L.A. - Ventura Co. line and A Street, Fillmore. (Samples @ L.A.-Ventura Co. line)	see above - all data exists @ L.A. Ventura Co. line, no data at Fillmore.				



# **ATTACHMENT 57**



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION  
January 27, 1997  
Resolution No. 97-02

*Amendment to the Water Quality Control Plan to incorporate a  
Policy for Addressing Levels of Chloride in Discharges of Wastewaters*

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region finds that:

1. In 1975, the Regional Board established water quality objectives for chloride in most of the Region's waterbodies based on background concentrations of chloride, in accordance with the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16, commonly known as the *State Antidegradation Policy*) and the federal *Antidegradation Policy* (as set forth in 40 CFR 131.12). Water quality objectives are the basis for limits in Waste Discharge Requirements that are prescribed by the Regional Board.
2. When water quality objectives for chloride were set in accordance with the *State Antidegradation Policy* and the federal *Antidegradation Policy*, the Regional Board assumed that chloride concentrations in imported waters would remain relatively low. Since 1975, however, chloride concentrations in supply waters imported into the Region have been increasing. During the late 1980s, drought in watersheds that are sources of imported supply waters made it difficult for many dischargers in the Los Angeles Region to comply with water quality limits for chloride.
3. In addition to relatively high chloride levels in supply waters, chloride levels in wastewaters in the Region can be affected by salt loading that occurs during beneficial use and treatment of supply waters and wastewaters. In some areas of the Region, a significant amount of loading may occur from the use of water softeners.
4. In 1990, the Regional Board adopted Resolution No. 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region*. This resolution, commonly referred to as the *Drought Policy*, was intended to provide short-term and temporary relief to dischargers who were unable to comply with limits for chloride due to the effects of drought on chloride levels in supply waters imported into the Region.

For those dischargers who applied for relief under the Drought Policy, the Regional Board temporarily reset limits on concentrations of chloride at the lesser of: (i) 250 mg/L, or (ii) the chloride concentrations in supply waters plus 85 mg/L. An important condition of this relief was that dischargers demonstrate that high chloride concentrations in their discharges of wastewaters are due to increased salinity levels in supply waters imported into their service areas. Several dischargers provided data that confirm that supply waters imported into the Region are the cause of exceedances of chloride limits in discharges of wastewaters. However, many other dischargers have not yet adequately assessed the source(s) of relatively high levels of chloride in wastewaters and the extent to which exceedances are due to factors such as chloride in supply waters and/or significant chloride loading during beneficial use and treatment of supply waters and wastewaters.

November 15, 1996  
Revised January 10, 1997  
Revised January 14, 1997  
Revised January 27, 1997



Resolution No. 97-02  
Page Two

5. The drought ended before the *Drought Policy* was due to expire in 1993. However, because water supply reservoirs still had high chloride concentrations in 1993 and because water suppliers estimated that it would take 12 to 18 months for complete replenishment of imported waters in reservoirs, the Regional Board renewed the *Drought Policy* in June 1993 and again in February 1995. The *Drought Policy* currently is due to expire on the earlier of February 27, 1997 or at that point in time when it has been determined that chloride levels in water supplies imported into the Region have returned to pre-drought conditions.
6. Chloride levels in supply waters imported into the Region and in reservoirs are no longer impacted by drought. However, chloride levels in supply waters imported into the Region are generally higher than they were before drought conditions in the late 1980. The higher levels of chloride in imported waters appear to be the result of intensifying demands for and utilization of water resources in watersheds that are the sources of supply waters. In addition, future droughts may affect levels of chloride in supply waters imported into the Region.
7. The Regional Board recognizes the shortage of water in the Region and the need to conserve supplies of fresh water for protection of beneficial uses. Accordingly, the Regional Board supports water reclamation, as described in State Board Resolution No 77-01: *Policy with Respect to Water Reclamation in California*. However, achievements in water conservation and reclamation can increase levels of chloride and other ionic constituents in reclaimed waters and wastewaters that are ultimately discharged to waterbodies in the Region.
8. In order to develop a long-term solution to the chloride compliance problems stemming from elevated levels of chloride in supply waters imported into the Region, the Regional Board has been working with a group of technical advisors, formerly known as the Chloride Subcommittee of the Surface Water Technical Review Committee. This group of technical advisors represents a variety of interests, including: water supply, reclamation, and wastewater management; environmental protection; and water softener industry interests. The group concurs with:
  - (a) an approach to permanently reset water quality objectives for chloride in certain surface waters, using levels of chloride in water supply plus a chloride loading factor.
  - (b) a need to assess long-term loading trends for chloride and other saline constituents.

Furthermore, due to concerns expressed about the potential for future adverse impacts to agricultural resources in Ventura County, the Regional Board proposes to work with a local group of agencies, municipalities, representatives of the agricultural community, and other interested parties in order to clarify chloride objectives needed to protect waters used for irrigation in the Santa Clara River and Calleguas Creek watersheds. In addition, this local group concurs with the need to undertake assessments of significant sources of chloride loading and—contingent upon results—identify methods that could control chloride loading and the costs and effectiveness of the various loading control methods.



9. The Secretary of Resources has certified the basin planning process exempt from certain requirements under the California Environmental Quality Act (CEQA), including preparation an initial study, a negative declaration and environmental impact report (Title 14, California Code of Regulations, Section 15251). As per this certification, an amendment to the *Basin Plan* is considered 'functionally equivalent' to an initial study, negative declaration, and environmental impact report.  
  
Any regulatory program of the Regional Board certified as functionally equivalent, however, must satisfy the documentation requirements of Title 23, California Code of Regulations, Section 377(a), which requires an environmental checklist with a description of the proposed activity, and a determination with respect to significant environmental impacts. On November 15, 1996, the Regional Board distributed information regarding a proposed amendment to the *Basin Plan* to incorporate a *Policy for Addressing Levels of Chloride in Discharges of Wastewaters (Chloride Policy)*. This information included an environmental checklist, a description of the proposed amendment to the *Basin Plan*, and a determination that the proposed amendment could not have a significant effect on the environment.
10. The public has had reasonable opportunity to participate in review of the amendment to the *Basin Plan*. Efforts to solicit public review and comment include: public notification, more than 45 days preceding Board action; public workshops, held on December 2, 1996, December 3, 1996, and January 6, 1997; responses from the Regional Board to oral and written comments received from the public, and a public hearing held on January 27, 1997.
11. In amending the *Basin Plan*, the Regional Board considered factors set forth in section 13241 of the Porter-Cologne Water Quality Control Act (California Water Code, Division 1, Chapter 2, Article 3, et seq., plus others).
12. The amendment is consistent with the State *Antidegradation Policy* (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal *Antidegradation Policy* (40 CFR 131.12).
13. Revision of water quality objectives for chloride is subject to approval by the State Water Resources Control Board, the State Office of Administrative Law, and the US Environmental Protection Agency.



THEREFORE, BE IT RESOLVED THAT:

1. Water quality objectives for chloride for certain surface waters will be revised as specified below.

Waterbody	New Objective
Los Angeles River—between Sepulveda Flood Control Basin and Figueroa Street (including Burbank Western Channel only)	190 mg/L
Los Angeles River—between Figueroa Street and estuary (including Rio Hondo below Santa Ana Freeway only)	190 mg/L
Rio Hondo—between Whittier Narrows Flood Control Basin and Santa Ana Frwy	180 mg/L
San Gabriel River—between Valley Blvd. and Firestone Blvd. (including Whittier Narrows Flood Control Basin, and San Jose Creek downstream of 71 Frwy only)	180 mg/L

These new objectives are set at the lower of (i) levels needed to protect beneficial uses, or (ii) chloride levels in supply waters imported into the Region plus a chloride loading factor of 85 mg/L. The levels at which the new water quality objectives have been set are expected to accommodate fluctuations in chloride concentrations that may be due to future drought. Although the new water quality objectives do not match background levels of chloride, they nevertheless are expected to be fully protective of drinking water and freshwater aquatic life.

2. Due to concerns expressed about the potential for future adverse impacts to agricultural resources in Ventura County, water quality objectives for chloride in the Santa Clara River and Calleguas Creek watersheds will not be revised at this time. To address compliance problems with chloride limits based on existing water quality objectives, the Regional Board hereby grants variances (interim relief) to existing dischargers identified on Attachment A. The Executive Officer is directed to notify these dischargers that they are subject to surface water interim limits specified below.

Waterbody Segments for which Existing Dischargers Are Subject to Interim Chloride Limits	Interim Chloride Limit
Santa Clara River—between Bouquet Canyon Road Bridge and West Pier Highway 99	190 mg/L
Santa Clara River—between West Pier Highway 99 and Blue Cut gaging station	190 mg/L
Santa Clara River—between Blue Cut gaging station and A Street (Fillmore)	190 mg/L
Arroyo Simi and tributaries—upstream Madera Road	160 mg/L
Arroyo Simi—downstream Madera Road, Arroyo Las Posas, and tributaries	190 mg/L
Calleguas Creek and tributaries—between Potrero Road and Arroyo Las Posas (including Conejo Creek, Arroyo Conejo, and Arroyo Santa Rosa)	190 mg/L

The variance period for interim relief will extend for three years following final approval of the amendment. During this period, the Regional Board expects that the local group of agencies, municipalities, representatives of the agricultural community, and other interested parties which have commented upon this policy will work together to: (i) clarify water quality objectives needed to protect waters used for irrigation in the Santa Clara River and Calleguas Creek



watersheds, (ii) assess significant sources of chloride loading, and (iii) contingent upon results of the chloride loading assessment, identify cost-effective ways that could protect beneficial uses of waters in the Santa Clara and Calleguas Creek watersheds. Should these issues not be resolved within the three-year variance period, the Regional Board intends to renew the variance.

At the end of the variance period, the Regional Board may reconsider revisions to water quality objectives for chloride in the Santa Clara River and Calleguas Creek watersheds. Future revisions of water quality objectives will consider chloride levels in supply waters (including fluctuations that may be due to future drought conditions), reasonable loading factors during beneficial use and treatment of supply waters and wastewaters, methods that could control chloride loading, and the associated costs and effectiveness of the various loading control methods.

3. To address the need to continue and, as appropriate, improve tracking and assessment of salinity loading throughout the Region, publicly-owned treatment works (POTWs) shall be required, as part of their NPDES permits, to monitor and assess salinity concentrations derived from: (i) source waters, (ii) loading that occurs during beneficial use of supply waters, and (iii) loading that occurs during treatment and disinfection of supply waters and wastewaters. Furthermore, those POTWs not already monitoring and assessing chloride loading from industrial sources shall expand their pre-treatment programs to include such assessments.

Monitoring data and assessments shall be reported by the POTWs to the Regional Board on an annual basis; the content and format of these reports shall be subject to approval by the Executive Officer of the Regional Board.

4. To address water quality problems from water softening processes throughout the Region, the Regional Board recommends that water suppliers, POTWs, and representatives of the water softener industry undertake educational campaigns, targeting residential, commercial, and industrial water consumers, on issues relating to water hardness, water quality problems associated with water softeners, and types of water softeners (encouraging the use of those types of softeners that pose less of a threat to water quality).
5. To address chloride loading that occurs during treatment and disinfection of supply waters and wastewaters, the Regional Board encourages shifts to less chlorine-intensive processes to achieve treatment and disinfection of supply waters and wastewaters, to the extent that such shifts are cost-effective and consistent with water quality and reclamation objectives.
6. Contingent upon the success of the salinity loading measures set forth in paragraphs (2) through (5) immediately above, the Regional Board may consider other salinity control measures at a later date. Such measures may include—but are not limited to—salt loading fees, bans or restrictions on inefficient water and/or "self-regenerating" types of softeners, regulatory controls of agricultural discharges, and expansion of POTW pretreatment programs to include salinity loading controls from commercial discharges.
7. Water quality objectives for chloride will not be changed for the headwaters of the Region's major stream systems. Furthermore, due to concerns over degradation of ground waters stored in the Region's basins, water quality objectives for chloride in ground waters will not be changed. In accordance with the State *Antidegradation Policy*, water quality objectives currently in effect will continue to protect the naturally-high quality of such surface and ground waters.

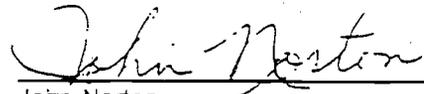


Resolution No. 97-02  
Page Six

8. Resolution No. 90-04: *Effects of Drought-Induced Water Supply Changes and Water Conservation Measures on Compliance with Waste Discharge Requirements within the Los Angeles Region (Drought Policy)*, which was intended to provide short-term and temporary relief to dischargers who were unable to comply with limits for chloride due to the effects of drought on chloride levels in supply waters, is hereby rescinded with the adoption of this resolution.

While this resolution and amendment to the *Basin Plan* are under review by the State Water Resources Control Board, Office of Administrative Law, and the US Environmental Protection Agency, the Regional Board will evaluate compliance consistent with provisions set forth in this resolution.

I, John Norton, Acting Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on January 27, 1997.

  
\_\_\_\_\_  
John Norton  
Acting Executive Officer

IWP



*Amendment to the Water Quality Control Plan to incorporate a  
Policy for Addressing Levels of Chloride in Discharges of Wastewaters*

**Attachment A**

**Publicly-owned Treatment Plants Subject to a Variance from  
Chloride Limits Based on Existing Water Quality Objectives**

<u>Publicly-owned Treatment Plant</u>	<u>Operator</u>
Saugus Water Reclamation Plant 26200 Springbrook Road, Saugus	County Sanitation Districts of Los Angeles County
Valencia Water Reclamation Plant 28185 The Old Road, Valencia	County Sanitation Districts of Los Angeles County
Santa Paula Wastewater Reclamation Facility 905 Corporate Street, Santa Paula	City of Santa Paula & Ventura Regional Sanitation District
City of Simi Valley Water Quality Control Facility 600 West Los Angeles Avenue, Simi Valley	City of Simi Valley
Moorpark Wastewater Treatment Plant 9550 Los Angeles Avenue, Moorpark	Ventura County Waterworks, District No. 1
Camrosa Wastewater Treatment Plant Lewis Road & Potrero Road, Camarillo	Ventura County Regional Sanitation District & Camrosa County Water District
Hill Canyon Wastewater Treatment Plant 9600 Santa Rosa Road, Camarillo	City of Thousand Oaks
Olsen Road Water Reclamation Plant 2025 Olsen Road, Thousand Oaks	City of Thousand Oaks
Camarillo Sanitary District Water Reclamation Plant 150 East Howard Road, Camarillo	Camarillo Sanitary District



# **ATTACHMENT 58**



State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R03-008

July 10, 2003

**Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Chloride in the Upper Santa Clara River**

WHEREAS:

1. The California Regional Water Quality Control Board Los Angeles Region (Regional Board) adopted a revised Basin Plan for the Los Angeles Region on June 13, 1994 which was approved by the State Water Resources Control Board (SWRCB) on November 17, 1994 and by the Office of Administrative Law (OAL) on February 23, 1995.
2. Section 303(d) of the Clean Water Act requires states to identify and to prepare a list of water bodies that do not meet water quality standards and then to establish load and waste load allocations, or a total maximum daily load (TMDL), for each water body that will ensure attainment of water quality standards and then to incorporate those allocations into their water quality control plans. Two reaches of the Santa Clara River near the City of Santa Clarita ("Upper Santa Clara River") were listed on California's 1998 section 303(d) list, due to impairment by chloride, which is present at levels that exceed the water quality objective.
3. Regional Board staff prepared a TMDL analysis and the associated documents to address the chloride impairment of the Upper Santa Clara River. The documents were issued for peer and public review. At a public hearing on October 24, 2002, the Regional Board adopted Resolution No. R02-018 amending the Basin Plan to incorporate a TMDL for chloride in the Upper Santa Clara River.
4. A Basin Plan amendment does not become effective until approved by the SWRCB and until the regulatory provisions are approved by the OAL and USEPA.
5. On February 19, 2003, the SWRCB adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") finding that the Regional Board staff prepared the documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act, scientific peer review, and other State laws and regulations to develop a TMDL.

July 24, 2003

6. In the Remand Resolution, the SWRCB also found that provisions of the amendment as adopted by the Regional Board warranted minor clarification of the language of various provisions. Regional Board Resolution No. R02-018 delegates to the Regional Board Executive Officer authority to make minor, non-substantive corrections to the adopted amendment if needed for clarity or consistency. The Regional Board Executive Officer made the necessary corrections to the amendment.
7. In the Remand Resolution, the SWRCB further found that the amendment as corrected does not adequately resolve issues regarding the appropriateness of the compliance time schedules for implementation tasks. Consequently, the SWRCB remanded to the Regional Board the amendment to the Basin Plan to incorporate a TMDL for chloride for the Upper Santa Clara River.
8. The Remand Resolution directed the Regional Board to consider:
  - a. Expansion of the current phased TMDL approach so that County Sanitation Districts of Los Angeles County can complete their implementation tasks by Regional Board-specified dates sequentially and within 13 years of the effective date of the TMDL. If advanced treatment facilities and disposal facilities are found to be necessary for compliance with the TMDL, the Regional Board may consider extending the implementation schedule as necessary to account for events beyond the control of the County Sanitation Districts of Los Angeles County.
  - b. Extension of the interim effluent limits beyond the currently proposed 2½ years so that these limits may remain in effect during the planning, construction and execution portions of the TMDL's implementation tasks.
  - c. Whether provision of a long-term alternate water supply to agricultural diverters of surface water by the County Sanitation Districts of Los Angeles County would be appropriate; and consider re-evaluation of the agricultural water quality objective and the agricultural beneficial use designation if such alternate supply is provided. The re-evaluation of the alternative water supply should consider re-examining and modifying the trigger and compliance schedule for providing the alternative water supply. The Regional Board's re-evaluation of the objective should consider accounting for the beneficial use(s) to be protected, the quality of the imported water supply to the Upper Santa Clara River watershed and the impacts of periods of drought or low rainfall.
  - d. An integrated solution, which may be a single comprehensive TMDL, for all water quality pollutants in the Santa Clara River basin listed on the Clean Water Act section 303(d) list.

9. Regional Board staff considered the State Board recommendations contained in the Remand Resolution and evaluated options for amending the Implementation Plan in consideration of the remand. The evaluations and recommendations of Regional Board staff are provided in a memo to file entitled, "Options Considered for Revision of Remanded Upper Santa Clara River Chloride TMDL" dated March 27, 2003. The results of Regional Board staff evaluation are shown in the redline version of Attachment A.
10. Since adoption of the Upper Santa Clara Chloride TMDL, the Regional Board, County Sanitation Districts of Los Angeles County, and the City of Santa Clarita have been proactively pursuing chloride source reduction. Specifically, the agencies have conducted extensive public outreach and County Sanitation Districts of Los Angeles County has enacted an ordinance banning the installation of self-regenerating water softeners.
11. At a public hearing on July 10, 2003, the Regional Board reconsidered Resolution No. R02-018 in light of the Remand Resolution.
  - a. The Regional Board expanded the phased-TMDL approach adopted by the Regional Board in Resolution R02-018 to allow County Sanitation Districts of Los Angeles County (CSDLAC) to complete the implementation tasks sequentially and within 13 years. Specifically, the due date of Task 9, (Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses) is extended to 4 years after the effective date of the TMDL. This will allow the results of studies to be conducted under tasks 3, 4 and 5 of the Implementation Plan (Ground/Surface Water Interaction Model, Chloride Source Identification/Reduction Pollution Prevention and Public Outreach Plan, and Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection) to be considered before Task 9 is completed. The issues of beneficial uses, quality of imported water and impacts of periods of drought or low rainfall will be analyzed in Tasks 3, 4 and 5, which are due two years after the effective date of the TMDL. Table 7-6.2 was revised to reflect these schedule modifications.
  - b. The Regional Board extended the currently proposed 2-1/2 years period for interim effluent limits so that the interim limits may remain in effect during the planning, construction, and execution portions of the TMDL's implementation tasks. Further, the Regional Board evaluated recent discharge data and a revision of the interim limit proposed by CSDLA, but did not find sufficient change in the performance data to justify a revision of the interim limit value. Table 7-6.1 was revised to explicitly state that the interim limit remains in effect during the planning, construction, and execution portion of the TMDL's implementation tasks, a period not to extend beyond 13 years from the effective date of the TMDL. Table 7-6.2, was modified to remove the 2-1/2 year period for interim effluent limits.

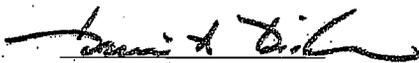
- c. The Regional Board considered whether a long-term alternate water supply to agricultural diverters would be appropriate. The Regional Board modified the task for Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses to include this assessment. Task 9 of Table 7-6.2 has been modified to reflect this additional analysis.
- d. The Regional Board chose not to incorporate the chloride TMDL into a single comprehensive TMDL addressing all water quality impairments of the Santa Clara River on the 303(d) list. The forthcoming nutrient TMDL for the Santa Clara River has undergone extensive development work and is scheduled to be finalized in 2003. The chloride and forthcoming nitrogen TMDLs address most of the water quality impairments on the 303(d) list for the Santa Clara River.
12. In all other respects, the findings and provisions of Regional Board Resolution R02-018 remain valid and are carried forward. The revisions to the Basin Plan Amendment to incorporate a TMDL for chloride in the Upper Santa Clara River adopted by Resolution R02-018 are shown in attachment A.
13. The revisions proposed to address the Remand Resolution do not alter the environmental analysis, necessity conclusion, and de minimis findings of Regional Board Resolution R02-018.

**THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:**

1. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region to incorporate the elements of the Upper Santa Clara River Chloride TMDL as set forth in Attachment A hereto.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
3. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.

4. If during its approval process the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on July 10, 2003.



Dennis A. Dickerson  
Executive Officer

## **Attachment A to Resolution No. R03-008**

### **Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region**

#### **To Incorporate a Total Maximum Daily Load for Chloride in the**

#### **Upper Santa Clara River**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles  
Region on July 10, 2003.

#### **Amendments**

#### **Table of Contents**

#### **Add:**

### **Chapter 7. Total Maximum Daily Loads (TMDLs)**

#### **7-6 Upper Santa Clara River Chloride TMDL**

#### **List of Figures, Tables, and Inserts**

Add: Chapter 7. Total Maximum Daily Loads (TMDLs) Tables

7-6.1. Upper Santa Clara River Chloride TMDL: Elements

7-6.2. Upper Santa Clara River Chloride TMDL: Implementation Schedule

### **Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL**

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.

This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003

This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003

This TMDL was approved by: The State Water Resource Control Board on [Insert Date]

The Office of Administrative Law on [Insert Date].

The U.S. Environmental Protection Agency on [Insert Date].

Element	<p>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</p> <p>Santa Clara River Chloride</p>
<p><b>Problem Statement</b></p>	<p>Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River. This objective was set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River. Irrigation of salt sensitive crops such as avocados and strawberries with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater are also rising.</p>
<p><b>Numeric Target.</b>  <i>(Interpretation of the numeric water quality objective, used to calculate the load allocations)</i></p>	<p>This TMDL has a numeric target of 100 mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use. These objectives are set forth in Chapter 3 of the Basin Plan.</p> <p>The numeric target for this TMDL pertains to Reaches 5 and 6 of the Santa Clara River and is based on achieving the existing water quality objective of 100 mg/L, measured instantaneously, throughout the impaired reaches. A subsequent Basin Plan amendment will be considered by the Regional Board to adjust the chloride objective based on technical studies about the chloride levels, including levels that are protective of salt sensitive crops, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River, provided that County Sanitation Districts of Los Angeles County choose to submit timely and complete studies in accordance with tasks 2 through 6 of Table 7.6.2.</p>
<p><b>Source Analysis</b></p>	<p>The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus Water Reclamation Plant (WRP) and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6.</p>
<p><b>Linkage Analysis</b></p>	<p>Linkage between chloride sources and the in-stream water quality was established through a statistical analysis of the WRP effluent and water quality data at Blue Cut and Highway 99. The analysis shows that additional assimilative capacity is usually added to Reaches 5 and 6 from groundwater discharge, but the magnitude of the assimilative capacity is not well quantified. Consequently, the Implementation Plan includes a hydrological study (Surface Water/Groundwater Interaction) of the upper reaches of the Santa</p>

Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements	
Element	Santa Clara River Chloride
	Clara River.
<i>Waste Load Allocations (for point sources)</i>	The numeric target is based on the water quality objective for chloride. The proposed waste load allocations (WLAs) are 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP. The waste load allocations are expressed as a concentration limit derived from the existing WQO, thereby accommodating future growth. Other NPDES discharges contribute a minor chloride load. The waste load allocation for these point sources is 100 mg/L.
<i>Load Allocation (for non point sources)</i>	The source analysis indicates nonpoint sources are not a major source of chloride. The load allocations for these nonpoint sources is 100 mg/L.
<i>Implementation</i>	Refer to Table 7-6.2. The implementation plan proposes that during the period of TMDL implementation, compliance for the WRP effluent will be evaluated in accordance with interim limits based on 2000 – 2001 performance (i.e. effluent chloride concentration at the Valencia and Saugus WRPs). Using the USEPA protocol described in Table 5-1 of the Technical Support Document for Water Quality-based Toxics Control (USEPA, 1991), the average monthly interim limits are 200 mg/L and 187 mg/L, and the maximum daily limits are 218 mg/L and 196mg/L for the Saugus and Valencia WRPs, respectively.
<i>Margin of Safety</i>	An implicit margin of safety is incorporated through conservative model assumptions and statistical analysis.
<i>Seasonal Variations and Critical Conditions</i>	Three critical conditions are identified for this TMDL. The driest six months of the year is the first critical condition for chloride because less surface flow is available to dilute effluent discharge, pumping rates for agricultural purposes are higher, groundwater discharge is less, poorer quality groundwater may be drawn into the aquifer and evapotranspiration effects are greater in warm weather. During drought, the second critical condition, reduced surface flow and increased groundwater extraction continues through several seasons with greater impact on groundwater resource and discharge. The third critical condition is based on the recent instream chloride concentration increases such as those that occurred in 1999, a year of average flow, when 9 of 12 monthly averages exceeded the objective. Data from all three critical conditions were used in the statistical model described. Hydrological modeling will be completed to evaluate whether additional loading will

Table 7-6.1: Upper Santa Clara River Chloride TMDL Elements	
Element	Santa Clara River Chloride
	impact the WQO or beneficial uses during non-critical conditions.

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation Tasks	Completion Date
<p>1. Alternative Water Supply</p> <p>a) Should (1) the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water quality objective of 100 mg/L, measured for the purposes of this TMDL as a rolling twelve month average, for three months of any 12 months, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and CSDLAC for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provide photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then CSDLA will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between CSDLAC and the agricultural diverter at the direction of the Regional Water Quality Control Board until such time as the in-river chloride concentrations do not exceed the water quality objective.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in a three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit a work plan for an accelerated schedule to reduce chloride discharges within ninety days of a request by the Regional Board Executive Officer.</p> <p>2. Progress reports will be submitted by CSDLAC and Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 3,4,5, and 6</p>	<p>Effective Date of TMDL</p>
<p>3. Groundwater/Surface Water Interaction Model: County Sanitation Districts of Los Angeles (CSDLAC) will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride</p>	<p>2 years after Effective Date of TMDL</p>

<p><b>Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation</b>  <b>Implementation Tasks</b></p>	<p><b>Completion Date</b></p>
<p>from groundwater and its linkage to surface water quality.</p> <p>4.Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: CSDLAC will quantify sources, execute pilot outreach programs, assess pilots, develop and implement source reduction/pollution prevention and outreach program, and report results. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall and will analyze the alternatives for reducing this source.</p> <p>5.Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: CSDLAC will convene a technical advisory committee in cooperation with the Regional Board, review literature, develop methodology for assessment, execute methodology, and report results. In addition, the study shall determine the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the results of Task 3.</p>	
<p>6.Develop Site Specific Objectives (SSO) for Chloride for Sensitive Agriculture: CSDLAC will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p> <p>7.Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: CSDLAC will solicit proposals and develop/draft anti-degradation analysis for Regional Board consideration.</p>	<p>3 years after Effective Date of TMDL</p>
<p>8.Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p>	<p>3.5 years after Effective Date of TMDL</p>
<p>9.Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: CSDLAC will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p>	<p>4 years after Effective Date of TMDL</p>
<p>10.Reconsideration of the Chloride TMDL for the Upper Santa Clara River by the Regional Board.</p>	<p>4.5 years after Effective Date of TMDL</p>
<p>11.Analysis of Feasible Compliance Measures to Meet Load Allocations from Revised TMDL, if necessary. CSDLAC will assess and report on feasible implementation actions to meet the chloride objective in place after Task 10.</p>	<p>5 years after Effective Date of TMDL</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL: Implementation Implementation Tasks	Completion Date
12. Complete Planning, Design, and Construction of Advanced Treatment Facilities: CSDLAC will prepare CEQA documents, obtain permits, acquire easements, design system, and construct. The Regional Board may consider extending the duration of this task as necessary to account for events beyond the control of the CSDLAC.	13 years after Effective Date of TMDL
13. The interim effluent limit for chloride shall remain in effect for no more than 13 years after the effective date of the TMDL.	13 years after Effective Date of TMDL.
14. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved.	13 years after Effective Date of TMDL or as directed by the Regional Board based on review of Tasks 1-9.



# **ATTACHMENT 59**



**State of California  
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION 04-004**

**May 6, 2004**

**Revision of interim waste load allocations and implementation plan for chloride in the  
Amendment to the Water Quality Control Plan for the Los Angeles Region to include a  
TMDL for Chloride in the Upper Santa Clara River, Resolution 03-008**

**WHEREAS, the California Regional Water Quality Control Board, Los Angeles  
Region, finds that:**

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards which are sufficient to protect beneficial uses designated for each water body found within its region.
2. The Regional Board carries out its CWA responsibilities through California's Porter-Cologne Water Quality Control Act and establishes water quality objectives designed to protect beneficial uses contained in the Water Quality Control Plan for the Los Angeles Region (Basin Plan).
3. At a public meeting on October 24, 2002, the Regional Board considered amending the Basin Plan to include a Total Maximum Daily Load (TMDL) for chloride in the Upper Santa Clara River. The proposed TMDL included interim waste load allocations for chloride for the Valencia and Saugus Water Reclamation Plants (WRPs) which are owned and operated by the County Sanitation Districts of Los Angeles County (CSDLAC). These interim waste load allocations provide the discharger the necessary time to implement chloride source reduction, complete site specific objective studies, and make appropriate modifications to the WRP, as necessary, to meet the water quality objective for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRP's performance in the three years preceding October 2002.
4. The Regional Board considered the entire record, including written and oral comments received from the public and the Regional Board staff's response to the written comments. Resolution 02-018, the TMDL for chloride in the Upper Santa Clara River, was adopted by Regional Board on October 24, 2002. Resolution 02-018 assigned waste load allocations (WLAs) to major POTWs, minor point sources, and MS4s permittees discharging to specific reaches of the Santa Clara River.
5. At a public workshop on February 4, 2003, the State Board considered the TMDL for chloride in the Upper Santa Clara River, the entire record, including written and oral comments received from the public and the State Board staff's response to the written comments. At a public meeting on February 19, 2003 the State Board adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board and directed the Regional Board to

reconsider several matters associated with the TMDL implementation plan, including the duration of the interim waste load allocations. The State Board resolution did not recommend that the Regional Board consider revision of the interim waste load allocations.

6. In response to the Remand Resolution, Regional Board staff revised the TMDL Implementation Plan to address issues identified in the Remand Resolution. At a public hearing on July 10, 2003, the Regional Board considered the revised TMDL for chloride in the Upper Santa Clara River. The Regional Board considered the entire record, including written and oral comments received from the public, the Regional Board staff's response to the written comments, and the Remand Resolution. At the public hearing, the Regional Board directed staff to reconsider interim waste load allocations and evaluate how any changes would affect avocados and groundwater.
7. On July 10, 2003, the Regional Board adopted Resolution 03-008 to revise the Basin Plan to include a TMDL in the Upper Santa Clara River. Resolution 03-008 contained interim waste load allocations for the Saugus and Valencia WRPs and assigned waste load allocations (WLAs) to major POTWs, minor point sources, and MS4s permittees discharging to specified reaches of the Santa Clara River.
8. During the time that the State and Regional Boards were considering the chloride TMDL, the National Pollutant Discharge Elimination System (NPDES) permits for the Valencia and Saugus Water Reclamation Plants (WRPs) were under consideration for renewal by the Regional Board. Time Schedule Orders adopted contemporaneously with the NPDES permits also included interim discharge limits for chloride ("NPDES Interim Limits") which differed from the TMDL interim waste load allocations. The NPDES Interim Limits are based on the chloride concentration of the water served from Castaic Lake for municipal supply in the Santa Clarita Valley plus a loading factor of 134 mg/L of the Valencia WRP and 114 mg/L for the Saugus WRP, measured as a twelve month rolling average. The loading values are the highest measured at each plant in the last 5 years.
9. Staff finds that the effects of the NPDES Interim Limits relative to TMDL interim waste load allocations on groundwater and avocados are minor. Potential fiscal impacts could be addressed through the mechanisms of the TMDL. The purpose of this Basin Plan Amendment is to modify the interim waste load allocations in the Chloride TMDL to conform to those in the Saugus and Valencia Time Schedule Orders adopted by the Regional Board on November 6, 2003.
10. The item summary, as well as CEQA checklist and tentative Basin Plan Amendment were released for public comment on December 30, 2003. The revised interim waste load allocations are proposed in attachment A to this resolution.
11. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 89-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).

12. The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.
13. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
14. The Basin Plan amendment incorporating a revision for interim waste load allocations for chloride in the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. Environmental Protection Agency (U.S. EPA). The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed.
15. The TMDL Implementation Plan includes a task to develop site specific objectives for chloride to protect beneficial uses. The studies supporting the proposed site specific objectives are to be completed within three years after the effective date of the TMDL. The three-year timeline is reasonable in light of existing information; however, depending on the data requirements that are recommended by technical experts pursuant to Implementation Task 4, the completion dates for the development of appropriate thresholds for chloride and associated implementation tasks may need to be revised in order to provide sufficient time to complete the necessary scientific studies. The Implementation Plan has been modified to recognize that the Regional Board will re-evaluate the implementation schedule 12 months after the effective date of the TMDL, and take action to amend the schedule if there is sufficient technical justification.
16. The Regional Board recognizes that certain completion dates provided in the TMDL Implementation Plan are estimates and that there are uncertainties associated with implementation of some of the tasks, particularly for those related to the development and implementation of appropriate control measures for meeting the water quality objective. For example, should additional treatment facilities be required, the time needed for actions including, but not limited to, gaining regulatory approval for measures selected for implementation, completion of CEQA requirements, and acquisition of land and easements, are subject to uncertainties and factors outside the control of responsible parties. In recognition of these uncertainties, the implementation plan has been modified to recognize that the Regional Board will re-evaluate the schedule 9 years after the effective date of the TMDL.

**THEREFORE, be it resolved that pursuant to Section 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:**

1. The revised implementation plan in attachment A of this Resolution supersedes the implementation plan contained in Resolution 03-008.
2. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region to incorporate the revisions of the interim waste load

allocations and implementation plan in the Santa Clara River Chloride TMDL, Table 7-8.1, Implementation Section as set forth in Attachment A hereto.

3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to Office of Administrative Law (OAL) and the United State Environmental Protection Agency (U.S. EPA).
5. If during its approval process the SWRCB or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.
7. Amend the text in the Basin Plan, Plans and Policies (Chapter 5) to add:

“Resolution 04-004. Adopted by the Regional Water Quality Control Board on May 6, 2004.

‘Amendment to revise the interim waste load allocations and implementation plan in the TMDL for Chloride in the Upper Santa Clara River, Resolution 03-008’.  
The resolution proposes revisions for the interim waste load allocations for chloride and a revised implementation plan for the Upper Santa Clara River.”

I, Dennis Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on May 6, 2004.



Dennis A. Dickerson  
Executive Officer

**Attachment A to Resolution No. 04-004**

**Revision of interim waste load allocations and implementation plan  
for the TMDL for Chloride in the Upper Santa Clara River, Resolution 03-008**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles Region on May 6, 2004.

**Amendments**

Table of Contents

Add:

Chapter 7. Total Maximum Daily Loads (TMDLs)  
7-6 Upper Santa Clara River Chloride TMDL

List of Figures, Tables, and Inserts

Add: Chapter 7. Total Maximum Daily Loads (TMDLs) Tables  
7-6.1. Upper Santa Clara River Chloride TMDL: Elements  
7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule

Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.  
This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003  
This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.  
This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6, 2004.

This TMDL was approved by: The State Water Resource Control Board on (Insert Date)  
The Office of Administrative Law on (Insert Date).  
The U.S. Environmental Protection Agency on (Insert Date).

<b>Element</b>	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements Santa Clara River Chloride</b>
<b>Problem Statement</b>	Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River. This objective was set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River. Irrigation of salt sensitive crops such as avocados and strawberries with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater are also rising.
<b>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</b>	<p>This TMDL has a numeric target of 100mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use. These objectives are set forth in Chapter 3 of the Basin Plan.</p> <p>The numeric target for this TMDL pertains to Reaches 5 and 6 of the Santa Clara River and is based on achieving the existing water quality objective of 100 mg/L, measured instantaneously, throughout the impaired reaches. A subsequent Basin Plan amendment will be considered by the Regional Board to adjust the chloride objective based on technical studies about the chloride levels, including levels that are protective of salt sensitive crops, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River, provided that County Sanitation Districts of Los Angeles County choose to submit timely and complete studies in accordance with tasks 2 through 6 of Table 7.6.2.</p>
<b>Source Analysis</b>	The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus Water Reclamation Plant (WRP) and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6.
<b>Linkage Analysis</b>	Linkage between chloride sources and the in-stream water quality was established through a statistical analysis of the WRP effluent and water quality data at Blue Cut and Highway 99. The analysis shows that additional assimilative capacity is usually added to Reaches 5 and 6 from groundwater discharge, but the magnitude of the assimilative capacity is not well quantified. Consequently, the Implementation Plan includes a hydrological study (Surface Water/Groundwater Interaction? Of the upper reaches of the Santa Clara River.
<b>Waste Load Allocations (for point sources)</b>	The numeric target is based on the water quality objective for chloride. The proposed waste load allocations (WLAs) are 100 mg/L for Valencia WRP and 100 mg/L Saugus WRP. The waste load allocations are

<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements</b>	
<b>Element</b>	<b>Santa Clara River Chloride</b>
	expressed as a concentration limit derived from the existing WQO, thereby accommodating future growth. Other NPDES discharges contribute a minor chloride load. The waste load allocation for these point sources is 100 mg/L.
<b>Load Allocation (for non point sources)</b>	The source analysis indicates nonpoint sources are not a major source of chloride. The load allocations for these nonpoint sources is 100 mg/L.
<b>Implementation</b>	<p>Refer to Table 7-6.2.</p> <p>The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluents will be evaluated in accordance with interim waste load allocations.</p> <p>Saugus WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average.                      At no time shall the interim wasteload allocation exceed 230mg/L.</p> <p style="padding-left: 40px;">Interim Waste Load Allocation=Treated Potable Water Supply + 114 mg/L, not to exceed 230 mg/L.</p> <p style="padding-left: 40px;">(114 mg/L is the maximum difference in chloride concentration between the State Water Project treated water and the Saugus WRP treated effluent over the last five years.)</p> <p>Valencia WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average. At no time shall the interim wasteload allocation exceed 230 mg/L.</p> <p style="padding-left: 40px;">Interim Waste Load Allocation=Treated potable Water Supply + 134 mg/L, not to exceed 230 mg/L.</p> <p style="padding-left: 40px;">(134 mg/L, is the maximum difference in chloride concentration between the State Water Project treated water and the Valencia WRP treated effluent over the last five years.)</p>
<b>Margin of Safety</b>	An implicit margin of safety is incorporated through conservative model assumptions and statistical analysis.
<b>Seasonal Variations and Critical Conditions</b>	Three critical conditions are identified for this TMDL. The driest six months of the year is the first critical condition for chloride because less surface flow is available to dilute effluent discharge, pumping rates for agricultural purposes are higher, groundwater discharge is less, poorer quality groundwater may be drawn into the aquifer and evapotranspiration

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements Santa Clara River Chloride
	effects are greater in warm weather. During drought, the second critical condition reduced surface flow and increased groundwater extraction continues through several seasons with greater impact on groundwater resource and discharge. The third critical conditions is based on the recent instream chloride concentration increases such as those that occurred in 1999, a year of average flow, when 9 of 12 monthly averages exceeded the objective. Data from all three critical conditions were used in the statistical model described. Hydrological modeling will be completed to evaluate whether additional loading will impact the WQO or beneficial uses during non-critical conditions.

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>1. Alternate Water Supply</p> <p>a) Should (1) the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water quality objective of 100mg/L, measured for the purposes of this TMDL as a rolling twelve month average, for three months of any 12 months, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and County Sanitation Districts of Los Angeles County (CSDLAC) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provide photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then CSDLAC will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between CSDLAC and the agricultural diverter at the direction of the Regional Water Quality Control Board until such as time as the in-river chloride concentrations do not exceed the water quality objective.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in the three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p> <p>2. Progress reports will be submitted by CSDLAC to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4,6, and 7, and on an annual basis for Task 5.</p>	
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, CSDLAC will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by CSDLAC, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in controlling chloride. CSDLAC shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride</p>	<p>6 months after Effective Date of TMDL</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.	
4. CSDLAC will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.	12 months after Effective Date
5. Groundwater/Surface Water Interaction Model: CSDLAC will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.	2 years after Effective Date of TMDL
6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: CSDLAC will prepare and submit a report on endangered species protection thresholds. CSDLAC will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.	3 years after Effective Date of TMDL
7. Develop Site Specific Objectives (SSO) for Chloride for Sensitive Agriculture: CSDLAC will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.	4 years after Effective Date of TMDL

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: CSDLAC will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p> <p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final wasteload allocations. CSDLAC shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride water quality objectives and final wasteload allocations.</p>	
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: CSDLAC will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Wasteload Allocations for Proposed Chloride Objective. CSDLAC will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p>5 years after Effective Date of TMDL</p>
<p>11. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet Final Wasteload Allocations adopted pursuant to Task 10 d) and the schedule for Task 12. The Regional Board, at a public meeting will consider extending the completion date of Task 12 and reconsider the schedule to implement control measures to meet Final Wasteload Allocations adopted pursuant to Task 10 d). CSDLAC will provide the justification for the need for an extension to the Regional Board executive Officer at least 6 months in advance of the deadline for this task.</p>	<p>9 years after Effective Date of TMDL</p>
<p>12. The interim effluent limits for chloride shall remain in effect for no more than 13 years after the effective date of the TMDL. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the CSDLAC.</p>	<p>13 years after Effective Date of TMDL</p>



# **ATTACHMENT 60**



State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2006-016

August 3, 2006

Amendment to the Water Quality Control Plan for the Los Angeles Region through  
revision of the Implementation Plan for the Upper Santa Clara River Chloride  
TMDL, Resolution 04-004

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years.
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
4. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
5. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San

Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

6. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303d list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the County Sanitation Districts of Los Angeles County (CSDLAC), are two major point sources that discharge to the USCR.
7. At a public meeting on October 24, 2002, the Regional Board considered amending the Basin Plan to include a TMDL for chloride in the USCR. The proposed TMDL included interim waste load allocations for chloride for the WRPs. These interim waste load allocations provide the discharger the necessary time to implement chloride source reduction, complete site specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
8. The Regional Board considered the entire record, including written and oral comments received from the public and the Regional Board staff's response to the written comments. Resolution 02-018, the TMDL for chloride in the USCR, was adopted by Regional Board on October 24, 2002. Resolution 02-018 assigned waste load allocations (WLAs) to major publicly owned treatment works (POTWs), minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River.
9. At a public workshop on February 4, 2003, the State Board considered the TMDL for chloride in the USCR, the entire record, including written and oral comments received from the public and the State Board staff's response to the written comments. At a public meeting on February 19, 2003 the State Board adopted SWRCB Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board.

10. In response to the Remand Resolution, Regional Board staff revised the TMDL Implementation Plan to address issues identified in the Remand Resolution. On July 10, 2003, the Regional Board adopted Resolution 03-008 to revise the Basin Plan to include a TMDL in the USCR. Resolution 03-008 contained interim waste load allocations for the Saugus and Valencia WRPs and assigned waste load allocations (WLAs) to major POTWs, minor point sources, and MS4s permittees discharging to specified reaches of the Santa Clara River.
11. During the time that the State and Regional Boards were considering the chloride TMDL, the National Pollutant Discharge Elimination System (NPDES) permits for the Valencia and Saugus Water Reclamation Plants (WRPs) were under consideration for renewal by the Regional Board. The NPDES permits also included interim discharge limits for chloride which differed from the TMDL interim waste load allocations. The NPDES interim limits are based on the chloride concentration of the water served from Castaic Lake for municipal supply in the Santa Clarita Valley plus a loading factor of 134 mg/L for the Valencia WRP and 114 mg/L for the Saugus WRP, measured as a twelve month rolling average. The loading values are the highest measured at each plant in the last 5 years.
12. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan in attachment A of Resolution No. 04-004 supersedes the Implementation Plan contained in Resolution No. 03-008.
13. The Implementation Plan as specified in attachment A of Resolution No. 04-004 requires the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
14. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," was reviewed and largely corroborated by a Technical Advisory Panel (TAP) that issued a "Critical Review Report" of the LRE.
15. The LRE found that the best estimate of a chloride hazard concentration for avocado crops falls within the range of 100 to 117 mg/L. A similar range of 100 to 120 mg/L was found by the TAP. The existing WQO of 100 mg/L is within the recommended range for the reasonable protection of salt-sensitive crops.

16. In addition to the LRE special study, a collaborative report entitled "Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan (Chloride Source Report)," was completed in November of 2005. This report, led by the CSDLAC, identifies sources of chloride in the USCR as well as strategies for reducing those sources. The potable water supply was identified as the largest source of chloride loading to the USCR. Self-Regenerating Water Softeners (SRWS) in the Saugus and Valencia service area were identified as the second largest source of chloride loading.
17. The second special study required by the Implementation Plan is the "Groundwater/Surface Water Interaction (GSWI) Model." The Regional Board and CSDLAC are working in cooperation to complete this model. Under existing TMDL, the GSWI is due May 4, 2007.
18. At a public hearing on November 3, 2005, the Regional Board was provided with an update on the status of the chloride TMDL and the results of the LRE study. The Board directed staff to evaluate whether revising the TMDL Implementation Plan is appropriate, and to consider the possible impacts of the high chloride level in surface water to groundwater quality.
19. Based on the conclusions of the LRE and the chloride source report, staff proposes four alternatives for the amendment to the Upper Santa Clara River Chloride TMDL: (1) a no-action alternative in which the Regional Board takes no action to revise the schedule, (2) an alternative that does not revise the 13-year TMDL implementation schedule but includes implementation milestones in years 6-13 of the TMDL schedule, (3) an alternative that extends the 13-year schedule, and (4) an alternative that accelerates the 13-year schedule. Staff recommends Alternative 4. Under this alternative, the Regional Board will consider a TMDL amendment to both accelerate the final compliance date and include time-certain tasks for tasks related to the design and treatment of chloride removal processes to reduce chloride loading if deemed necessary. Staff notes there is potential for additional chloride loading of 4 million to 7 million lbs per year while the interim limit (approximately 200 mg/L) is in effect instead of discharge at the WQO (100 mg/L). Staff however believes this discharge can be mitigated by accelerating the TMDL schedule.
20. The Remand Resolution directed the Regional Board to consider a phased approach so that the Districts can complete their implementation tasks by Regional Board specified dates sequentially and within 13 years. This direction was born of concerns expressed by stakeholders to the State Board that they should not be required to expend resources planning and constructing new technologies that the special studies could render unnecessary. The Regional Board, therefore, readopted the TMDL with a 13 year implementation plan. That 13-year period included five years for special studies, feasibility analysis and WQO revisions, if warranted, followed by

eight years for planning, design, and construction of the selected remedy. The eight year time schedule for planning, design, and construction was based on comments submitted by the Districts on October 7, 2002, with a supporting engineering study (Cost Impacts for Compliance with a 100 mg/L Instantaneous Chloride Discharge Limit at the Santa Clara Valley Water Reclamation Plants, Prepared by MWH, October 2002), that eight years is required to plan, design and construct advanced treatment for chloride.

21. With completion of the LRE, and the anticipated completion of the GSWI model by November 20, 2007, the Board finds that sufficient information will be available such that there is no prejudice to the Districts in initiating the feasibility tasks when the GSWI model is completed. Specifically, the LRE studies reveal that at most the WQO could be relaxed up to 117 mg/L, from 100mg/L. These results, coupled with the results of the GSWI modeling, will demonstrate whether the AGR and GWR beneficial uses could still be protected with SSOs that are sufficiently less stringent such that construction of advanced treatment systems would not be necessary. Subsequent TMDL tasks, such as development of SSOs, development of the antidegradation analysis, development of a preplanning report on conceptual measures to meet different hypothetical final wasteload allocations, and preparation and consideration of a Basin Plan Amendment to revise the chloride objective by the Regional Board, can be accomplished in a shorter timeframe than originally contemplated because the range of chloride values identified by the LRE as necessary to protect AGR and GWR is significantly smaller than the potential range of chloride objectives contemplated during development of the TMDL schedule. This action does not require the Districts to complete the planning and design tasks before the Regional Board considers revision of the chloride WQO, preserves the current eight year schedule for planning, design and construction that is currently contained in the TMDL, and also preserves the requirements for the Board to reconsider the schedule twice during the planning, design and construction phase. The Board finds the proposed action complies with State Board Resolution 2003-0014.
22. The Staff Report, as well as a Notice of Exemption, and tentative Basin Plan Amendment were released for public comment on May 5, 2006. The revised Implementation Plan is proposed in Attachment A to this resolution.
23. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the revisions of the Implementation Plan for the Upper Santa Clara River Chloride TMDL do not include revisions to WQOs, and are intended to shorten the time until compliance with standards. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
24. The proposed amendment results in no potential for adverse environmental effects (de minimis finding), either individually or cumulatively, on wildlife

because shortening the time to implementation will not result in different processes from those already contemplated, but will merely advance those processes.

25. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
26. The Basin Plan amendment incorporating a revision for the Implementation Plan in the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. Environmental Protection Agency (U.S. EPA). The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.

**Therefore, be it resolved that:**

1. Pursuant to Section 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan by replacing the Implementation Plan contained in Resolution 04-004 with the revised Implementation Plan in Attachment A of this Resolution.
2. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region to incorporate the revisions of the Implementation Plan in the Upper Santa Clara River Chloride TMDL, Table 7-6.2, Implementation Section as set forth in Attachment A hereto.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law (OAL) and the United State Environmental Protection Agency (U.S. EPA).
5. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

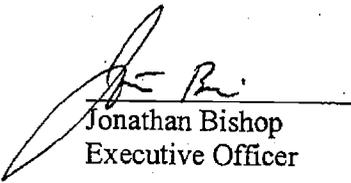
7. The text in the Basin Plan, Plans and Policies (Chapter 5), is hereby amended to add:

“Resolution No. 06-0XX. Adopted by the Regional Water Quality Control Board on August 3, 2006.

~~‘Amendment to revise the Implementation Plan in the TMDL for Chloride in the Upper Santa Clara River, Resolution 04-004’.~~

The resolution proposes revisions to the Implementation Plan for the Upper Santa Clara River Chloride TMDL.”

I, Jonathan Bishop, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on August 3, 2006.



Jonathan Bishop  
Executive Officer



**Attachment A to Resolution No. R4-2006-016**

**Revision of the Implementation Plan  
for the TMDL for Chloride in the Upper Santa Clara River, Resolution 04-004**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles Region on August 3, 2006.

**Amendments**

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7-6 Upper Santa Clara River Chloride TMDL

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Chapter 7. Total Maximum Daily Loads (TMDLs) Tables

7-6.1. Upper Santa Clara River Chloride TMDL: Elements

7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule (Revised)

Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.

This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003

This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6, 2004.

This TMDL was approved by: The State Water Resource Control Board on July 22, 2004

The Office of Administrative Law on November 15, 2004

The U.S. Environmental Protection Agency on April 28, 2005

This TMDL was revised and adopted by: The Regional Water Quality Control Board on August 3, 2006.

<b>Element</b>	<b>Table 7.6.1: Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride</b>
<b>Problem Statement</b>	Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River. This objective was set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River. Irrigation of salt sensitive crops such as avocados and strawberries with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater are also rising.
<b>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</b>	This TMDL has a numeric target of 100mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use. These objectives are set forth in Chapter 3 of the Basin Plan.  The numeric target for this TMDL pertains to Reaches 5 and 6 of the Santa Clara River and is based on achieving the existing water quality objective of 100 mg/L, measured instantaneously, throughout the impaired reaches. A subsequent Basin Plan amendment will be considered by the Regional Board to adjust the chloride objective based on technical studies about the chloride levels, including levels that are protective of salt sensitive crops, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River, provided that County Sanitation Districts of Los Angeles County choose to submit timely and complete studies in accordance with tasks 2 through 6 of Table 7.6.2.
<b>Source Analysis</b>	The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus Water Reclamation Plant (WRP) and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6.
<b>Linkage Analysis</b>	Linkage between chloride sources and the in-stream water quality was established through a statistical analysis of the WRP effluent and water quality data at Blue Cut and Highway 99. The analysis shows that additional assimilative capacity is usually added to Reaches 5 and 6 from groundwater discharge, but the magnitude of the assimilative capacity is not well quantified. Consequently, the Implementation Plan includes a hydrological study (Surface Water/Groundwater Interaction? Of the upper reaches of the Santa Clara River.
<b>Waste Load Allocations (for point sources)</b>	The numeric target is based on the water quality objective for chloride. The proposed waste load allocations (WLAs) are 100 mg/L for Valencia WRP and 100 mg/L Saugus WRP. The waste load allocations are

<b>Element</b>	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>
	expressed as a concentration limit derived from the existing WQO, thereby accommodating future growth. Other NPDES discharges contribute a minor chloride load. The waste load allocation for these point sources is 100 mg/L.
<b>Load Allocation (for non point sources)</b>	The source analysis indicates nonpoint sources are not a major source of chloride. The load allocations for these nonpoint sources is 100 mg/L.
<b>Implementation</b>	<p>Refer to Table 7-6.2.</p> <p>The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluents will be evaluated in accordance with interim waste load allocations.</p> <p>Saugus WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average.                      At no time shall the interim wasteload allocation exceed 230mg/L.</p> <p style="text-align: center;">Interim Waste Load Allocation=Treated Potable Water Supply + 114 mg/L, not to exceed 230 mg/L.</p> <p style="text-align: center;">(114 mg/L is the maximum difference in chloride concentration between the State Water Project treated water and the Saugus WRP treated effluent over the last five years.)</p> <p>Valencia WRP: The interim waste load allocation for chloride is the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average. At no time shall the interim wasteload allocation exceed 230 mg/L.</p> <p style="text-align: center;">Interim Waste Load Allocation=Treated potable Water Supply + 134 mg/L, not to exceed 230 mg/L.</p> <p style="text-align: center;">(134 mg/L, is the maximum difference in chloride concentration between the State Water Project treated water and the Valencia WRP treated effluent over the last five years.)</p>
<b>Margin of Safety</b>	An implicit margin of safety is incorporated through conservative model assumptions and statistical analysis.
<b>Seasonal Variations and Critical Conditions</b>	Three critical conditions are identified for this TMDL. The driest six months of the year is the first critical condition for chloride because less surface flow is available to dilute effluent discharge, pumping rates for agricultural purposes are higher, groundwater discharge is less, poorer quality groundwater may be drawn into the aquifer and evapotranspiration

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements Santa Clara River Chloride
	effects are greater in warm weather. During drought, the second critical condition reduced surface flow and increased groundwater extraction continues through several seasons with greater impact on groundwater resource and discharge. The third critical conditions is based on the recent instream chloride concentration increases such as those that occurred in 1999, a year of average flow, when 9 of 12 monthly averages exceeded the objective. Data from all three critical conditions were used in the statistical model described. Hydrological modeling will be completed to evaluate whether additional loading will impact the WQO or beneficial uses during non-critical conditions.

<b>Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
<p>1. Alternate Water Supply</p> <p>a) Should (1) the monthly average in-river concentration at Blue Cut, the reach boundary, exceed the water quality objective of 100mg/L, measured for the purposes of this TMDL as a rolling twelve month average, for three months of any 12 months, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and County Sanitation Districts of Los Angeles County (CSDLAC) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provide photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then CSDLAC will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between CSDLAC and the agricultural diverter at the direction of the Regional Water Quality Control Board until such as time as the in-river chloride concentrations do not exceed the water quality objective.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in the three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p> <p>2. Progress reports will be submitted by CSDLAC to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4, 6, and 7, and on an annual basis for Task 5.</p>	<p>Effective Date of TMDL                      (05/04/2005)</p>
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, CSDLAC will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by CSDLAC, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in controlling chloride. CSDLAC shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride</p>	<p>6 months after Effective Date of TMDL                      (11/04/2005)</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation	Completion Date
Implementation Tasks	
sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.	
4. CSDLAC will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.	12 months after Effective Date (05/04/2006)
5. Groundwater/Surface Water Interaction Model: CSDLAC will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.	2.5 years after Effective Date of TMDL (11/20/2007)
6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: CSDLAC will prepare and submit a report on endangered species protection thresholds. CSDLAC will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.	2.5 years after Effective Date of TMDL (11/20/2007)
7. Develop Site Specific Objectives (SSO) for Chloride for Sensitive Agriculture: CSDLAC will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.	2.8 years after Effective Date of TMDL (02/20/2008)

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: CSDLAC will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p> <p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final wasteload allocations. CSDLAC shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride water quality objectives and final wasteload allocations.</p>	
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: CSDLAC will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Wasteload Allocations for Proposed Chloride Objective. CSDLAC will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p>3 years after Effective Date of TMDL (05/04/2008)</p>
<p>11. a) Implementation of Compliance Measures, Planning: CSDLAC to submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Facilities Plan and EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Facilities Plan and EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision.</p> <p>b) Implementation of Compliance Measures, Planning: CSDLAC to provide a schedule of related tasks and subtasks related to Task 11a),</p>	<p>5 years after Effective Date of TMDL (05/04/2010)</p> <p>5 years after Effective Date of</p>

<b>Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation</b> <b>Implementation Tasks</b>	<b>Completion Date</b>
and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Facilities Plan and EIR.	TMDL (05/04/2010)
12. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet Final Wasteload Allocations adopted pursuant to Task 10 d) and the schedule for Task 13. The Regional Board, at a public meeting will consider extending the completion date of Task 13 and reconsider the schedule to implement control measures to meet Final Wasteload Allocations adopted pursuant to Task 10 d). CSDLAC will provide the justification for the need for an extension to the Regional Board executive Officer at least 6 months in advance of the deadline for this task.	6 years after Effective Date of TMDL (05/04/2011)
13. a) Implementation of Compliance Measures, Complete Environmental Impact Report: CSDLAC shall complete a Facilities Plan and Environmental Impact Report for advanced treatment facilities to comply with final effluent permit limits for chloride.  b) Implementation of Compliance Measures, Engineering Design: CSDLAC will begin the engineering design of the recommended project.  c) Implementation of Compliance Measures, Engineering Design: CSDLAC will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition CSDLAC will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project.  d) Implementation of Compliance Measures, Construction: CSDLAC shall have applied and received all appropriate permits and have completed construction of the recommended project.	6 years after Effective Date of TMDL (05/04/2011)  6 years after Effective Date of TMDL (05/04/2011)  7 years after Effective Date of TMDL (05/04/2012)  11 years after Effective Date of TMDL (05/04/2016)
14. The interim effluent limits for chloride shall remain in effect for no more than 11 years after the effective date of the TMDL. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the CSDLAC.	11 years after Effective Date of TMDL (05/04/2016)

# **ATTACHMENT 61**



State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2007-018  
November 1, 2007

Amendment to the Water Quality Control Plan for the Los Angeles Region to  
Subdivide Reach 4 of the Santa Clara River

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The Santa Clara River (SCR) is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. The predominant land uses in the SCR watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the SCR watershed is estimated at over \$700 million annually and residential use is increasing rapidly both in the upper and lower watershed.
2. Reaches 5 and 6 of the SCR are located upstream of the Blue Cut gauging station, west of the Los Angeles - Ventura County line. Beneficial uses of the Upper Santa Clara River (USCR) include agricultural supply (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE). Reaches 5 and 6 of the USCR are listed as impaired by chloride on the United States Environmental Protection Agency (U.S. EPA) approved 303(d) list of impaired waterbodies in California due to excessive concentrations of chloride. A chloride TMDL is currently effective which assigns wasteload allocations to the Valencia and Saugus Water Reclamation Plants (WRPs) which are owned and operated by the County Sanitation Districts of Los Angeles County (Districts).
3. Reach 4 of the SCR is located downstream from Reach 5 and extends to the City of Fillmore. Reach 4 receives surface flow from Reach 5 and contains several unique hydrogeologic features that affect chloride and other water quality parameters in the upper and lower segments of Reach 4. The key hydrological feature of Reach 4 is a dry gap where surface water in the upper portion of Reach 4 infiltrates into the underlying groundwater basin, Piru Basin, under dry weather conditions. Flow resurfaces approximately six miles downstream. Flow from a major tributary, Piru Creek, also infiltrates into the Piru basin under dry weather conditions. Both the surface water and groundwater upstream of the Piru Creek confluence with Reach 4 contain greater levels of chloride than the surface and groundwater levels downstream

from the Piru Creek confluence due to water reclamation plant discharges into Reaches 5 and 6 upstream of Reach 4. The Basin Plan recognizes the unique hydrogeology in the Piru Basin by establishing different groundwater objectives for chloride upstream and downstream of Piru Creek. The chloride objective for groundwater downstream of the Piru Creek confluence is 100 mg/l whereas the chloride objective for groundwater upstream of the Piru Creek confluence is 200 mg/L. However, the water quality objective (WQO) for chloride in surface water is 100 mg/l both upstream and downstream of Piru Creek.

4. The TMDL schedule requires completion of several special studies and Regional Board consideration of site specific objectives (SSOs) for chloride in the USCR by May 2008. The special studies include a review of technical literature relating to the chloride threshold for irrigation of salt-sensitive crops, a model of the groundwater-surface water interactions in the USCR, and a study of the chloride threshold for threatened and endangered species. The salt-sensitive crop study is complete and the studies pertaining to modeling and threatened and endangered species are scheduled for completion by November 2007.
5. The Regional Board finds that subdividing Reach 4 into two reaches that are spatially equivalent to the existing reach would better represent the unique hydraulic regime between the downstream portion of Reach 4 (i.e. Reach 4A) and the upstream portion of Reach 4 (Reach 4B). Reach 4A is different from Reach 4B in terms of channel morphology, loss in transit, and inflows from tributaries as compared to Reach 4A. All flow in Reach 4B infiltrates to groundwater during dry weather conditions, creating the beginning of the "Dry Gap", while in Reach 4A, rising groundwater resurfaces due to unique geologic conditions. Additionally, surface water quality in Reaches 4A and 4B is significantly different due to the differing groundwater-surface water interaction and contributions from wastewater discharges in these areas. Further, influence from tributary inflows to the SCR in Reach 4B are significantly smaller than influence from tributary flows in Reach 4A. The proposed reaches also better coincide with the Basin Plan descriptions of the groundwater basins underlying the reaches. Finally, the Regional Board finds that dividing Reach 4 into two separate reaches would provide the greatest benefit by limiting the geographical scope of any potential SSO for chloride to be considered by the Regional Board in the future.
6. The present Reach 4 definition is between the A Street bridge in Fillmore and the Blue Cut gauging station near the Ventura - Los Angeles County line. The proposed redefined reach consists of Reach 4A, between the confluence of Piru Creek and the A Street Bridge in the City of Fillmore, and Reach 4B between the Blue Cut gauging station and the confluence of Piru Creek. This action itself does not modify the WQO for chloride in either Reach 4A or Reach 4B, nor adopt a SSO for chloride in Reach 4A or 4B. Dividing Reach 4

is an administrative action so that the Regional Board may effectively consider the results of the forthcoming TMDL special studies.

7. The Regional Board finds it appropriate to correct an error in the 1994 Basin Plan map by changing the circled number "3" between "Sisar Creek" and "Santa Paula Creek" above the dotted line to circled number "9", and to revise Reach 4 of the SCR by dividing Reach 4 into two separate reaches, Reach 4A between the confluence of Piru Creek and the A Street bridge in the City of Fillmore and Reach 4B between the Blue Cut gauging station and the confluence of Piru Creek.
8. The Staff Report, as well as tentative Basin Plan Amendment was released for public comment on August 27, 2007. The revised reach designations are proposed in Attachment A to this resolution.
9. Notice of this hearing was published in accordance with the requirements of Water Code section 13244. This notice was published in the Santa Clarita Signal and Ventura Star, newspapers of general circulation, on August 27, 2007.
10. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft staff report was released for public comment on August 27, 2007, a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on November 1, 2007, to consider adoption of the TMDL.
11. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the boundary re-designation for Reach 4 of the SCR do not include revisions to WQOs. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
12. The proposed amendment results in no potential for adverse environmental effects, either individually or cumulatively, because dividing an existing reach into two reaches that are spatially equivalent to the existing reach to reflect unique hydrological characteristics of the two segments is merely an administrative task and no physical impacts on the environment are anticipated. The subdivision of Reach 4 merely facilitates a convenient and logical basis for consideration of water quality regulations in the future and does not revise any WQOs. This action distinguishes water body segments based on the technical difference associated with their distinct hydrological characteristics and the different effects of wastewater discharges on water quality in the two reaches. The action of creating administrative units has no impacts on what water quality requirements can or should be applicable at any

given location. Accordingly, this action is not a "project" within the meaning of the California Environmental Quality Act.

13. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b).
14. The Basin Plan amendment for re-designation of Reach 4 of the SCR must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.

**Therefore, be it resolved that:**

1. Pursuant to Section 13240 of the Water Code, the Regional Board hereby amends the Basin Plan by dividing Reach 4 of the SCR into two separate reaches, Reach 4A between the confluence of Piru Creek and the A Street bridge in the City of Fillmore and Reach 4B between the Blue Cut gauging station and the confluence of Piru Creek.
2. Pursuant to sections 13240 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 2 the Water Quality Control Plan for the Los Angeles Region to incorporate the revisions of reach designation of SCR, Figure 2-3, as set forth in Attachment A hereto.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL and U.S. EPA.
5. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment, this resolution, or other relevant documentation are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption, or pay the applicable fee as may be required by the Fish and Game Code.
7. Figure 2-3. Major surface waters of the Santa Clara River watershed.

Eliminate:

"4. Between Blue Cut gaging station (approx. 1 mile west of LA/Ventura county line) and A Street, Fillmore"

Add:

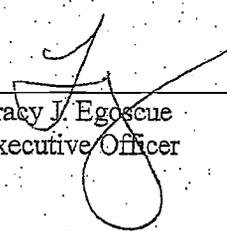
"4A. Between the confluence of Piru Creek and A Street, Fillmore

4B. Between Blue Cut gauging station and confluence of Piru Creek"

And:

Change the circled number "3" between "Sisar Creek" and "Santa Paula Creek" above the dotted line to circled number "9".

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 1, 2007.

  
\_\_\_\_\_  
Tracy J. Egoscue  
Executive Officer



**Attachment A to Resolution No. R4-2007-018**

**SUBDIVISION OF SANTA CLARA RIVER REACH 4**

Proposed for adoption by the California Regional Water Quality Control Board, Los Angeles Region on November 1, 2007.

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Chapter 2. Beneficial Uses

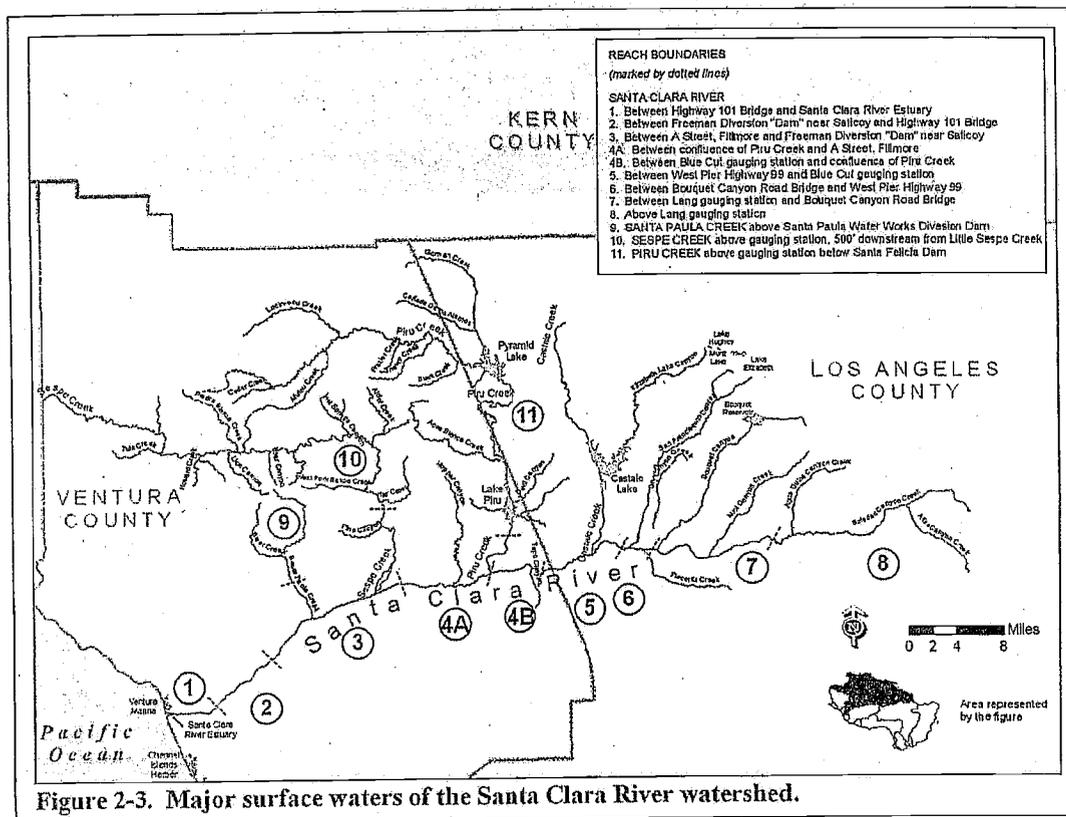
Figure 2-3. Major surface waters of the Santa Clara River watershed

This Basin Plan Amendment (BPA) was adopted by: The Regional Water Quality Control Board on November 1, 2007.

This BPA was approved by: The State Water Resource Control Board on xxxxx xx, xxxx.

The Office of Administrative Law on xxxxx xx, xxxx.

The U.S. Environmental Protection Agency on xxxxx xx, xxxx.



# **ATTACHMENT 62**



11-1-07

0001

01 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
02 LOS ANGELES REGION  
03 CHAIR FRANCINE B. DIAMOND  
04

05 IN REGARDS TO: )

06 CONSIDERATION OF THE REVISED )  
06 TENTATIVE WASTE DISCHARGE )  
07 REQUIREMENTS AND CEASE AND )  
07 DESIST ORDERS FOR THE BOEING )  
08 COMPANY'S SANTA SUSANA FIELD )  
08 LABORATORY )  
09 BASIN PLANNING TMDL )  
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TRANSCRIPT OF PROCEEDINGS

Simi Valley, California

Thursday, November 1, 2007

Reported by:

BRENDA J. MARTINEZ,  
CSR NO. 12858

Job No.:  
A6787WQLA

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IN REGARDS TO: )

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TENTATIVE WASTE DISCHARGE )  
REQUIREMENTS AND CEASE AND )  
DESIST ORDERS FOR THE BOEING )

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08 LABORATORY  
09 BASIN PLANNING TMDL  
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15 TRANSCRIPT OF PROCEEDINGS, taken at  
15 city of simi valley, Council Chambers,  
16 2929 Tapo Canyon Road, Simi Valley,  
16 2929 Tapo Canyon Road, Simi Valley,  
17 California, commencing at 9:00 a.m.,  
17 California, commencing at 9:00 a.m.,  
18 on Thursday, November 1, 2007, reported by  
18 on Thursday, November 1, 2007, reported by  
19 BRENDA J. MARTINEZ, CSR No. 12858,  
19 BRENDA J. MARTINEZ, CSR No. 12858,  
20 a Certified Shorthand Reporter in and for  
20 a Certified Shorthand Reporter in and for  
21 the state of California.  
21 the state of California.  
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0003

01 APPEARANCES:  
01 APPEARANCES:  
02 CHAIR, FRANCINE B. DIAMOND  
02 CHAIR, FRANCINE B. DIAMOND  
03 VICE-CHAIR, MARY ANN LUTZ (NOT PRESENT)  
03 VICE-CHAIR, MARY ANN LUTZ (NOT PRESENT)  
04 BOARD MEMBER, H. DAVID NAHAI (NOT PRESENT)  
04 BOARD MEMBER, H. DAVID NAHAI (NOT PRESENT)  
05 BOARD MEMBER, MARIBEL MARIN  
05 BOARD MEMBER, MARIBEL MARIN  
06 BOARD MEMBER, BRADLEY H. MINDLIN  
06 BOARD MEMBER, BRADLEY H. MINDLIN  
07 BOARD MEMBER, F.W. "DICK" RICHARDSON  
07 BOARD MEMBER, F.W. "DICK" RICHARDSON  
08 BOARD MEMBER, LEO VANDER LANS  
08 BOARD MEMBER, LEO VANDER LANS  
09 EXECUTIVE OFFICER, TRACY EGOSCUE  
09 EXECUTIVE OFFICER, TRACY EGOSCUE  
10 SENIOR STAFF COUNSEL, MICHAEL LEVY  
10 SENIOR STAFF COUNSEL, MICHAEL LEVY  
11 CHIEF DEPUTY EXECUTIVE OFFICER, DEBORAH SMITH  
11 CHIEF DEPUTY EXECUTIVE OFFICER, DEBORAH SMITH  
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11-1-07

18 quickly on some of the history. I mean, I may skip some  
19 of the general history of the T.M.D.L. so --

20 CHAIR DIAMOND: Ms. Harris.

21 MS. HARRIS: This is the public hearing for  
22 consideration of a proposed resolution in naming a water  
23 Quality Control Plan to Subdivide Reach 4 of the  
24 Santa Clara River into two reaches. Copies of the  
25 resolution were sent to interested persons.

0268

01 Madam Chair, will you now please open the hearing  
02 and administer the oath?

03 CHAIR DIAMOND: Yes. All those who are going to  
04 testify in Item Number 11, please raise your right hand  
05 and repeat after me.

06 (WHEREUPON ALL POTENTIAL WITNESSES WERE  
07 COLLECTIVELY SWORN)

08 CHAIR DIAMOND: Thank you.

09 Mr. Unger.

10 MR. UNGER: Chair Diamond, I've been advised that I  
11 should wait until Board Member Marin returns.

12 CHAIR DIAMOND: She'll be right back. Okay. Mr.  
13 Unger.

14 MR. UNGER: Good afternoon, Chair Diamond, members of  
15 the Regional Board. For the record, I'm Sam Unger, Chief of  
16 the Regional Programs Section.

17 Today I'm presenting for your consideration a Basin  
18 Plan Amendment to divide Reach 4, the reach stretching from  
19 the city of Fillmore to the blue cut area near the  
20 Los Angeles-Ventura County line of the Santa Clara River,  
21 and we're proposing to split that into two reaches.

22 As you know, this item is part of the upper  
23 Santa Clara River chloride T.M.D.L. You go to the next  
24 slide. This T.M.D.L. has a long history before this Board.  
25 I'm not going to go through the history, but suffice it to  
0269

01 say that we are now -- the revision of the schedule that  
02 took place in 2006 that this Board adopted based on the  
03 results of the literature review showed 100 to  
04 117 milligrams per liter was an appropriate standard for  
05 avocado irrigation was approved by State Board this May, and  
06 we are now working under that scheduling.

07 So what we're doing now is we're -- we're bringing  
08 this in advance of completion of the other special studies.  
09 The special studies shown on this slide, the chloride study  
10 guideline, which has been completed. I'm just going to  
11 refer to it. There is also a groundwater surface water  
12 interaction study, which is a quite advanced stage right  
13 now. We're running scenarios, some preliminary results are  
14 coming out, and we hope to have the results of that study  
15 early next year, and a study of the endangered species  
16 protection, vis a vis chloride in the upper  
17 Santa Clara River.

18 Due to the revised schedule, implementation now is  
19 going to go very quickly next year when the results of these  
20 studies are available to plan, design, and construction.  
21 And so the item today is to really enhance that transition  
22 from a study phase to the design phase.

23 This slide is taken from a basin plan, and it  
24 depicts the entire Santa Clara River with the reaches. In  
25 our work, we teach our designated -- our stretches of the  
0270

01 river that share similar hydrological and water quality  
02 features.

11-1-07

03 They are often broken at tributary confluences,  
04 discharges of major P.O.T.W.'s, and transitions from  
05 freshwater to saltwater, which occurs in the estuaries of  
06 our region.

07 In our Basin Plan, all of the surface water reaches  
08 are designated in a series of figures in Chapter 2, such as  
09 the one you're seeing right here. Most of these reach  
10 designations were originally designated in 1975 Basin Plan,  
11 but over the years there have been some changes to some of  
12 them when water quality or land uses were found to be  
13 changed from the original designations, and that's what  
14 we're proposing to do here today.

15 This slide shows Reach 4, the reach that we're  
16 currently talking about and the upstream Reach 5 some of the  
17 major hydrological, geographical, and jurisdictional  
18 features of the upper Santa Clara River.

19 The purple forest is Los Angeles County, the yellow  
20 is Ventura County, and going from upstream to downstream,  
21 the yellow line represents Reach 6, the green line Reach 5,  
22 and the red line is the current Reach 4.

23 Two managed reservoirs, Castaic Lake and Piru Lake  
24 are tributary to the Santa Clara River to the Castaic Creek  
25 and Piru Creek. The major chloride sources are the Saugus

0271 and Valencia water reclamation plants, which are also shown  
01 on this slide over towards the right.

02 And the major feature of these reaches is the dry  
03 gap, which is approximately six miles along. This is an  
04 area where under typical conditions surface flow typically  
05 infiltrates into the underlying groundwater basin, which  
06 then exfiltrates back into the surface flow downstream.

07 Near the middle of the dry gap is Piru Creek  
08 confluence, but this too mostly infiltrates into the  
09 underlying groundwater basins. The underlying groundwater  
10 basins are also shown on the map with the red, light green,  
11 and the light blue, and what we're proposing to do is split  
12 the reach right there between the light green and the blue  
13 for reasons which I'll talk about right now.

14 This slide depicts the surface and groundwater  
15 systems. A key feature on the slide, again, is Piru Creek,  
16 which enters the Piru Groundwater Basin, and -- and the  
17 point I'm trying to get to is -- thank you. Why is not  
18 it -- there we go. Okay.

19 Piru Creek right there from Piru Lake down to this  
20 area, and the water quality within the groundwater basin as  
21 measured by chloride and other parameters is markedly  
22 different from the east side of the Piru Basin and the west  
23 side of the Piru Basin.

24 On the east side of the Piru Basin, the groundwater  
25 quality is reflective of the overlying surface flow, which  
0272 is influenced from the discharges from the Saugus and  
01 Valencia treatment plants.

02 On the west side, the groundwater quality reflects  
03 the influence of Piru Creek, which attenuates the high  
04 chloride levels from the Saugus and Valencia wastewater  
05 Treatment Plants.

06 The ultimate source of Piru Creek water is the  
07 state water project. And as mentioned previously, the  
08 influence of Piru Creek on the groundwater quality was noted  
09 in our original basin plan, which had 200 milligrams per  
10 liter in the eastern reach, and 100 milligrams in the  
11 western reach.  
12  
13

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14 I want to stress to you today that this Basin Plan  
15 Amendment does not preordain or prejudice any further  
16 regulatory actions, such as water quality objective changes,  
17 Site Specific Objectives or beneficial use and divisions,  
18 which may be brought before the Board when the results on  
19 all the special studies are complete. It's really just the  
20 structure so that you can look at more alternatives to solve  
21 this chloride problem.

22 I'm going to just very quickly, this is just a list  
23 of the beneficial uses and water quality objectives. As we  
24 all know, agricultural supply, groundwater recharge, aquatic  
25 life habitat are the few beneficial uses regarding chloride.

0273

01 The surface water quality for Reaches 5 and 6,  
02 excuse me, for all Reach 4 are 100 milligrams per liter, but  
03 as I said, the underlying groundwater is 100 milligrams per  
04 liter for chloride in western Piru and 200 milligrams per  
05 liter for eastern Piru.

06 So what are we talking about? We're talking about  
07 making a change to our Basin Plan by just switching out,  
08 essentially this figure, which is in Chapter 2 of our Basin  
09 Plan to essentially put this little reach break in the  
10 figure and essentially redesignating this area as 4A and  
11 this area as 4B and putting the accompanying description on  
12 the legend of this map.

13 Flow in Reach 4 -- and the reason basically that we  
14 want to do this is because of the difference in water  
15 quality flow and the difference in hydrology between reaches  
16 A and B.

17 We are bringing this action, again, for two  
18 reasons. It will allow development of a more geographically  
19 precise site specific objective in the future if such a site  
20 specific objective is deemed appropriate based on the  
21 results of the special studies. And this action will allow  
22 dischargers, the Regional Board, and stakeholders to develop  
23 a wider range implementation actions to obtain water quality  
24 standards.

0274

25 As we've been working since the State Board  
01 approval of our scheduled revision, a key new implementation  
02 strategy has been brought to the table. Since that time  
03 you've also heard when you considered the Newhall Ranch  
04 Water Reclamation Plant permits that were months ago, that  
05 they are planning on putting in reverse osmosis.

06 So there's a number of things that have just  
07 changed even since over last year, and that's why we're  
08 doing this today so that we can take advantage of the other  
09 tools that make it available to us as we continue our  
10 studies and find the best way to reach solutions to the  
11 chloride issues.

12 These are just a summary of comments that have been  
13 received. I'd like you to know, too, that we have --  
14 this -- this item has been very well bedded through the  
15 standing process that we have in the upper Santa Clara River  
16 Watershed with stakeholders and the discharger. We meet on  
17 a monthly basis. They've all reviewed this, and we've  
18 received six comment letters, basically, from the Ventura  
19 County Water Quality Coalition, the Newhall Land and  
20 Farming, Castaic Lake Water Agency, which is a wholesaler in  
21 the Santa Clarita Valley, the City of Santa Clarita, United  
22 Water Conservation District, and the Valencia Water Company.

23 Five and six letters supported this Reach 4  
24 subdivision. I say the other letter from United Water

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25 Conservation District was -- was also supportive to a

0275

01 degree, although they thought that we hadn't provided  
02 sufficient rationale for the hydrological water quality  
03 differences.

04 However, it was, you know, responsive to comments  
05 in difference of water quality between the eastern part of  
06 Reach 4 and the western part of Reach 4 is -- is significant  
07 and very well-known.

08 So let's talk about, real quickly, the first is the  
09 rationale for reaching -- for dividing Reach 4 is  
10 unconvincing. And we'd like to say, again, I can't say it  
11 enough at this time, that this item does not revise the  
12 water quality objectives in any of the relevant reaches at  
13 all.

14 The water quality objectives will only be proposed  
15 after all of the special studies are completed. They also  
16 said that this may be a prelude to degradation to water  
17 quality in the eastern Reach 4 and the eastern Piru Basin,  
18 and our response to that, again, is that we're not doing any  
19 citation objectives, we're not doing any water quality  
20 changes at this time until all the special studies are  
21 completed next year, and we will -- we will -- in any  
22 recommendations that we bring before you at that time, we  
23 will consider protection of water quality and the  
24 degradation of water quality will certainly be brought to  
25 full consideration before we bring any Site Specific

0276

01 Objectives to your attention.

02 And, finally, it is also at the end of the day  
03 special studies are complete we will bring this item back to  
04 you. It is always the Board's option to maintain the  
05 current objectives any way even if we split up the reaches.  
06 So we feel that those are perfect responses to the concerns.  
07 We recognize the concerns, we feel that they are a bit  
08 premature.

09 And, finally, there are two comment letters, one  
10 from the Ventura County Agriculture Association, for one,  
11 and also from United is that the groundwater objective for  
12 chloride in the eastern Piru Basin needs to be revised to a  
13 level that is protective of existing agriculture sources.  
14 And they go on to note that the current level of  
15 200 milligrams per liter in the eastern basin was really set  
16 due to historical drawing, discharge contamination in the  
17 oil field, production and exploration in the upper  
18 Santa Clara River Watershed.

19 Staff agrees. Staff agrees that the levels in the  
20 Piru Basin basin have historically ranged in the eastern  
21 part of the Piru Basin between 100 -- around 150 milligrams  
22 per liter between the years 1957 and 1966.

23 When these oil field brine discharges were  
24 essentially outlawed, the high chloride in the eastern  
25 portion of the basin started to attenuate and came down, and

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01 now it's typical where it's hovering somewhere in the 100 to  
02 120 range most recently. The -- what used to be reflective  
03 of oil fields discharges is now reflective of wastewater  
04 treatment plant discharges.

05 So it may be appropriate to do that, but, again, we  
06 think it's too premature at this time, and we think that  
07 this should be brought back to you with the entire package  
08 of alternatives to address the chloride issue of the  
09 Santa Clara River.

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10 We have just another few minutes. So just to bring  
11 you your alternatives here today, certainly you can maintain  
12 the current reach definition, take no action on this item,  
13 or you can divide Reach 4 into two separate reaches, 4A and  
14 4B with no change to the objectives in those reaches at this  
15 time. It doesn't prejudice any further Site Specific  
16 Objectives, and that will be done at the confluence of  
17 Piru Creek by changing the map which I've shown you before  
18 in our Basin Plan and replacing the existing map.  
19 Our recommendation is alternative two, and  
20 basically because this is part of a set of larger actions  
21 that will be taken. It's a path that we sat down  
22 essentially in solving this problem, there's a study face,  
23 we think that this will bring more options for your  
24 consideration next year when the results of the modelling  
25 and the other special studies that are complete. So with

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01 that --

02 CHAIR DIAMOND: Thank you, Mr. Unger.

03 We have two cards. Mr. Philip Brees (phonetic)?  
04 Followed by Ron Smith and we need to be out of here at 5:30,  
05 so give us time to deliberate.

06 MR. BREES: Madam Chair, Board members, my name is  
07 Phil Brees, I'm the manager of the Technical Services  
08 Department of the Los Angeles County Sanitation District,  
09 difficult elephant that was referred to earlier. Today I'm  
10 here to represent the Santa Clarita Valley Sanitation  
11 District.

12 Now, first I'd like to express appreciation for the  
13 Board staff's efforts on the Santa Clara River T.M.D.L.

14 As you may know, district staff and Board staff  
15 have met on almost a weekly basis on this T.M.D.L., and it's  
16 directly due to staff's concerted efforts that this item was  
17 brought before the Board today, and we want to recognize  
18 that effort.

19 The district supports subdivision of Reach 4 into  
20 two subreaches, 4A and 4B for two reasons. One, we believe  
21 there is substantial technical merit to staff's proposal.  
22 There are substantial significant hydrologic and water  
23 quality differences between the eastern and western portions  
24 of Reach 4 that justifies subdivision of the reach.

25 And, second, this action will expand potential

0279

01 T.M.D.L. compliance options, which can be considered to  
02 address the chloride T.M.D.L.

03 A very important option is currently under  
04 development, it's an alternative water resources management  
05 option, which, in concept, enjoys broad stakeholder support.  
06 This option is a watershed-based solution that provides many  
07 advantages that are not available from a conventional  
08 concrete and steel advanced treatment approach, and it still  
09 protects all existing and potential beneficial uses.

10 This action to subdivide the Reach will support  
11 continued development of this option, which represents a  
12 potential win-win situation for water resources and water  
13 quality management in Los Angeles and Ventura County.

14 So I'd like to reiterate District support for  
15 staff's recommendation, and at this late time in the day,  
16 I'd be happy to answer any questions and thank you for  
17 consideration.

18 CHAIR DIAMOND: Thank you very much. Mr. Rob Roy.

19 MR. ROY: Thank you, Madam Chair. I'll be one minute.  
20 Sam took all my thunder from me. We basically are

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# **ATTACHMENT 63**



State of California  
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2008-012  
December 11, 2008

Amendment to the Water Quality Control Plan for the Los Angeles Region to Adopt  
Site Specific Chloride Objectives and to Revise the Upper Santa Clara River  
Chloride TMDL

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality standards that are sufficient to protect beneficial uses designated for each water body found within its region.
2. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives (WQOs), and protect beneficial uses, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
3. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
4. The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. The predominant land uses in the Santa Clara River watershed include agriculture, open space, and residential uses. Revenue from the agricultural industry within the Santa Clara River watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.

5. The upper reaches of the Santa Clara River include Reaches 5 and 6 which are located upstream of the Blue Cut gauging station, west of the Los Angeles – Ventura County line between the cities of Fillmore and Santa Clarita. Reaches 5 and 6 of the Upper Santa Clara River (USCR) appear on the EPA 303d list of impaired waterbodies (designated on the 2002 EPA 303d list as Reaches 7 and 8, respectively). Several beneficial uses of the USCR, including agricultural supply water (AGR), groundwater recharge (GWR), and rare, threatened, or endangered species habitat (RARE), are listed as impaired due to excessive chloride concentration in the waters of the USCR. Valencia and Saugus Water Reclamation Plants (WRPs), which are owned and operated by the Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD), are two major point sources that discharge to the USCR.
6. On October 24, 2002, the Regional Board adopted Resolution No. 02-018, amending the Basin Plan to include a TMDL for chloride in the USCR. Resolution 02-018 assigned waste load allocations (WLAs) to the Valencia and Saugus WRPs, minor point sources, and MS4s permittees, discharging to specified reaches of the Santa Clara River. The TMDL included interim WLAs for chloride for the WRPs. These interim WLAs provide the WRPs the necessary time to implement chloride source reduction, complete site-specific objective (SSO) studies, and make appropriate modifications to the WRP, as necessary, to meet the WQO for chloride. The interim waste load allocations proposed in the TMDL were based on a statistical evaluation of the WRPs' performance in the three years preceding October 2002.
7. On February 19, 2003 the State Water Resources Control Board (State Board) adopted State Board Resolution 2003-0014 (the "Remand Resolution") which remanded the TMDL to the Regional Board. The Remand Resolution directed the Regional Board to consider a phased implementation approach to allow SCVSD to complete special studies prior to planning and construction of advanced treatment technologies.
8. On July 10, 2003, in response to the Remand Resolution, the Regional Board adopted Resolution 03-008, revising the implementation Plan for the TMDL. The revised TMDL allowed 13 years to implement the TMDL.
9. On May 6, 2004, the Regional Board adopted Resolution 04-004 to revise the interim waste-load allocations and Implementation Plan for the chloride TMDL in the USCR. The revised Implementation Plan required the completion of several special studies that serve to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, including impacts to downstream reaches and underlying groundwater basins.
10. The first of the special studies, an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture, was completed in September of 2005. This special study, entitled "Literature Review and Evaluation (LRE)," found that the best estimate of a chloride

hazard concentration for avocado crops falls within the range of 100 to 120 mg/L. A similar range of 100 to 117 mg/L was found by an independent technical advisory panel (TAP). An additional study completed in January 2008, entitled "Compliance Averaging Period for Chloride Threshold Guidelines in Avocado," found that a 3-month averaging period of the LRE guidelines would be protective of avocados. The TAP co-chairs reviewed this study and agreed that a 3-month averaging period is appropriate.

11. On August 3, 2006, the Regional Board revised the Implementation Schedule for the TMDL in Resolution No. 04-004 (Resolution No. 06-016). The revised TMDL accelerated the schedule from 13 years to 11 years based on findings from the LRE. The State Board approved the Regional Board amendment on May 22, 2007 (State Board Resolution No. 2007-0029). In approving the amendment, the State Board directed the Regional Board to consider variability in the SSO for chloride to account for the effects of drought on source water quality.
12. Prior to completion of the special studies, the presumed implementation plan included two options: advanced treatment of effluent from the Valencia and Saugus WRPs and disposal of brine in the ocean through an ocean outfall, or disposal of tertiary treatment effluent in the ocean through an ocean outfall. Both options entail construction of a pipeline from the Santa Clarita Valley WRPs to the ocean and an ocean outfall.
13. The second special study required by the Implementation Plan is the "Groundwater/Surface Water Interaction (GSWI) Model." The GSWI study model has been completed, reviewed and approved as an appropriate and adequate modeling tool by the stakeholders and an independent GSWI TAP. The GSWI model has been used to examine feasibility of various implementation alternatives. The GSWI study predicts that none of the alternatives, including the advanced treatment of WRP effluent and disposal of brine in a new ocean outfall or disposal of tertiary treatment effluent in an ocean outfall, would achieve compliance with the existing chloride WQO of 100 mg/L at all times and at all locations and that an alternative water resources management approach could achieve attainment for certain reaches.
14. The third special study required by the Implementation Plan is the "Evaluation of Appropriate Chloride Threshold for Endangered Species Protection (ESP)." This special study has been completed and found that the existing USEPA chloride criteria of 230 mg/L as a chronic threshold and 860 mg/L as an acute threshold are protective of aquatic life in the USCR, including Threatened and Endangered species. These conclusions indicate that endangered species can tolerate higher levels of chloride than salt-sensitive agricultural crops. The independent ESP TAP concurred with the study findings and conclusions.

15. The Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c). The completion of these TMDL special studies, all conducted in a facilitated stakeholder process in which stakeholders participated in scoping and reviewing the studies, has led to development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater. The alternative, termed the alternative water resources management approach (AWRM), develops site specific objectives (SSOs) for chloride while protecting beneficial uses. The AWRM provides water quality and water supply benefits in Los Angeles and Ventura Counties. The AWRM consists of chloride source reduction actions and chloride load reduction through advanced treatment (microfiltration and reverse osmosis) of a portion of the Valencia WRP effluent in conformance with SSOs.
16. To support the development of the AWRM compliance option by stakeholders, Regional Board adopted Resolution No. 07-018 on November 1, 2007. Resolution No. 07-018 modified the regulatory provisions of the Basin Plan by subdividing Reach 4 of the Santa Clara River (SCR) as two separate Reaches, Reach 4A between the confluence of Piru Creek and the A Street Bridge in the City of Fillmore, and Reach 4B between the Blue Cut Gauging Station and the confluence of Piru Creek. The Regional Board stated that this action would allow the development of more geographically precise SSOs.
17. This amendment to the Basin Plan will incorporate SSOs for chloride in Reaches 4B, 5, and 6 of the Santa Clara River and the groundwater basins underlying those reaches. The SSOs are protective of beneficial uses of these waterbodies. The GSWI study found that the AWRM compliance alternative will result in timely attainment of the SSOs for Reaches 4B, 5, and 6 and reduce the chloride load to the USCR and underlying groundwater basins. The proposed implementation activities under AWRM, which will increase chloride export from the East Piru groundwater basin underlying Reach 4B, will offset any increases in chloride discharges.
18. This amendment to the Basin Plan will include implementation language, including minimum salt export requirements to ensure that excess salt loadings to the groundwater basin due to periods of elevated water supply concentrations are removed from the groundwater basin through pumping and export.
19. The adoption of SSOs for chloride is part of a comprehensive strategy for addressing the buildup of salts in the Santa Clara watershed, which includes development and implementation of Total Maximum Daily Loads and corresponding effluent and receiving water limitations in NPDES permits.

20. The TMDL numeric targets, WLAs, and Implementation Plan are based on the SSOs for chloride. The TMDL provides interim WLAs for chloride, as well as interim WLAs for sulfate and TDS to support the supplemental water and water recycling components of the AWRM.
21. The TMDL provides a ten-year schedule to attain compliance with the SSOs for chloride. The SSOs are conditioned on full and ongoing implementation of the AWRM program; if the AWRM system is not built and operated, the water quality objectives for chloride revert back to the current levels in the Basin Plan, which are 100 mg/L.
22. The SCVSD, Ventura County Agricultural Water Quality Coalition, the United Water Conservation District, and Upper Basin Water Purveyors, consisting of the Castaic Lake Water Agency (CLWA), Valencia Water Company, Newhall County Water District, Santa Clarita Water Division of the CLWA, and the Los Angeles County Waterworks District No. 36, herein referred to as the AWRM Stakeholders have entered into a memorandum of understanding (MOU), effective October 23, 2008 to implement the AWRM Program. The AWRM MOU specifies the agreed-upon responsibilities of AWRM Stakeholders for the implementation of ultra-violet light disinfection and advanced treatment facilities (i.e., microfiltration-reverse osmosis and brine disposal), salt management facilities (i.e., extraction wells and water supply conveyance pipelines), supplemental water (i.e., water transfers and related facilities), and alternative water supplies for the protection of beneficial uses. The AWRM MOU also specifies the various uses of desalinated recycled water, which include: (1) compliance with water quality objectives for Reaches 4A, 4B and 5; (2) protection of salt-sensitive agricultural beneficial uses; (3) removal of excess chloride load above 117 mg/L from the East Piru Basin; and (4) enhancement of water supplies in Ventura and Los Angeles Counties. In addition, the AWRM MOU will implement an extension of the GSWI model to assess the groundwater and surface water interactions and impacts to surface water and groundwater quality from the AWRM program to the Fillmore and Santa Paula basins.
23. Implementation actions to achieve SSOs in Reaches 4B, 5, and 6 and the TMDL must also result in compliance with downstream water quality objectives for chloride. Surface water chloride concentrations will comply with the existing water quality objective of 100 mg/L in Reach 4A.
24. Regional Board staff prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this amendment. The technical document entitled "Upper Santa Clara River Chloride TMDL Reconsideration and Conditional Site Specific Objectives" (Staff Report) is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting on December 11, 2008. The Staff Report relies upon the scientific background and data collection and analysis documented in the TMDL special studies.

The TMDL special studies are distinguished from the Regional Board's staff report in that they do not present the recommendations of Regional Board staff.

25. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. Stakeholders have participated extensively in the special studies since 2005 through a facilitated process in which meetings are held monthly in the cities of Fillmore, Santa Paula, and Santa Clarita. Technical working groups (TWGs) have executed the implementation studies and stakeholder-selected TAPs have reviewed the studies. All meetings are open to the public, and agendas and minutes from meetings are published on the Santa Clara River Chloride TMDL website: [www.santaclarariver.org](http://www.santaclarariver.org). A draft of the amendment was released for public comment on September 30, 2008; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; a notice of hearing published in the Los Angeles Daily News, the Santa Clarita Signal, and the Ventura County Star on September 30, 2008; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on December 11, 2008 to consider adoption of the amendment.
26. In amending the Basin Plan to establish SSOs and to revise this TMDL, the Regional Board considered the requirements set forth in Sections 13240, 13241, and 13242 of the California Water Code. The 13241 factors are set forth and considered in the staff report.
27. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
28. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Water Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report, the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations,

determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.

29. A CEQA Scoping hearing was conducted on July 29, 2008 at the Council Chamber of City of Fillmore – 250 Central Avenue, Fillmore, California. A notice of the CEQA Scoping hearing was sent to interested parties. The notice of CEQA Scoping hearing was also published in the Los Angeles Daily News on July 11, 2008 and Ventura County Star on July 11, 2008.
30. In preparing the accompanying CEQA substitute documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid or eliminate the identified impacts. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.
31. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)
32. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents may not foreseeably reduce impacts to less than significant levels.

33. The substitute documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
34. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)
35. Considering the record as a whole, this Basin Plan amendment will result in no effect, either individually or cumulatively, on wildlife resources.
36. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
37. The Basin Plan amendment incorporating SSOs and a revision of the Santa Clara River Chloride TMDL must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.
38. Occasionally during its approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided she informs the Board of any such changes.

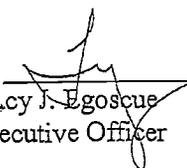
**Therefore, be it resolved that:**

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 3 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, to incorporate SSOs for chloride for Reaches 4B, 5, and 6 in the Santa Clara River watershed and underlying groundwater basins (as identified in Tables 3-8 and 3-10), which will replace the previously applicable water quality objectives in Reaches 4B, 5, and 6 of the Santa Clara River and underlying groundwater basins.
2. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 4 of the Water

Quality Control Plan for the Los Angeles Region as set forth in Attachment B hereto, to include USCR SSOs for chloride.

3. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment C hereto, to incorporate the revisions to the Upper Santa Clara River Chloride TMDL.
4. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is more fully set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)
5. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.
6. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
7. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL and U.S. EPA.
8. If during its approval process Regional Board staff, State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity, or for consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 11, 2008.

  
Tracy J. Egoscue  
Executive Officer

1/15/08  
Date



**Attachment A to Resolution R4-2008-012**  
**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

The following language will be added to Chapter 3, Water Quality Objectives of the Basin Plan, under "Mineral Quality":

Add table after Table 3-8.

**Table 3-8a. Conditional Site Specific Objectives for Santa Clara River Surface Waters**

WATERSHED/STREAM REACH	Chloride (mg/L)
<b>Santa Clara River Watershed:</b>	
Between Bouquet Canyon Road Bridge and West Pier Highway 99	150 (12-month average)
Between West Pier Highway 99 and Blue Cut gaging station	150 (12-month average)
Between Blue Cut gaging station and confluence of Piru Creek	117/130 <sup>a</sup> (3-month average) <sup>b</sup>

- a. The conditional site specific objective of 130 mg/L applies only if the following conditions and implementation requirements are met:
1. Water supply chloride concentrations measured in Castaic Lake are  $\geq 80$  mg/L.
  2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B (between Blue Cut gaging station and confluence of Piru Creek) surface water exceeds 117 mg/L.
  3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (CNCI<sub>117</sub>)<sup>i</sup> to Reach 4B of the Santa Clara River (SCR), calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.

$${}^i \text{CNCI}_{117} = \text{Cl}_{(\text{Above } 117)} - \text{Cl}_{(\text{Below } 117)} - \text{Cl}_{(\text{Export Ews})}$$

Where:

$$\text{Cl}_{(\text{Above } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{>117}^3]$$

$$\text{Cl}_{(\text{Below } 117)} = [\text{WRP Cl Load}^1 / \text{Reach 4B Cl Load}^2] * [\text{Reach 4B Cl Load}_{\leq 117}^4]$$

$$\text{Cl}_{(\text{Export Ews})} = \text{Cl Load Removed by Extraction Wells}$$

<sup>1</sup> WRP Cl Load is determined as the monthly average chloride (Cl) concentration multiplied by the monthly average flow measured at the Valencia WRP.

<sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gaging Station 11109000 (Las Brisas Bridge).

**Attachment A to Resolution R4-2008-012**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for Chloride in Upper Santa Clara River Watershed**

<sup>3</sup> Reach 4B Cl Load<sub>>117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.

<sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.

4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.

b. The averaging period for the critical condition SSO of 130 mg/L may be reconsidered based on results of chloride trend monitoring after the alternative water resources management (AWRM) system is applied.

The conditional site specific objectives for chloride in the surface water between Bouquet Canyon Road bridge and West Pier Highway 99, between West Pier Highway 99 and Blue Cut gaging station, and between Blue Cut gaging station and confluence of Piru Creek shall apply and supersede the existing water quality objectives in Table 3-8 only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.

*Add table after Table 3-10.*

**Table 3-10a. Conditional Site Specific Objectives for Selected Constituents in Regional Groundwaters**

DWR Basin No.	BASIN	Chloride (mg/L)
4-4	Ventura Central <sup>d</sup> Lower area east of Piru Creek <sup>1</sup>	150 (rolling 12-month average)
4-4.07	Eastern Santa Clara Santa Clara—Bouquet & San Francisquito Canyons  Castaic Valley	150 (rolling 12-month average)  150 (rolling 12-month average)

1. This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.

The conditional site specific objectives for chloride in the groundwater in Santa Clara--

**Attachment A to Resolution R4-2008-012**

**Basin Plan Amendment Incorporating Conditional Site-Specific Objectives for  
Chloride in Upper Santa Clara River Watershed**

Bouquet & San Francisquito Canyons, Castaic valley, and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing regional ~~groundwater quality objectives only when chloride load reductions and/or chloride export~~ projects are in operation by the SCVSD according to the implementation section in Table 7-6.1 of Chapter 7.



Attachment B to Resolution No. R4-2008-012

Revision of the TMDL for Chloride in the Upper Santa Clara River

Adopted by the California Regional Water Quality Control Board, Los Angeles Region on  
December 11, 2008.

Amendments

Table of Contents

Chapter 7. Total Maximum Daily Loads (TMDLs)  
7-6 Upper Santa Clara River Chloride TMDL

List of Figures, Tables, and Inserts

Chapter 7. Total Maximum Daily Loads (TMDLs) Tables  
7-6.1. Upper Santa Clara River Chloride TMDL: Elements (Revised)  
7-6.2. Upper Santa Clara River Chloride TMDL; Implementation Schedule (Revised)

Chapter 7. Total Maximum Daily Loads (TMDLs) Upper Santa Clara River TMDL

This TMDL was adopted by: The Regional Water Quality Control Board on October 24, 2002.  
This TMDL was remanded by: The State Water Resources Control Board on February 19, 2003  
This TMDL was adopted by: The Regional Water Quality Control Board on July 10, 2003.  
This TMDL was revised and adopted by: The Regional Water Quality Control Board on May 6,  
2004.

This TMDL was approved by: The State Water Resource Control Board on July 22, 2004  
The Office of Administrative Law on November 15, 2004

The U.S. Environmental Protection Agency on April 28, 2005

This TMDL was revised and adopted by: The Regional Water Quality Control Board on August  
3, 2006.

This TMDL was approved by: The State Water Resource Control Board on May 22, 2007.  
The Office of Administrative Law on July 3, 2007.

This TMDL was revised and adopted by: The Regional Water Quality Control Board on  
December 11, 2008.

This TMDL was approved by: The State Water Resource Control Board on xxx xx, 200x.  
The Office of Administrative Law on xxx xx, 200x.

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride															
<i>Problem Statement</i>	Elevated chloride concentrations are causing impairments of the water quality objective in Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) of the Santa Clara River (SCR). These reaches are on the 1998 and 2002 Clean Water Act (CWA) 303(d) lists of impaired water bodies as impaired due to chloride. The objectives for these reaches were set to protect all beneficial uses; agricultural beneficial uses have been determined to be most sensitive, and not currently attained at the downstream end of Reach 5 (EPA 303(d) list Reach 7) and Reach 6 (EPA 303(d) list Reach 8) in the Upper Santa Clara River (USCR). Irrigation of salt sensitive crops such as avocados, strawberries, and nursery crops with water containing elevated levels of chloride results in reduced crop yields. Chloride levels in groundwater in Piru Basin underlying the reach downstream of Reach 5 are also rising.															
<i>Numeric Target (Interpretation of the numeric water quality objective, used to calculate the load allocations)</i>	<p>Numeric targets are equivalent to conditional site specific objectives (SSOs) that are based on technical studies regarding chloride levels which protect salt sensitive crops and endangered and threatened species, chloride source identification, and the magnitude of assimilative capacity in the upper reaches of the Santa Clara River and underlying groundwater basin. The TMDL special study, Literature Review Evaluation, shows that the most sensitive beneficial uses can be supported with rolling averaging periods as shown in the tables below.</p> <p>1. Conditional Surface Water SSOs</p> <p>The conditional SSOs for chloride in the surface water of Reaches 4B, 5, and 6 shall apply and supersede the existing water quality objectives of 100 mg/L only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. Conditional surface water SSOs for Reaches 4B, 5, and 6 of the Santa Clara River are listed as follows:</p> <table border="1" data-bbox="535 1449 1339 1795"> <thead> <tr> <th>Reach</th> <th>Conditional SSO for Chloride (mg/L)</th> <th>Rolling Averaging Period</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>150</td> <td>12-month</td> </tr> <tr> <td>5</td> <td>150</td> <td>12-month</td> </tr> <tr> <td>4B</td> <td>117</td> <td>3-month</td> </tr> <tr> <td>4B Critical Conditions</td> <td>130<sup>a</sup></td> <td>3-month<sup>b</sup></td> </tr> </tbody> </table>	Reach	Conditional SSO for Chloride (mg/L)	Rolling Averaging Period	6	150	12-month	5	150	12-month	4B	117	3-month	4B Critical Conditions	130 <sup>a</sup>	3-month <sup>b</sup>
Reach	Conditional SSO for Chloride (mg/L)	Rolling Averaging Period														
6	150	12-month														
5	150	12-month														
4B	117	3-month														
4B Critical Conditions	130 <sup>a</sup>	3-month <sup>b</sup>														

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride
	<p>a. The conditional SSO for chloride in Reach 4B under critical condition shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</li> <li>2. The Santa Clarita Valley Sanitation District (SCVSD) shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</li> <li>3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (<math>CNCl_{117}</math>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.</li> </ol> <p><sup>i</sup> <math>CNCl_{117} = Cl_{(Above\ 117)} - Cl_{(Below\ 117)} - Cl_{(Export\ Ews)}</math></p> <p>Where:</p> <p><math>Cl_{(Above\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{&gt;117}^3]</math></p> <p><math>Cl_{(Below\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{\leq 117}^4]</math></p> <p><math>Cl_{(Export\ Ews)} = Cl\ Load\ Removed\ by\ Extraction\ Wells</math></p> <p><sup>1</sup> WRP Cl Load is determined as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B Cl Load<sub>&gt;117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.</p> <p><sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.</p> <ol style="list-style-type: none"> <li>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Los Angeles Regional Water Quality Control Board (Regional Board) a letter documenting the fulfillment of conditions 1, 2, and 3.</li> </ol>

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride												
	<p>b. The averaging period for the critical condition SSO may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</p> <p>2. Conditional SSOs for Groundwater</p> <p>Conditional groundwater SSOs are listed as follows:</p> <table border="1" data-bbox="545 663 1308 1136"> <thead> <tr> <th data-bbox="545 684 805 758">Groundwater Basin</th> <th data-bbox="805 684 1032 821">Conditional Groundwater SSO for Chloride (mg/L)</th> <th data-bbox="1032 684 1308 747">Rolling Averaging Period</th> </tr> </thead> <tbody> <tr> <td data-bbox="545 842 805 978">Santa Clara-- Bouquet &amp; San Francisquito Canyons</td> <td data-bbox="805 842 1032 873">150</td> <td data-bbox="1032 842 1308 873">12-month</td> </tr> <tr> <td data-bbox="545 999 805 1031">Castaic Valley</td> <td data-bbox="805 999 1032 1031">150</td> <td data-bbox="1032 999 1308 1031">12-month</td> </tr> <tr> <td data-bbox="545 1062 805 1125">Lower area east of Piru Creek <sup>a</sup></td> <td data-bbox="805 1062 1032 1094">150</td> <td data-bbox="1032 1062 1308 1094">12-month</td> </tr> </tbody> </table> <p><sup>a</sup> This objective only applies to the San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.</p> <p>The conditional SSOs for chloride in the groundwater in Santa Clara--Bouquet &amp; San Francisquito Canyons, Castaic Valley and the lower area east of Piru Creek (San Pedro Formation) shall apply and supersede the existing groundwater quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1.</p>	Groundwater Basin	Conditional Groundwater SSO for Chloride (mg/L)	Rolling Averaging Period	Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month	Castaic Valley	150	12-month	Lower area east of Piru Creek <sup>a</sup>	150	12-month
Groundwater Basin	Conditional Groundwater SSO for Chloride (mg/L)	Rolling Averaging Period											
Santa Clara-- Bouquet & San Francisquito Canyons	150	12-month											
Castaic Valley	150	12-month											
Lower area east of Piru Creek <sup>a</sup>	150	12-month											
<i>Source Analysis</i>	<p>The principal source of chloride into Reaches 5 and 6 of the Santa Clara River is discharges from the Saugus WRP and Valencia WRP, which are estimated to contribute 70% of the chloride load in Reaches 5 and 6. These sources of chloride accumulate and degrade groundwater in the lower area east of Piru Creek in the basin.</p>												
<i>Linkage Analysis</i>	<p>A groundwater-surface water interaction (GSWI) model was developed to</p>												

Element	<b>Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements</b> <b>Santa Clara River Chloride</b>						
	<p>assess the linkage between chloride sources and in-stream water quality and to quantify the assimilative capacity of Reaches 4A, 4B, 5, and 6 and the groundwater basins underlying those reaches. GSWI was then used to predict the effects of WRP discharges on chloride loading to surface water and groundwater under a variety of future hydrology, land use, and water use assumptions including future discharges from the Newhall Ranch WRP in order to determine appropriate wasteload allocations (WLAs) and load allocations (LAs).</p> <p>The linkage analysis demonstrates that beneficial uses can be protected through a combination of SSOs for surface water and groundwater and reduction of chloride levels from the Valencia WRP effluent through advanced treatment.</p>						
<p><i>Waste Load Allocations (for point sources)</i></p>	<p>The conditional WLAs for chloride for all point sources shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, WLAs shall be based on existing water quality objectives for chloride of 100 mg/L.</p> <p>Conditional WLAs for chloride for discharges to Reach 4B by the Saugus and Valencia WRPs are as follows:</p> <table border="1" data-bbox="646 1207 1307 1627"> <thead> <tr> <th>Reach</th> <th>Concentration-based Conditional WLA for Chloride (mg/L)</th> </tr> </thead> <tbody> <tr> <td>4B</td> <td>117 (3-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td>4B Critical Conditions</td> <td>130<sup>a</sup> (3-month Average<sup>b</sup>), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>a. The Conditional WLA under critical conditions shall apply only if the following conditions and implementation requirements are met:</p> <ol style="list-style-type: none"> <li>1. Water supply chloride concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</li> </ol>	Reach	Concentration-based Conditional WLA for Chloride (mg/L)	4B	117 (3-month Average), 230 (Daily Maximum)	4B Critical Conditions	130 <sup>a</sup> (3-month Average <sup>b</sup> ), 230 (Daily Maximum)
Reach	Concentration-based Conditional WLA for Chloride (mg/L)						
4B	117 (3-month Average), 230 (Daily Maximum)						
4B Critical Conditions	130 <sup>a</sup> (3-month Average <sup>b</sup> ), 230 (Daily Maximum)						

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride
	<p>2. SCVSD shall provide supplemental water to salt-sensitive agricultural uses that are irrigated with surface water during periods when Reach 4B surface water exceeds 117 mg/L.</p> <p>3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L (CNCl<sub>117</sub>)<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the Saugus and Valencia WRPs shall be zero or less.</p> <p><sup>1</sup> CNCl<sub>117</sub> = Cl<sub>(Above 117)</sub> - Cl<sub>(Below 117)</sub> - Cl<sub>(Export Ews)</sub></p> <p>Where:</p> <p>Cl<sub>(Above 117)</sub> = [WRP Cl Load<sup>1</sup>/Reach 4B Cl Load<sup>2</sup>] * [Reach 4B Cl Load<sub>&gt;117</sub><sup>3</sup>]</p> <p>Cl<sub>(Below 117)</sub> = [WRP Cl Load<sup>1</sup>/Reach 4B Cl Load<sup>2</sup>] * [Reach 4B Cl Load<sub>≤117</sub><sup>4</sup>]</p> <p>Cl<sub>(Export Ews)</sub> = Cl Load Removed by Extraction Wells</p> <p><sup>1</sup> WRP Cl Load is determined as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.</p> <p><sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).</p> <p><sup>3</sup> Reach 4B Cl Load<sub>&gt;117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.</p> <p><sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.</p> <p>4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.</p> <p>b. The averaging period for the critical condition WLA may be reconsidered based on results of chloride trend monitoring after the conditional WLAs of this TMDL are implemented.</p>

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride										
	<p>Discharges to Reaches 5 and 6 by the Saugus and Valencia WRPs will have final concentration-based and mass-based conditional WLAs for chloride based on conditional SSOs as follows:</p> <table border="1" data-bbox="527 577 1409 961"> <thead> <tr> <th data-bbox="527 577 706 751">WRP</th> <th data-bbox="706 577 1047 751">Concentration-based Conditional WLA for Chloride (mg/L)</th> <th data-bbox="1047 577 1409 751">Mass-based Conditional WLA for Chloride (pounds/day)</th> </tr> </thead> <tbody> <tr> <td data-bbox="527 751 706 850">Saugus</td> <td data-bbox="706 751 1047 850">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1047 751 1409 850"><math>Q_{Design} * 150 \text{ mg/L} * 8.34</math> (12-month Average)</td> </tr> <tr> <td data-bbox="527 850 706 961">Valencia</td> <td data-bbox="706 850 1047 961">150 (12-month Average), 230 (Daily Maximum)</td> <td data-bbox="1047 850 1409 961"><math>Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}</math> (12-month Average)</td> </tr> </tbody> </table> <p>Where <math>Q_{design}</math> is the design capacity of WRPs in units of million gallons per day (MGD), <math>AF_{RO}</math> is the chloride mass loading adjustment factor for operation of reverse osmosis (RO) facilities, where:</p> <p>If RO facilities are operated at <math>\geq 50\%</math> Capacity Factor<sup>a</sup> in preceding 12 months</p> $AF_{RO} = 0$ <p>If RO facilities are operated at <math>&lt; 50\%</math> Capacity Factor<sup>b</sup> in preceding 12 months</p> $AF_{RO} = (50\% \text{ Capacity Factor} - \%RO \text{ Capacity}) * ChlorideLoadRO^c$ <p><sup>a</sup> Capacity Factor is based on 3 MGD of recycled water treated with RO, 90% of the time.</p> <p><sup>b</sup> If operation of RO facilities at <math>&lt; 50\%</math> rated capacity is the result of conditions that are outside the control of SCVSD, then under the discretion of the Executive Officer of the Regional Board, the <math>AF_{RO}</math> may be set to 0.</p> <p><sup>c</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride</p>		WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)	Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)	Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)
WRP	Concentration-based Conditional WLA for Chloride (mg/L)	Mass-based Conditional WLA for Chloride (pounds/day)									
Saugus	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$ (12-month Average)									
Valencia	150 (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$ (12-month Average)									

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL Elements Santa Clara River Chloride								
	<p>rejection rate of 95%. Determination of chloride load based on the following:</p> $\text{Chloride Load}_{RO} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$ <p>Where:  <math>Q_{RO}</math> = 3 MGD of recycled water treated with RO  <math>C_{WRP}</math> = Chloride concentration in water supply + 50 mg/L  <math>r</math> = % Reverse Osmosis chloride rejection (95% or 0.95)                      8.34 = Conversion factor (ppd/(mg/L*MGD))</p> <p>The final WLAs for TDS and sulfate are equal to existing surface water and groundwater quality objectives for TDS and sulfate in Tables 3-8 and 3-10 of the Basin Plan. The Regional Board may revise the final WLAs based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p> <p>Other minor NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive conditional WLAs. The conditional WLA for these point sources is as follows:</p> <table border="1" data-bbox="646 1087 1222 1581"> <thead> <tr> <th>Reach</th> <th>Concentration-based Conditional WLA for Chloride (mg/L)</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td>5</td> <td>150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td>4B</td> <td>117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>Other major NPDES discharges (as defined in Table 4-1 of the Basin Plan) receive WLAs equal to 100 mg/L. The Regional Board may consider assigning conditional WLAs to other major dischargers based on an analysis of the downstream increase in net chloride loading to surface water and groundwater as a result of implementation of conditional WLAs.</p>	Reach	Concentration-based Conditional WLA for Chloride (mg/L)	6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
Reach	Concentration-based Conditional WLA for Chloride (mg/L)								
6	150 (12-month Average), 230 (Daily Maximum)								
5	150 (12-month Average), 230 (Daily Maximum)								
4B	117 (3-month Average), 230 (Daily Maximum)								
<b>Load Allocation</b>	The source analysis indicates nonpoint sources are not a major source of								

Element	Table 7-6.1. Upper Santa Clara River Chloride TMDL: Elements Santa Clara River Chloride								
<i>(for non-point sources)</i>	<p>chloride. The conditional LAs for these nonpoint sources are as below:</p> <table border="1" data-bbox="641 464 1307 924"> <thead> <tr> <th data-bbox="641 464 803 556">Reach</th> <th data-bbox="803 464 1307 556">Concentration-based Conditional LA for Chloride (mg/L)</th> </tr> </thead> <tbody> <tr> <td data-bbox="641 556 803 682">6</td> <td data-bbox="803 556 1307 682">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="641 682 803 808">5</td> <td data-bbox="803 682 1307 808">150 (12-month Average), 230 (Daily Maximum)</td> </tr> <tr> <td data-bbox="641 808 803 924">4B</td> <td data-bbox="803 808 1307 924">117 (3-month Average), 230 (Daily Maximum)</td> </tr> </tbody> </table> <p>The conditional LAs shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation section in Table 7-6.1. If these conditions are not met, LAs are based on existing water quality objectives of 100 mg/L.</p>	Reach	Concentration-based Conditional LA for Chloride (mg/L)	6	150 (12-month Average), 230 (Daily Maximum)	5	150 (12-month Average), 230 (Daily Maximum)	4B	117 (3-month Average), 230 (Daily Maximum)
Reach	Concentration-based Conditional LA for Chloride (mg/L)								
6	150 (12-month Average), 230 (Daily Maximum)								
5	150 (12-month Average), 230 (Daily Maximum)								
4B	117 (3-month Average), 230 (Daily Maximum)								

<p><i>Implementation</i></p>	<p>Refer to Table 7-6.2.</p> <p><u><i>Implementation of Upper Santa Clara River Conditional Site Specific Objectives for Chloride</i></u></p> <p>In accordance with Regional Board resolution 97-002, the Regional Board and stakeholders have developed an integrated watershed plan to address chloride impairments and protect beneficial uses of surface waters and groundwater basins underlying Reaches 4B, 5, and 6 of the Santa Clara River. The plan involves: 1) Reducing chloride loads and/or increasing chloride exports from the USCR watershed through implementation of advanced treatment (RO) of a portion of the effluent from the Valencia WRP. The advanced treated effluent will be discharged into Reach 4B or blended with extracted groundwater from the Piru Basin underlying Reach 4B and discharged into Reach 4A. The resultant brine from the advanced treatment process will be disposed in a legal and environmentally sound manner. 2) Implementing the conditional SSOs for chloride in surface waters and underlying groundwater basins of the USCR watershed provided in Chapter 3.</p> <p>The watershed chloride reduction plan will be implemented through NPDES permits for the Valencia WRP and a new NPDES permit for discharge into Reach 4A. The conditional SSOs for chloride in the USCR watershed shall apply and supersede the regional water quality objectives only when chloride load reductions and/or chloride export projects are in operation and reduce chloride loading in accordance with the following table:</p> <table border="1" data-bbox="495 1228 1315 1585"> <thead> <tr> <th>Water Supply Chloride<sup>1</sup></th> <th>Chloride Load Reductions<sup>2</sup></th> </tr> </thead> <tbody> <tr> <td>40 mg/L</td> <td>58,000 lbs per month</td> </tr> <tr> <td>50 mg/L</td> <td>64,000 lbs per month</td> </tr> <tr> <td>60 mg/L</td> <td>71,000 lbs per month</td> </tr> <tr> <td>70 mg/L</td> <td>77,000 lbs per month</td> </tr> <tr> <td>80 mg/L</td> <td>83,000 lbs per month</td> </tr> <tr> <td>90 mg/L</td> <td>90,000 lbs per month</td> </tr> <tr> <td>100 mg/L</td> <td>96,000 lbs per month</td> </tr> </tbody> </table> <p><sup>1</sup> Based on measured chloride of the State Water Project (SWP) water stored in Castaic Lake.  <sup>2</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of</p>	Water Supply Chloride <sup>1</sup>	Chloride Load Reductions <sup>2</sup>	40 mg/L	58,000 lbs per month	50 mg/L	64,000 lbs per month	60 mg/L	71,000 lbs per month	70 mg/L	77,000 lbs per month	80 mg/L	83,000 lbs per month	90 mg/L	90,000 lbs per month	100 mg/L	96,000 lbs per month
Water Supply Chloride <sup>1</sup>	Chloride Load Reductions <sup>2</sup>																
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70 mg/L	77,000 lbs per month																
80 mg/L	83,000 lbs per month																
90 mg/L	90,000 lbs per month																
100 mg/L	96,000 lbs per month																

chloride load based on the following:

$$\text{ChlorideLoad} = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$$

where r = % chloride rejection (95%)  
Q<sub>RO</sub> = 3 MGD of recycled water treated

with RO

C<sub>WRP</sub> = SWP-Cl + 50 mg/L

#### Conditional WLAs

Conditional WLAs for the Saugus and Valencia WRPs will be implemented through effluent limits, receiving water limits and monitoring requirements in NPDES permits. Conditional WLAs for Reach 4B will be implemented as receiving water limits. Conditional WLAs for Reaches 5 and 6 will be implemented as effluent limits.

The implementation plan proposes that during the period of TMDL implementation, compliance for the WRPs' effluent limits will be evaluated in accordance with interim WLAs.

#### Saugus WRP:

The interim WLA for chloride is equal to the interim limit for chloride specified in order No. R4-04-004. The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Saugus WRP instead of existing water quality objectives.

#### Valencia WRP:

The interim WLA for chloride is equal to the interim limit for chloride specified in order No. R4-04-004. The interim WLA for TDS is 1000 mg/L as an annual average. The interim WLA for sulfate is 450 mg/L as an annual average. These interim WLAs shall apply as interim end-of-pipe effluent limits, interim groundwater limits, and interim limits in the Non-NPDES WDR for recycled water uses from the Valencia WRP instead of existing water quality objectives.

#### Other Major NPDES Permits (including Newhall Ranch WRP):

The Regional Board may consider assigning conditional WLAs for other major NPDES permits, including the Newhall Ranch WRP, pending implementation of a chloride mass removal quantity that is proportional to

	<p>mass based chloride removal required for the Valencia WRP.</p> <p><u>Supplemental Water released to Reach 6 of Santa Clara River:</u></p> <p>In order to accommodate the discharge of supplemental water to Reach 6, interim WLAs are provided for sulfate of 450 mg/L and TDS of 1000 mg/L as annual averages. The final WLAs are equal to the existing water quality objectives for sulfate and TDS in Table 3-8 of the Basin Plan. The Regional Board may revise the final WLA based on review of trend monitoring data as detailed in the monitoring section of this Basin Plan amendment.</p>
<p><i>Monitoring</i></p>	<p>NPDES monitoring: NPDES Permittees will conduct chloride, TDS, and sulfate monitoring to ensure that water quality objectives are being met.</p> <p>Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p> <p>Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the</p>

	<p>following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>
<p><i>Margin of Safety</i></p>	<p>An implicit margin of safety is incorporated through conservative model assumptions and chloride mass balance analysis. The model is an integrated groundwater surface water model which shows that chloride discharged from the WRPs accumulates in the east Piru Basin. Further mass balance analysis shows that the chloride mass removed from the Piru Basin exceeds the chloride loaded into the Piru Basin from implementation of the conditional SSOs.</p>
<p><i>Seasonal Variations and Critical Conditions</i></p>	<p>During dry weather conditions, less surface flow is available to dilute effluent discharge, groundwater pumping rates for agricultural purposes are higher, groundwater discharge is lower, poorer quality groundwater may be drawn into the aquifer, and evapotranspiration effects are greater than in wet weather conditions. During drought, reduced surface flow and increased groundwater extraction continues through several seasons with greater impacts on groundwater resources and discharges. Dry and critically dry periods affecting the Sacramento and San Joaquin River Valleys reduce fresh water flow into the Sacramento-San Joaquin Delta and result in higher than normal chloride concentrations in the State Water Project supply within the California aqueduct system. These increased chloride levels are transferred to the upper Santa Clara River. This critical condition is defined as when water supply concentrations measured in Castaic Lake are <math>\geq 80</math> mg/L.</p> <p>These critical conditions were included in the GSWI model to determine appropriate allocations and implementation scenarios for the TMDL.</p>

Table 7-6.2 Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>1. Alternate Water Supply</p> <p>a) Should (1) the in-river concentration at Blue Cut, the Reach 4B boundary, exceed the conditional SSO of 117 mg/L, measured for the purposes of this TMDL as a rolling three-month average, (2) each agricultural diverter provide records of the diversion dates and amounts to the Regional Board and Santa Clarita Valley County Sanitation Districts of Los Angeles County (SCVSD) for at least 2 years after the effective date of the TMDL and (3) each agricultural diverter provides photographic evidence that diverted water is applied to avocado, strawberry or other chloride sensitive crop and evidence of a water right to divert, then the SCVSD will be responsible for providing an alternative water supply, negotiating the delivery of alternative water by a third party, or providing fiscal remediation to be quantified in negotiations between the SCVSD and the agricultural diverter at the direction of the Regional Water Quality Control Board until such time as the in-river chloride concentrations do not exceed the conditional SSO.</p> <p>b) Should the instream concentration exceed 230 mg/L more than two times in the three year period, the discharger identified by the Regional Board Executive Officer shall be required to submit, within ninety days of a request by the Regional Board Executive Officer, a workplan for an accelerated schedule to reduce chloride discharges.</p>	<p>Effective Date of TMDL                      (05/04/2005)</p>
<p>2. Progress reports will be submitted by the SCVSD to Regional Board staff on a semiannual basis from the effective date of the TMDL for tasks 4, 6, and 7, and on an annual basis for Tasks 5 and 11.</p> <p>Progress reports will be submitted by the Reach 4A Permittee to Regional Board staff on an annual basis for Task 12.</p>	<p>Semiannually and annually</p>
<p>3. Chloride Source Identification/Reduction, Pollution Prevention and Public Outreach Plan: Six months after the effective date of the TMDL, the SCVSD will submit a plan to the Regional Board that addresses measures taken and planned to be taken to quantify and control sources of chloride, including, but not limited to: execute community-wide outreach programs, which were developed based on the pilot outreach efforts conducted by the SCVSD, assess potential incentive/disincentive programs for residential self-regenerating water softeners, and other measures that may be effective in</p>	<p>6 months after Effective Date of TMDL                      (11/04/2005)</p>

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation	Completion Date
<p style="text-align: center;"><b>Implementation Tasks</b></p> <p>controlling chloride. The SCVSD shall develop and implement the source reduction/pollution prevention and public outreach program, and report results annually thereafter to the Regional Board. Chloride sources from imported water supplies will be assessed. The assessment will include conditions of drought and low rainfall, and will analyze the alternatives for reducing this source.</p>	
<p>4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6. The Regional Board, at a public hearing will re-evaluate the schedule for Task 6 and subsequent linked tasks based on input from the TAC(s), along with Regional Board staff analysis and assessment consistent with state and federal law, as to the types of studies needed and the time needed to conduct the necessary scientific studies to determine the appropriate chloride threshold for the protection of salt sensitive agricultural uses, and will take action to amend the schedule if there is sufficient technical justification.</p>	<p>12 months after Effective Date (05/04/2006)</p>
<p>5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>
<p>6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated increase in imported water concentrations on downstream crops utilizing the result of Task 5.</p>	<p>2.5 years after Effective Date of TMDL (11/20/2007)</p>

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>7. Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.</p> <p>8. Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.</p> <p>9. Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.</p>	<p>2.8 years after Effective Date of TMDL (02/20/2008)</p>
<p>10. a) Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board.</p> <p>b) Evaluation of Alternative Water Supplies for Agricultural Beneficial Uses: The SCVSD will quantify water needs, identify alternative water supplies, evaluate necessary facilities, and report results, including the long-term application of this remedy.</p> <p>c) Analysis of Feasible Compliance Measures to Meet Final Conditional Wasteload Allocations for Proposed Chloride Objective. The SCVSD will assess and report on feasible implementation actions to meet the chloride objective established pursuant to Task 10a).</p> <p>d) Reconsideration of and action taken on the Chloride TMDL and Final Conditional Wasteload Allocations for the Upper Santa Clara River by the Regional Board.</p>	<p>3.5 years after Effective Date of TMDL (12/11/2008)</p>
<p>11. Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin,</p>	<p>4 years after Effective Date of TMDL (05/04/2009)</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation	Completion Date
Implementation Tasks	
<p>and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	
<p>12. Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	<p>Submitted with permit application</p>
<p>13. Begin monitoring per approved SVCSD monitoring plan completed in Task 11.</p>	<p>One year after Executive Officer approval of Task 11 monitoring plan for SCVSD</p>

Table 7-6.2: Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
14. Begin monitoring per approved Reach 4A Permittee monitoring plan.	One year after Executive Officer approval of Task 12 monitoring plan for Reach 4A Permittee
<p>15. a) Implementation of Compliance Measures, Planning: The SCVSD shall submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Wastewater Facilities Plan and Programmatic EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Wastewater Facilities Plan and Programmatic EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision.</p> <p>b) Implementation of Compliance Measures, Planning: The SCVSD shall provide a schedule of related tasks and subtasks related to Task 15a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Wastewater Facilities Plan and Programmatic EIR.</p>	<p>5 years after Effective Date of TMDL (05/04/2010)</p> <p>5 years after Effective Date of TMDL (05/04/2010)</p>
16. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion date of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task.	6 years after Effective Date of TMDL (05/04/2011)
<p>17. a) Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.</p> <p>b) Implementation of Compliance Measures, Engineering Design:</p>	<p>6 years after Effective Date of TMDL (05/04/2011)</p> <p>6 years after</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>The SCVSD will begin the engineering design of the recommended project wastewater facilities.</p> <p>c) Implementation of Compliance Measures, Engineering Design: The SCVSD will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition the SCVSD will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project wastewater facilities.</p> <p>d) Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of the recommended project wastewater facilities.</p> <p>e) Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of the recommended project wastewater facilities.</p>	<p>Effective Date of TMDL (05/04/2011)</p> <p>7 years after Effective Date of TMDL (05/04/2012)</p> <p>9.5 years after Effective Date of TMDL (11/04/2014)</p> <p>10 years after Effective Date of TMDL (05/04/2015)</p>
<p>18. The Regional Board Executive Officer may consider conditional SSOs for TDS and sulfate for Reaches 4B, 5, and 6 based on results of groundwater-surface water interaction studies on accumulation of TDS and sulfate in groundwater, potential impacts to beneficial uses, and an anti-degradation analysis.</p>	<p>7 years after Effective Date of TMDL (05/04/2012)</p>
<p>19. The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted for chloride pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task. The Regional Board will also consider conditional SSOs and final conditional WLAs for TDS and sulfate based on results of Task 18.</p>	<p>9.5 years after Effective Date of TMDL (11/04/2014)</p>
<p>20. The interim WLAs for chloride shall remain in effect for no more</p>	<p>10 years after</p>

Table 7-6.2. Upper Santa Clara River Chloride TMDL Implementation Implementation Tasks	Completion Date
<p>than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.</p>	<p>Effective Date of TMDL (05/04/2015)</p>
<p>21. The interim WLAs for TDS and sulfate contained in this BPA (Resolution No. R4-2008-012) shall be implemented no sooner than the effective date of this BPA, and shall remain in effect until May 4, 2015. Final WLAs shall apply by May 5, 2015 unless conditional SSOs and final conditional WLAs for TDS and sulfate are adopted as described in Task 19.</p>	<p>10 years after Effective Date of TMDL (05/04/2015)</p>

# **ATTACHMENT 64**



**UPPER SANTA CLARA RIVER**  
**CHLORIDE TMDL RECONSIDERATION, CONDITIONAL**  
**SITE SPECIFIC OBJECTIVES FOR CHLORIDE, AND**  
**INTERIM WASTELOAD ALLOCATIONS FOR SULFATE**  
**AND TOTAL DISSOLVED SOLIDS**

**FINAL STAFF REPORT**



**CALIFORNIA REGIONAL WATER QUALITY CONTROL**  
**BOARD - LOS ANGELES REGION**

January 2009

### Executive Summary

Chloride levels in the upper Santa Clara River (USCR) and in nearby groundwater basins have increased over the past three decades due to increased salt loadings from water imported into the Santa Clarita Valley and the increased number of self regenerating water softeners in the Santa Clarita Valley. Since the 1970s, growth in the Santa Clarita Valley has led to chloride levels that exceed the water quality objective and impair beneficial uses for agricultural supply. Agriculture is the largest industry in the Santa Clara River Valley and the Regional Board has adopted a TMDL to restore the Santa Clara River to attain its beneficial uses.

This Staff Report discusses efforts under the Upper Santa Clara River Chloride TMDL to address these impairments with particular emphasis on the recent studies which have led to a stakeholder developed plan for complying with the TMDL. The stakeholder plan, termed "Alternative Water Resources Management Plan" (AWRM) considers the results of key TMDL studies on the chloride sensitivity of crops and aquatic life and the interaction of groundwater and surface water in the USCR to fashion a plan that provides reduction of chloride loads from current levels, enhancement of water supplies for recycling and downstream uses, restoration of groundwater basins underlying the Upper Santa Clara River, and consideration of critical conditions such as a sustained drought. The AWRM requires a revision to existing water quality objectives for chloride, but it provides a significant reduction in chloride loading from current levels such that the most stringent beneficial uses are attained. During the critical condition of sustained drought, growers are provided alternative water to meet requirements and the chloride exported from the watershed still exceeds chloride into the watershed so that groundwater conditions will continue to improve.

The Regional Board first adopted a Total Maximum Daily Load (TMDL) for chloride in the USCR in 2000. The TMDL showed that chloride is loaded primarily into the Santa Clara River from Water Reclamation Plants serving residential, commercial and industrial users in the Santa Clarita Valley. The sources of the chloride which are loaded into the SCR are primarily chloride contained in the imported source water and chloride added by domestic uses, including self regenerating water softeners. As the Santa Clarita Valley has grown over the past decades, these TMDL source analyses also showed that the water quality objectives could not be met with source control alone, and that some type of advanced treatment would be necessary.

The identification of remedies for chloride impairments is challenging due to stakeholders with widely different interests in Los Angeles and Ventura Counties and potentially costly implementation measures. These factors lead to a remand of the TMDL from State Water Resources Control Board and after reconsideration by the Regional Board, the TMDL became effective on May 5, 2005. Key provisions of this TMDL include special studies to address scientific uncertainties and a consideration of site specific objectives by the Regional Board. This Staff Report summarizes the results of the special studies and discussions with stakeholders, which lead to an AWRM program to comply with the TMDL. This report considers the antidegradation and Water

Staff Report: Upper Santa Clara River  
Chloride TMDL Reconsideration and Conditional SSOs

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Code Section 13241 requirements and recommends conditional site specific objectives to implement the AWRM.

Prior to completion of the special studies, the presumed implementation plan included two options: advanced treatment of effluent from the Saugus and Valencia water reclamation plants and disposal of brine in a new ocean outfall or disposal of effluent from the Saugus and Valencia water reclamation plants in a new ocean outfall. Both options entail construction of a pipeline from the Santa Clarita Valley WRPs and an ocean outfall. Concerns regarding the cost and feasibility of constructing this line lead caused controversy amongst stakeholders.

The TMDL Special Studies, all conducted in a facilitated stakeholder process in which stakeholders in scoping and reviewing the studies addressed three scientific uncertainties: 1) the levels of chloride required to support irrigation of salt sensitive crops; 2) the interaction of surface water and groundwater and the fate and transport of chloride in the USCR; 3) the effects of chloride on threatened and endangered fish in the USCR.

Regional Board staff finds that the work to date provides sufficient information on the chloride hazard threshold for salt-sensitive crops, the chloride threshold for endangered species, and the hydraulic and contaminant interactions between surface waters and groundwater basins in the USCR watershed to demonstrate that conditional site specific objectives can be combined with reverse osmosis technology to effectively reduce chloride loadings to the USCR and protect beneficial uses. Completion of the Literature Review and Evaluation (LRE) provided a scientifically defensible baseline to support a Water Quality Objective (WQO) of 117 milligrams per liter (mg/L) that is protective of agricultural supply beneficial use (AGR). The endangered species study shows that the chloride threshold for protection of salt sensitive agriculture is also protective of threatened and endangered species. The groundwater surface water interaction model shows that surface flows in the river recharge the Piru Basin with attendant chloride accumulation in that groundwater Basin. The AWRM consists of chloride source reduction actions and chloride load reduction through advanced treatment of the Valencia WRP effluent in conjunction with conditional site specific objectives. These source and load reductions mitigate the effect of any chloride accumulation in the groundwater basin.

The TMDL provides a ten-year schedule to attain compliance with the conditional SSOs. Key uncertainties at this point relate to identification of the optimum method for brine disposal. Several options, including deep-well injection in the vicinity of old oil fields in the Santa Clarita Valley, and drying and landfill disposal will be considered by the Santa Clarita Sanitation District of Los Angeles County in the first two years of the TMDL Implementation Plan. The recommended water quality objective changes before the Board are conditioned on implementation of the AWRM program; if the AWRM system is not built, the water quality objectives revert back to the current levels in the Basin Plan.

Staff Report: Upper Santa Clara River  
Chloride TMDL Reconsideration and Conditional SSOs

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Staff's recommendation is to adopt the conditional site specific objectives for chloride. Staff finds that the costs of implementing the AWRM program will not increase monthly sewage rates substantially above the state average and median rates. Staff notes that the existing TMDL schedule can be accelerated by one year from 11 years to 10 years.

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**List of Acronyms**

AGR – Agricultural Supply Beneficial Use  
AWRM – Alternative Water Resources Management  
BPA – Basin Plan Amendment  
cfs – cubic feet per second  
CLWA – Castaic Lake Water Agency  
EIR – Environmental Impact Report  
ESA – Extended Study Alternatives  
ESP – Endangered Species Protection  
GWR – Groundwater Recharge Beneficial Use  
GSWI – Groundwater and Surface Water Interaction Model  
LA – load allocation  
LRE – Literature Review and Evaluation  
LWA – Larry Walker Associates  
MCL – Maximum Contaminant Level  
MF/RO – microfiltration-reverse osmosis  
MGD – million gallons per day  
mg/L – milligrams per liter  
NPDES – National Pollutant Discharge Elimination System  
O&M – operation and maintenance  
ppd – pounds per day  
RARE – Rare and Endangered Species Habitat Beneficial Use  
RO – Reverse Osmosis  
SARI – Santa Ana Regional Interceptor  
SB475 – Senate Bill 475  
SCV – Santa Clarita Valley  
SCVJSS – Santa Clarita Valley Joint Sewerage System  
SCVSD – Santa Clarita Valley Sanitation District of Los Angeles County  
SRWS – Self-Regenerating Water Softener  
SSO – Site Specific Objective  
SWP – State Water Project  
SWRCB – State Water Resources Control Board  
TAP – Technical Advisory Panel  
TDS – Total Dissolved Solids  
TMDL – Total Maximum Daily Load  
USBR – United States Bureau of Reclamation  
USCR – Upper Santa Clara River  
USEPA – United States Environmental Protection Agency  
USGS – United States Geological Survey  
UWCD – United Water Conservation District  
WLA – Wasteload Allocation  
WQO – Water Quality Objective  
WRP – Water Reclamation Plant

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## 1. Introduction

This staff report discusses the scientific and regulatory basis for proposed Basin Plan amendments to revise the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL) and establish conditional site-specific water quality objectives (SSOs) for chloride in reaches and groundwater basins in the Upper Santa Clara River watershed.

The Los Angeles Regional Water Quality Control Board (Regional Board) adopted a TMDL to address chloride impairments of the USCR on July 10, 2003 (Resolution 03-008). On May 6, 2004, the Regional Board amended the USCR chloride TMDL to revise the interim wasteload allocations (WLAs) and implementation schedule (Resolution 04-004). The amended TMDL was approved by the State Water Resources Control Board (State Board), Office of Administrative Law and United States Environmental Protection Agency (USEPA), and became effective on May 4, 2005.

At the time the TMDL was adopted and approved, there were key scientific uncertainties regarding the sensitivity of crops to chloride and the complex interactions between surface water and groundwater in the Upper Santa Clara River watershed. However, the TMDL found that the chloride sources are primarily imported source water from the State Water Project and chloride added by domestic uses, including self regenerating water softeners. These chloride sources are loaded into the USCR in effluent from the Saugus and Valencia Water Reclamation Plants (WRPs) that serve residents and industries in the Santa Clarita Valley. The TMDL recognized the possibility of revised chloride water quality objectives (WQOs) and included mandatory reconsiderations by the Regional Board to consider SSOs. The TMDL required the Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD<sup>1</sup>) to implement special studies and actions to reduce chloride loadings from the Saugus and Valencia WRPs. The TMDL included the following special studies to be considered by the Regional Board:

- Literature Review and Evaluation (LRE) – review agronomic literature to determine a chloride threshold for salt sensitive crops.
- Extended Study Alternatives (ESA) – identify agricultural studies, including schedules and costs, to refine the chloride threshold.
- Endangered Species Protection (ESP) – review available literature to determine chloride sensitivities of endangered species in the USCR.
- Groundwater and Surface Water Interaction Study (GSWI) – determine chloride transport and fate from surface waters to groundwater basins underlying the USCR.

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<sup>1</sup>Prior to 2005, the Santa Clarita Valley was historically served by the County Sanitation District Number 26 of Los Angeles County (Saugus WRP) and County Sanitation District Number 32 of Los Angeles County (Valencia WRP). Both of these Districts were collectively referred to as the County Sanitation Districts of Los Angeles County or CSDLAC in previous documents related to the Upper Santa Clara River Chloride TMDL. These two districts were merged into a single district, the Santa Clarita Valley Sanitation District of Los Angeles County or SCVSD as of July 1, 2005.

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- Conceptual Compliance Measures – identify potential chloride control measures and costs based on different hypothetical WQO and final WLA scenarios.
- Site Specific Objectives and Antidegradation Analysis - consider a site-specific objective for chloride based on the results of the agricultural chloride threshold study and the GSWI.

The TMDL special studies were conducted in a facilitated stakeholder process in which stakeholders participated in scoping and reviewing the studies. This process has lead stakeholders to develop an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater. The alternative, termed Alternative Water Resources Management (AWRM) was first set forth by Upper Basin water purveyors and United Water Conservation District (UWCD), the management agency for groundwater resources in the Ventura County portions of Upper Santa Clara River watershed.

This Staff Report first presents a background on the TMDL, including regulatory history, the stakeholder collaborative process, a description of the watershed and the sources of chloride, and other salinity management programs in the state. The report then discusses the results and conclusions of the special studies which led to the development of the AWRM Program and proposed conditional SSOs. The AWRM Program and the proposed conditional SSOs needed to support the AWRM are then discussed. The report then discusses one of the special studies in detail, the Site Specific Objectives/Antidegradation Analysis, which provides the regulatory basis for the conditional SSOs. Finally, the staff report reviews the alternatives for TMDL implementation based on the results of the special studies, provides staff's recommendation for conditional SSOs and TMDL revisions, and discusses how the recommended conditional SSOs and TMDL revisions would be implemented.

## 2. Background

This section provides background information on chloride issues in the USCR watershed.

### 2.1. Regulatory History

The Regional Board has adopted several resolutions that regulated chloride in the USCR, starting with Resolution 75-21 in 1975, which established WQOs throughout the region.

In 1990, the Regional Board adopted the Drought Policy, Resolution 90-04. This resolution was intended to provide short-term and temporary relief to dischargers who were unable to comply with limits for chloride due to the effects of drought on chloride levels in supply waters imported to the Region. The Regional Board temporarily reset limits on concentration of chloride at the lesser of: (i) 250 mg/L, or (ii) the chloride concentration of supply water plus 85 mg/L. The Regional Board renewed the Drought Policy in 1993 and again in 1995 because the chloride levels in supply waters remained higher than the chloride levels before the onset of the drought. The Regional Board did not revise the chloride WQOs in the Santa Clara River and Calleguas Creek because of the potential to affect present and anticipated agricultural beneficial uses.

In 1997, the Regional Board adopted the Chloride Policy, Resolution No. 97-02. The Chloride Policy revised the chloride objective for the Los Angeles River, Rio Hondo, and San Gabriel River. Due to concerns expressed about the potential for future adverse impacts to agricultural resources in Ventura County, WQOs for chloride in the Santa Clara River and Calleguas Creek were not revised. Rather, the chloride policy provided surface water interim limits of 190 mg/L in the Santa Clara River that extended for three years following approval of the amendment. The Regional Board did not revise the chloride WQOs in the Santa Clara River and Calleguas Creek because of the potential to affect existing and anticipated AGR. Similarly, the Regional Board did not revise the groundwater objectives for chloride.

The Regional Board first adopted a TMDL for chloride in the USCR in October 2002 (Resolution No. 2002-018). The TMDL showed that the chloride sources are primarily chloride contained in the imported source water from the State Water Project and chloride added by domestic uses, including self regenerating water softeners. These chloride sources are loaded into the USCR in effluent from the Saugus and Valencia WRPs that serve residents and industries in the Santa Clarita Valley. The TMDL source analysis also showed that the water quality objectives could not be met with source control alone, and that some type of advanced treatment would be necessary. The TMDL contained an 8-1/2 year implementation plan to attain chloride WQOs.

Because of differing stakeholder interests and potentially costly implementation measures, the State Board remanded the Chloride TMDL (State Board Resolution No. 2003-0014) to the Regional Board in February 2003 due to concerns about the duration of the interim effluent limits and concerns that the original implementation plan could have required the SCVSD to embark on planning and construction of an advanced treatment even though such studies might have demonstrated a need that could have been proved unnecessary in the end. The remand resolution also directs the Regional Board to consider an integrated solution for all water quality pollutants in the SCR basin on the Clean Water Act 303(d) list. The Regional Board revised the TMDL Implementation Plan to extend the interim wasteload allocations and final compliance date to 13 years after the TMDL effective date. It also included two additional special studies and several mandatory reconsiderations of the TMDL by the Regional Board. The Regional Board adopted the revised TMDL in July 2003 (Resolution No. 2003-008).

The TMDL was amended in 2004 (Resolution No. 04-004) to conform the interim wasteload allocations for the Saugus and Valencia WRPs to the effluent limits in 1994 Time Schedule Orders associated with National Pollutant Discharge Elimination System (NPDES) permits. In May 2004, the Regional Board and SCVSD signed a Settlement Agreement and Stipulation Concerning Chlorides in the UCSR. The Regional Board and SCVSD agreed that, if or when new or revised NPDES permits are subsequently issued to the Saugus or Valencia treatment plants prior to the date that a revised WQO or final wasteload allocations take effect in accordance with the Chloride TMDL Amendments, interim chloride effluent limitations reflecting the interim wasteload allocations in the TMDL, including any revisions thereto, will be included in the revised permits.

In 2006, the Regional Board reconsidered the TMDL and amended the TMDL schedule. The Board considered the results of the special studies to date and found it appropriate to accelerate the study period of the Implementation Plan based on the Literature Review and Evaluation, which showed that the range of chloride values protective of AGR and GWR beneficial uses was significantly smaller than originally anticipated.

In 2007, the Regional Board amended the Basin Plan to divide Reach 4 into two separate reaches. This action was based on historical and current water quality, flow, and land use data showing significant water quality differences between the western and eastern portions of Reach 4. Staff found that Reach 4 of the SCR contains unique hydrogeologic conditions due to the significant alterations to land uses and waste discharges within the USCR watershed that supported the separation of the reach into two separate reaches, 4A and 4B, divided at the confluence of Piru Creek.

This proposed action represents the second Regional Board reconsideration of the TMDL, which is scheduled 3-years after the TMDL effective date. Specifically, Tasks 10.a and 10.d of the TMDL Implementation Schedule state, "Preparation and Consideration of a Basin Plan Amendment (BPA) to revise the chloride objective by the Regional Board" and "Reconsideration of and action taken on the Chloride TMDL and Final Wasteload Allocations for the Upper Santa Clara River by the Regional Board."



## **2.2. Stakeholder Collaborative Process**

Based on the Chloride Agreement and Stipulation discussed in Section 2.1, the Regional Board and the SCVSD entered into a collaborative process in June of 2004 to implement the TMDL special studies. The Regional Board and SCVSD have set up a facilitated process to allow for stakeholder input and review of the special studies as they are developed. The SCVSD, Regional Board, facilitators, consultants and stakeholders attended Technical Working Group meetings on a monthly basis in the Cities of Santa Clarita, Fillmore, and Santa Paula to discuss the TMDL special studies as well as other planning issues regarding chloride impairments within the Santa Clara River. About thirty people who represent a wide range of stakeholder interests, including Municipalities, County government, agricultural interests, water purveyors, and environmental interests, attend the meetings. There is a website, [www.santaclarariver.org](http://www.santaclarariver.org), which updates activities and progress on the USCR Chloride TMDL.

Additionally, an independent technical advisory panel (TAP) of recognized agricultural experts was engaged to review the results of the LRE. The TAP issued a separate report, which provides technical guidance on the use of the LRE for policy development. The TAP report largely confirmed the results of the LRE. Both the TAP Report and LRE are available to the public on the website listed above.

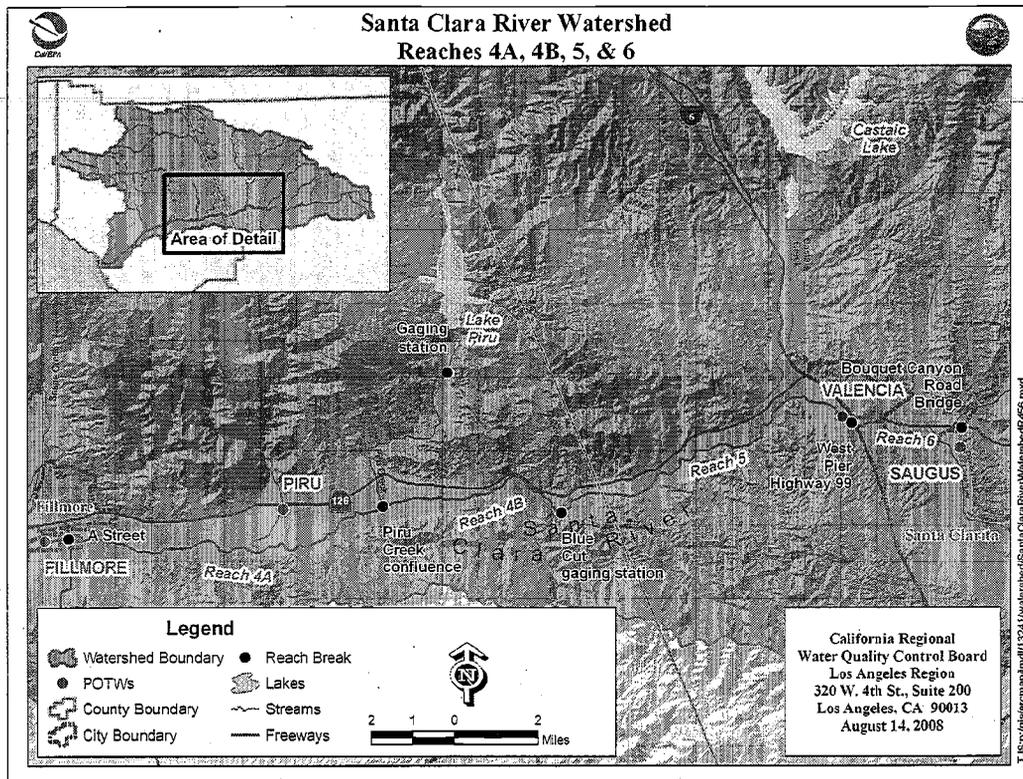
Finally, Regional Board staff has been meeting with SCVSD' staff and representatives of the Upper Basin Water Purveyors, UWCD, and Ventura County Agricultural Water Quality Coalition, to explore the potential implementation actions and site specific objectives for the TMDL. This process has led to development of the AWRM and the development of proposed conditional SSOs to support the AWRM and protect beneficial uses.

## **2.3. Environmental Setting**

The Santa Clara River is the largest river system in Southern California that remains in a relatively natural state. The river originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Municipalities within the watershed include Santa Clarita, Newhall, Fillmore, Santa Paula, and Ventura (Figure 1).

Extensive patches of high quality riparian habitat exist along the length of the river and its tributaries. Two endangered fish, the unarmored stickleback and the steelhead trout, are resident in the river. One of the Santa Clara River's largest tributaries, Sespe Creek, is designated a wild trout stream by the state of California and a wild and scenic river by the United States Forest Service. Piru and Santa Paula Creeks, tributaries to the Santa Clara River, also support steelhead habitat. In addition, the river serves as an important wildlife corridor. The Santa Clara River drains to the Pacific Ocean through a lagoon that supports a large variety of wildlife.

Figure 2. Santa Clara River Watershed Reaches 4A, 4B, 5, and 6



2.4. Beneficial Uses and WQOs

Key beneficial uses and WQOs for the USCR are described in the Basin Plan and include agricultural supply (AGR), groundwater recharge (GWR) and rare and endangered species habitat (RARE). A full description of each of these beneficial uses is included in the Basin Plan. AGR is designated as existing or potential for all reaches of the Santa Clara River, including the USCR, except the headwaters. GWR is designated as an existing or potential beneficial use for the USCR. RARE is an existing and potential designated beneficial use for the upper reaches included in this TMDL. Two types of endangered and rare aquatic species are known to reside in the watershed: steelhead trout and unarmored three-spine stickleback.

The current WQO for chloride in Reaches 4A, 4B, 5 and 6 of the Santa Clara River is 100 milligrams per liter (mg/L). The groundwater quality objectives for the Santa Clara – Piru Creek area are: 200 mg/L chloride in the Upper area (above Lake Piru), 200 mg/L in the Lower area east of Piru Creek, and 100 mg/L west of Piru Creek.

## 2.5. Chloride Sources and Water Quality

This section summarizes chloride sources in the USCR watershed and projections of the effects of future growth and chloride reduction measures on the final WRPs effluent quality. Regional Board and SCVSD staff analyzed chloride sources in the USCR watershed in the 2002 Regional Board TMDL Staff Report and in the SCVSD's 2002, 2005, 2006 and 2007 chloride reports. These analyses utilized mass balance techniques to identify and quantify chloride loads from imported water and residential, commercial, and industrial sources.

The key findings from these reports include:

- The average chloride concentration in the USCR, as measured at the Blue Cut gauging station and at the Ventura/Los Angeles county line, was 131 mg/L in 2002 and 126 mg/L in 2003. The average chloride concentration at the Blue Cut gauging station frequently exceeds the WQO of 100 mg/L.
- The total chloride load from the Saugus and Valencia WRPs ranged from 23,500 pounds per day (ppd) to 28,500 ppd in 2001 through 2007.
- The WRP effluent chloride load is comprised of two main sources: chloride present in the imported water supply and chloride added by residents, businesses, and institutions in the Saugus and Valencia WRP service area. The chloride load added by users can be further divided into two parts: brine discharge from self-regenerating water softeners (SRWSs) and all other loads added by users. Excluding the imported chloride load that exists in the water supply, non-SRWS sources of chloride include: residential, commercial, industrial, infiltration, and wastewater disinfection. The two largest sources of chloride in the WRP effluent are the imported water supply and SRWSs, which have historically comprised from 37% to 45% and from 26% to 33% of the chloride in the WRP effluent, respectively.
- Municipal supply in Santa Clarita Valley (SCV) water supply is a blend of State Water Project (SWP) water and local groundwater. Over the past 30 years, chloride concentrations in water from the SWP ranged from 28 mg/L to 128 mg/L. The quantity of SWP water served by SCV water purveyors has increased from 41,768 acre-feet in 2002 to 47,205 acre-feet in 2004. The use of imported water has grown steadily. As reported by the Castaic Lake Water Agency (CLWA), the use of SWP water by SCV water purveyors is projected to grow to 69,500 acre-feet by 2015.
- The chloride loads from SRWSs increased markedly from 1997 to 2003, when a ban on residential SRWSs was struck down by legislative action in 1997. A prospective ban on installation of new SRWSs was reinstated in 2003. The SCVSD reported a sharp decline in residential SRWS chloride contribution from 66 mg/L in 2004 to 35 mg/L during the first half of 2007. This large change in chloride loading represents the removal or inactivation of roughly 2,200 SRWSs, from a high in 2004 of 6,800 to 4,600 by July of 2007.

- In 2006, The SCVSD and the City of Santa Clarita co-sponsored Senate Bill 475 (SB475), which is authored by Senator George Runner of the 17<sup>th</sup> Senate District. SB 475 provides the SCVSD with the authority to require removal all SRWS remaining in the Santa Clara Valley that were installed prior to SCVSD's 2003 ordinance. SB 475 also includes establishments of a phased voluntary and mandatory program to compensate residents for the reasonable value and cost of removal and disposal of SRWS. SB 475 was passed by the Legislature on August 31, 2006, and signed into law on September 22, 2006. The SCVSD has enacted a new ordinance on June 11, 2008 banning the use of existing SRWS, which will become effective on January 1, 2009, contingent upon voter approval by the qualified voters in the SCVSD's service area. This ordinance will be considered for voter approval by qualified voters in the district's service area in the November 2008 general election.

The relative magnitude of chloride loads from different sources is summarized below:

**Table 1. Relative Chloride Loadings to Saugus and Valencia WRPs Effluent by Source**

Year	Water Supply	Ind.	Com.	Residential Non-SRWS	Residential SRWS	Inf.	Disinf.	Total Load
2001	42%	3%	4%	14%	33%	0%	4%	100%
2002	45%	2%	3%	13%	29%	0%	8%	100%
2003	45%	1%	3%	13%	31%	0%	7%	100%
2004	41%	1%	3%	14%	33%	0%	8%	100%
2005	37%	2%	3%	16%	30%	3%	9%	100%
2006	42%	2%	3%	18%	26%	0%	9%	100%
2007 (through June)	43%	2%	4%	17%	26%	0%	8%	100%

Note: Ind. indicates Industrial, Com. indicates Commercial, Inf. indicates Infiltration, Disinf. indicates Disinfection

## 2.6. Future Growth

Presently, there is extensive residential growth planned for the USCR watershed over the next several decades. The population of the SCV is growing very rapidly. The City of Santa Clarita is projected to grow from 151,800 residents in 2000 to 243,104 residents in 2010. The SCVSD estimates effluent flow from wastewater treatment plants will grow from approximately 20 million gallons per day (MGD) presently to about 34 MGD by 2027. The effects of this growth on the chloride levels in the Santa Clara River and underlying aquifers were investigated through GSWI Study (see Section 3.4).

The Landmark Village project site is located in unincorporated Los Angeles County, within the SCV. The project site is located along the SCR, immediately west of the confluence of Castaic Creek and the SCR. The county line forms the western

boundary. The SCR forms the southern boundary of the project site, while the northern project boundary is defined by State Route 126. The project applicant proposes to develop the 292.6-acre Landmark Village tract map site, located in the first phase of the Riverwood Village within the boundary of the approved Newhall Ranch Specific Plan. The Landmark Village tract map site proposes construction of 1,444 residential dwelling units, 1,033,000 square feet of mixed-use/commercial uses, a 9-acre elementary school, a 16-acre community park, public and private recreational facilities, trails, and road improvements. Several off-site project-related components would also be developed on an additional 679.2 acres of land. The project also includes a 6.8 MGD WRP (Newhall Ranch WRP) as associated facility (Impact Sciences, Inc., 2006).

Projections of future chloride loading to the USCR are dependent on several factors. Most importantly, the chloride contribution from the blended water supply varies greatly according to hydrologic conditions in Northern California because the salinity of SWP is dependent on the mix of fresh and brackish water in the San Francisco Bay – Delta which is the source of the water imported into the SCV. The timing and duration of future droughts are uncertain but based on review of more than thirty years of water quality data it is not unreasonable to conclude that California will experience several droughts within the next few decades.

Staff notes that growth within the SCV is accompanied by increasing demand for imported water and increasing chloride loads. In 1980, imported SWP comprised 1,125 acre-feet, approximately 5% of the total water supply to the SCV. By 1998, imported SWP comprised approximately 20,000 acre-feet, approximately 50% of the total water supply to the SCV.

Additionally, staff notes that the SCVSD's chloride report indicates that that chloride loading from non-SRWS residential sources in terms of ppd has been increasing. This increase is likely correlated with residential growth and increased residential wastewater flow and increased demand on water resources. The chloride load from non-SRWS residential sources increased from 3,562 ppd in 2002 to 4,272 ppd in 2006.

## **2.7. Salinity Management – Recent State and Regional Boards Actions**

Water quality impairments by salts and chloride are a statewide issue. This section provides a brief overview of several current issues addressed by the State Board and the Central Valley, Santa Ana, and Los Angeles Regional Boards. It also reviews the status of salinity implementation activities in Northern California.

In the Central Valley region, salts in surface and ground water are largely derived from supply water from the SWP and the Delta Mendota Canal and from surface soil. Salinity impairments are exacerbated locally by other sources, such as discharges to land associated with municipal wastewater disposal. The Central Valley Regional Board has adopted several approaches for basin management within their jurisdiction. The Central Valley Regional Board established a policy to control groundwater degradation for the Tulare Basin, a policy to promote the maximum export of salt from the San Joaquin River

Basin, and a policy to control point source discharges to the Sacramento River Basin. At this time, salinity TMDL for the San Joaquin River has been developed to meet the objectives at Vernalis and a second phase of this TMDL is being developed for upstream stretches of the river. Further, the State Board may consider whether to adopt Cease and Desist Orders against the United States Bureau of Reclamation (USBR) and the Department of Water Resources with regard to their potential violation of conditions in their water right permits that require the USBR and the California Department of Water Resources to meet salinity standards in the Southern Delta.

In southern California, the USBR led a comprehensive regional salinity management study in support of the Southern California Water Recycling Projects Initiative. The study was conducted by CH2M Hill and identified a range of projected brine discharge volumes for Southern California. Some of the factors influencing this projected range are the salinity of imported water, the stringency of wastewater effluent regulation, and the level of seawater desalting. The study predicted a regional brine discharge volume ranging from 43.7 MGD to 2,011 MGD. In addition to predicting future brine discharge volumes, the study identified the location of existing and potential future brine/concentrate management facilities in southern California. These facilities include 86 pipelines, 113 wastewater treatment plants, 32 groundwater desalters, 9 seawater desalination facilities, and 9 major groundwater basins (with 91 sub-basins).

An established Southern California salinity management facility is the Arlington Desalter Facility and the Santa Ana Regional Interceptor (SARI). The Desalter, using Reverse Osmosis (RO) technology, produces up to 6 MGD of blended desalinated water, with another estimated 1 MGD of concentrated brine generated by the plant discharged to the SARI line. The SARI line, a regional brine line, is designed to convey 30 MGD of non-reclaimable wastewater from the upper Santa Ana River basin to the ocean for disposal, after treatment. The non-reclaimable wastewater consists of Desalter concentrate and industrial wastewater. Domestic wastewater is also received on a temporary basis. To date over 73 miles of the SARI line have been completed. The most recent extension (23 miles in length), the Temescal Valley Regional Interceptor line was completed in 2002. The upstream extension was completed in 1995 to the City of San Bernardino Wastewater Treatment Plant. The SARI also serves the Chino Basin area and the City of Riverside.

Desalination treatment facilities have been planned in several regions of the state. The Northern California Salinity Coalition is planning RO treatment facilities to draw and treat water with a high salinity concentration from shallow aquifers in order to reduce net salt loading in groundwater basins of the Bay Area. The USBR proposed using RO to treat reused drainage water from an agricultural subsurface drainage system in the San Luis and Northerly Area of the Central Valley. Drainage will be collected from the fields and sent to one of 16 reuse areas to irrigate salt tolerant crops. The drainage from the reuse areas will then be collected and sent to Point Estero for ocean disposal or to a treatment facility.

Staff also notes that within the Region, the City of Los Angeles has implemented a RO facility at the Terminal Island Treatment Plant in order to meet local water quality targets. The facility processes 4.5 MGD and produces potable water for injection to the seawater barrier in the Dominguez Gap. The reverse osmosis effluent meets standards established by the Department of Health Services and is suitable not only for injecting into groundwater basins but also as boiler feed water for local industries.

In 2006, the Los Angeles Regional Board adopted the Calleguas Creek Watershed Salts TMDL based on a salts balance for that watershed. The Regional Board found that the water quality impairments and groundwater degradation in the Calleguas Creek watershed are due to a greater mass of salts imported to the watershed than exported from the watershed. The TMDL requires salt export throughout the watershed to achieve a salt balance, reduce salt load to surface and groundwater, and achieve and maintain water quality objectives for salts in the watershed. The Calleguas Creek watershed TMDL Implementation Plan is based on construction of a regional brine line and ocean outfall through which brines from the advanced treatment of degraded groundwater in the Calleguas Creek watershed are discharged directly to the ocean in compliance with the state Ocean Plan. The TMDL implementation plan also includes increased use of POTW effluent and advanced treated (reverse osmosis) groundwater for recycled water use. This plan has collateral benefits of increasing local sources of water supply in the watershed.

### **3. Results of TMDL Special Studies**

This section describes the results of TMDL Special Studies and other chloride management activities in the USCR watershed, which were considered by staff in proposing TMDL revisions and conditional SSOs for the USCR watershed.

#### **3.1. Literature Review and Evaluation**

The first TMDL special study, the LRE, was completed in September 2005 and presented to the Regional Board on November 3, 2005. The LRE reviewed approximately 200 technical articles on the chloride and salinity sensitivities of avocado, strawberry and nursery plants. The LRE found a guideline concentration range for chloride sensitivity for avocado of 100 –117 mg/L. There is not sufficient technical literature to determine a guideline range for strawberry and nursery crops. The LRE concluded that a conservative guideline concentration for chloride hazard is 100-117 mg/L. The LRE was reviewed by an independent TAP and the majority TAP opinion concurred with the 100 –117 mg/L guideline concentration range. One minority TAP opinion advocated a higher guideline concentration and another minority TAP opinion recommended a maximum guideline concentration of 100 mg/L. As a supplement to the LRE, a memorandum on averaging period analysis was prepared by Newfields Agricultural and Environmental Resources (Newfields), in consultation with the TAP co-chairs, to determine what the applicable compliance averaging periods are for the LRE guideline concentration. The memorandum found that the minimum time between the beginning of exposure to chloride stress and signs of visible leaf chloride injury is between 2 and 9 weeks when high chloride concentrations are applied (at least 170 mg/L), and usually between 4 and 8 weeks. Based on an analysis of the literature and the receiving water variability, a three-month averaging period was recommended. (Newfields, 2008)

#### **3.2. Extended Study Alternatives**

This task provided an overview of the types of agricultural studies that are available to further define an appropriate threshold for protection of AGR in the Santa Clara River Watershed. The ESA evaluated study options ranging from surveys to field experiments and estimated a period of 2 to 10 years to develop adequate local data to define a site-specific threshold different from the threshold determined by the LRE. The ESA also documented the complexities of determining the effects of chloride on crop productivity under field conditions. Staff finds that the duration of time and the treatments proposed by the ESA might not be sufficient to address all the factors that may affect the chloride threshold level, and, absent a lengthy TMDL schedule extension, might not provide conclusive data to meet the TMDL requirements.

### **3.3. Endangered Species Protection**

This task provided a review of technical literature regarding the chloride sensitivity of several endangered aquatic and riparian species to better understand the potential exposure and tolerance of these species to chlorides in the USCR. Special attention was given to resident species including Unarmored Three-Spine Stickleback, Steelhead Trout, Arroyo Toad, Red-Legged Frog and Cottonwood tree. Evaluation of overall toxicity data indicates that chloride concentrations for acute and chronic toxicity would be fully protective of Threatened and Endangered species in the USCR. Thus, the existing US EPA chronic chloride criteria of 230 mg/L can be considered to be fully protective of local biota. These conclusions indicate that endangered species can tolerate higher levels of chloride than salt-sensitive agricultural crops. The study results were reviewed by an independent TAP with the TAP finding the report supports the conclusion that the existing US EPA criteria are protective of threatened and endangered species in the Santa Clara River.

### **3.4. Groundwater and Surface Water Interaction Model**

The GSWI model study was developed to determine the linkage between surface water and groundwater quality with respect to chloride and total dissolved solids (TDS) in the USCR. The model simulated historical water levels, flows, and concentrations and movement of chloride in surface water and groundwater in the USCR watershed from 1975 through 2005. The calibrated model was reviewed and approved as an appropriate and adequate modeling tool by the stakeholders and an independent GSWI TAP. The model was then used to assess the assimilative capacity of the surface water in Reaches 4, 5 and 6 and the groundwater basins underlying those reaches. The model was also used to determine the gradient of chloride concentrations from the Saugus and Valencia WRP outfalls to downstream receiving water stations and to assess the impacts of WRP effluent on underlying groundwater in the USCR. The model was then used to simulate future potential chloride impacts from 2007 to 2030 based on various combinations of high, intermediate and low reuse of recycled water from the with various levels of advanced treatment or SRWS removal rates. The results of the initial GSWI study are presented in a report entitled "Task 2B-1 Numerical Model Development and Scenario Results" (CH2M Hill, 2008; Geomatrix, 2008a).

Based on the model, none of the alternatives were predicted to comply with the existing chloride WQO of 100 mg/L at all times and at all locations (Table 2).

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**Table 2. Attainment Frequencies of Compliance Options-Existing Water Quality Objective**

Compliance Options	Surface Water at Blue Cut Reach 4B	East Piru Basin Groundwater Reach 4B		West Piru Basin Groundwater Reach 4A	
	Surface Water WQO 100 mg/L	Surface Water WQO 100 mg/L	Ground-water WQO 200 mg/L	Surface Water WQO 100 mg/L	Ground-water WQO 100 mg/L
Advanced Treatment	66.8	55.0	100.0	100.0	100.0
Minimal Discharge	65.5	62.1	100.0	100.0	100.0
Zero Discharge	63.8	68.3	100.0	100.0	100.0
Alternate WRP Discharge	48.9	46.1	100.0	100.0	100.0
Location					
AWRM	43.5	56.3	100.0	100.0	100.0

Note: Values represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

Only the advanced treatment scenarios would produce surface water chloride concentrations less than the upper bound of the LRE chloride threshold of 120 mg/L (Table 3).

**Table 3. Attainment Frequencies of the Compliance Options-LRE Water Quality Objective**

Compliance Options	Surface Water at Blue Cut Reach 4B	East Piru Basin Groundwater Reach 4B		West Piru Basin Groundwater Reach 4A	
	Surface Water WQO 120 mg/L	Surface Water WQO 120 mg/L	Ground-water WQO 200 mg/L	Surface Water WQO 120 mg/L	Ground-water WQO 100 mg/L
Advanced Treatment	99.0	99.6	100.0	100.0	100.0
Minimal Discharge	87.8	98.8	100.0	100.0	100.0
Zero Discharge	80.7	97.5	100.0	100.0	100.0
Alternate WRP Discharge	76.0	80.5	100.0	100.0	100.0
Location					
AWRM	88.0	93.0	100.0	100.0	100.0

Note: Values represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

As a result, stakeholders in the USCR developed the AWRM Program, which increases chloride WQOs in certain groundwater basins and reaches of the USCR watershed, decreases the chloride objectives in the eastern Piru Basin, and results in an overall reduction in chloride loading as well as water supply benefits.

### 3.5. Conceptual Compliance Measures (AWRM)

The GSWI model was used to assess the ability of the AWRM to achieve compliance with proposed conditional SSOs under future water use scenarios within the USCR watershed. The model was based on design capacities at Valencia WRP and Saugus WRP of 27.6 MGD and 6.5 MGD, for a total system design capacity of 34.1 MGD by year 2027. The results of this effort are presented in a report entitled "Task 2B-2 Assessment of Alternatives for Compliance Options Using the Groundwater/Surface Water Interaction Model" (Geomatrix, 2008b). The model predicted that the AWRM could achieve proposed conditional SSOs for chloride under both drought and non-drought conditions (Table 4).

**Table 4. Attainment Frequencies of the AWRM Compliance Option for Revised WQO**

Compliance Options	Reach 4B (at Blue Cut)			Reach 5		Reach 6	
	Surface Water	Surface Water	Ground-water	Surface Water	Ground-water	Surface Water	Ground-water
	WQO 117 mg/L	WQO 130 mg/L	WQO 150 mg/L				
AWRM Alternative	99.9	99.2	100.0	98.3-99.7	100.0	98.6-99.7	100.0

Note: Values represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

### 3.6. Site Specific Objectives and Antidegradation Analysis

The Site Specific Objectives and Antidegradation analysis has been completed and is included in a report entitled "Task 7 and 8 Report Site Specific Objective and Antidegradation Analysis" prepared by Larry Walker Associates (LWA). This report also presents the costs associated with the AWRM compliance alternatives identified in the GSWI reports. The report found that adoption of proposed conditional SSOs, when implemented with the AWRM Program, would be consistent with the state and federal antidegradation policies. The results of the SSO/Antidegradation analysis are discussed further in Sections 6 and 7.

#### 4. **Alternative Water Resources Management Program**

The AWRM Program is a result of joint efforts of the Upper Basin Water Purveyors<sup>2</sup>, Ventura County agricultural and water interests<sup>3</sup>, and the SCVSD to find a regional watershed solution for compliance with the TMDL that benefits parties in both Los Angeles and Ventura Counties. The AWRM Program, which is described in detail in the GSWI Task 2B-2 Report (Geomatrix, 2008b), consists of advanced treatment for a portion of the recycled water from the SCVSD's Valencia WRP, constructing a well field in the eastern Piru basin to pump out higher chloride groundwater, discharging the blended pumped groundwater and advanced treated recycled water to Reach 4A at the western end of the Piru basin at a chloride concentration not to exceed 95 mg/L (Reach 4A WQO is 100 mg/L), and providing supplemental water and advanced treated recycled water to the river.

The objectives of the AWRM program are to lower chloride concentrations crossing the County Line, comply with conditional SSOs, protect agricultural water users in the eastern Piru basin, mitigate high-chloride groundwater in the eastern Piru basin, and maximize water resources in Ventura County. The key elements of the AWRM Program focus on reducing chloride in the water reclamation plant effluent through:

- SRWS removal
- Conversion of treated wastewater disinfection from chlorine injection to ultra-violet light disinfection
- Construction of 3 MGD microfiltration-reverse osmosis (MF/RO) facility at the Valencia WRP
- Brine disposal via deep well injection
- Groundwater extraction from the Piru Basin
- Discharges of blended MF/RO water and extracted groundwater in Reaches 4A and 4B

These facilities would typically be operated in two modes depending on the SCVSD's ability to comply with applicable water quality objectives, which is correlated to chloride concentrations in the State Water Project (SWP) supply water (Figure 3). During typical hydrologic cycles, when the supply water concentration is below 80 mg/l, the SCVSD WRPs would be able to comply with applicable water quality objectives a majority of the time without having to discharge RO permeate produced at the Valencia WRP to the Santa Clara River. Under these conditions, the RO permeate could be

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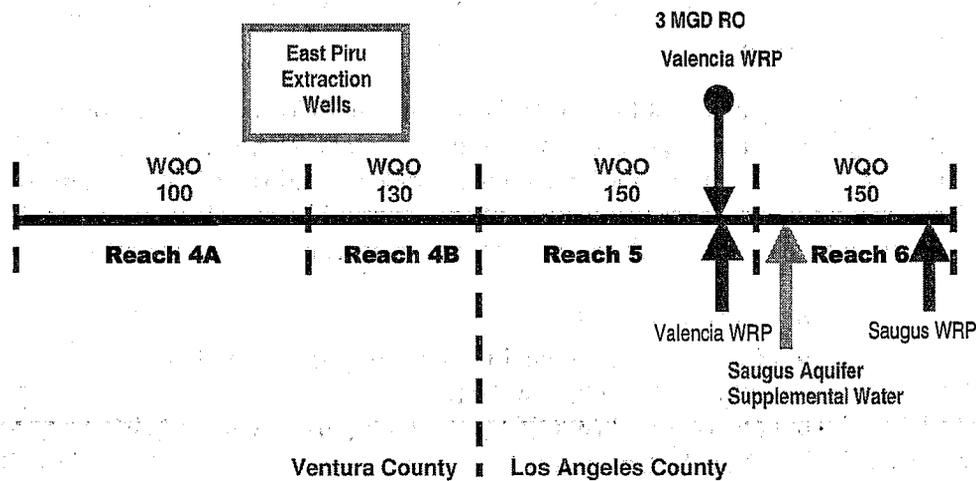
<sup>2</sup> The Upper Basin Water Purveyors are the Castaic Lake Water Agency, Valencia Water Company, Newhall County Water District, Los Angeles County Water Works District No. 36, and the Santa Clarita Water Division of the Castaic Lake Water Agency

<sup>3</sup> Represented by Ventura County Agricultural Water Quality Coalition (VCAWQC) and UWCD

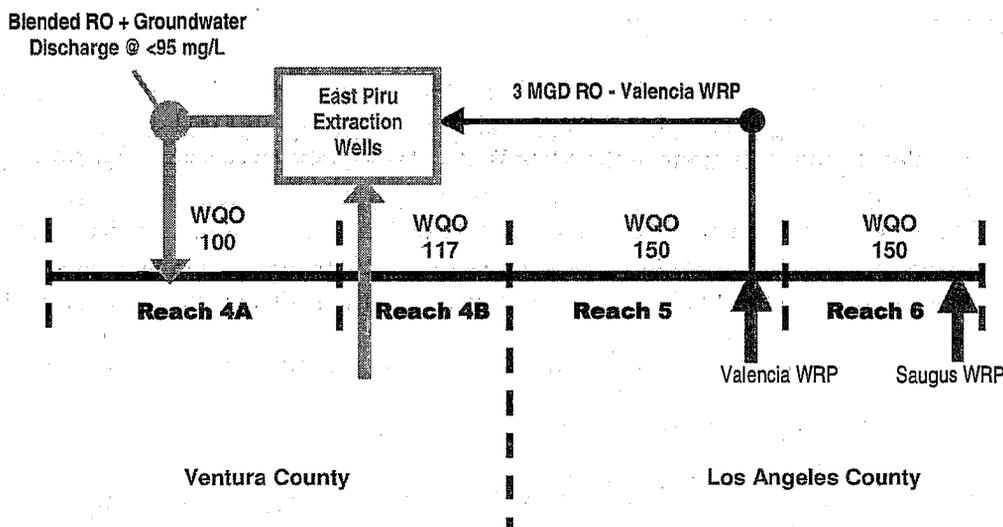
delivered to the extraction wells, blended with pumped groundwater, and discharged to Reach 4A for Ventura County water supply benefit. This option provides further water quality benefits for Ventura County because increased flows can mitigate sea water intrusion to the Oxnard Plain. During periods when the supply water concentration is above 80 mg/l is typically when most, if not all of the RO permeate will need to be discharged directly to the Santa Clara River to comply with applicable water quality objectives. In addition some supplemental water would also be discharged as necessary to the Santa Clara River to reduce chloride concentrations in Reach 4B and comply with applicable water quality objectives.

Figure 3. Schematic of AWRM Facilities

Typical AWRM facility operation to comply with WQOs, when SWP > 80 mg/L



Typical AWRM facility operation to comply with WQOs, when SWP < 80 mg/L



Stakeholders have agreed upon the primary objectives for the uses of RO permeate from the MF/RO facility at the Valencia WRP. The primary objectives are prioritized as follows:

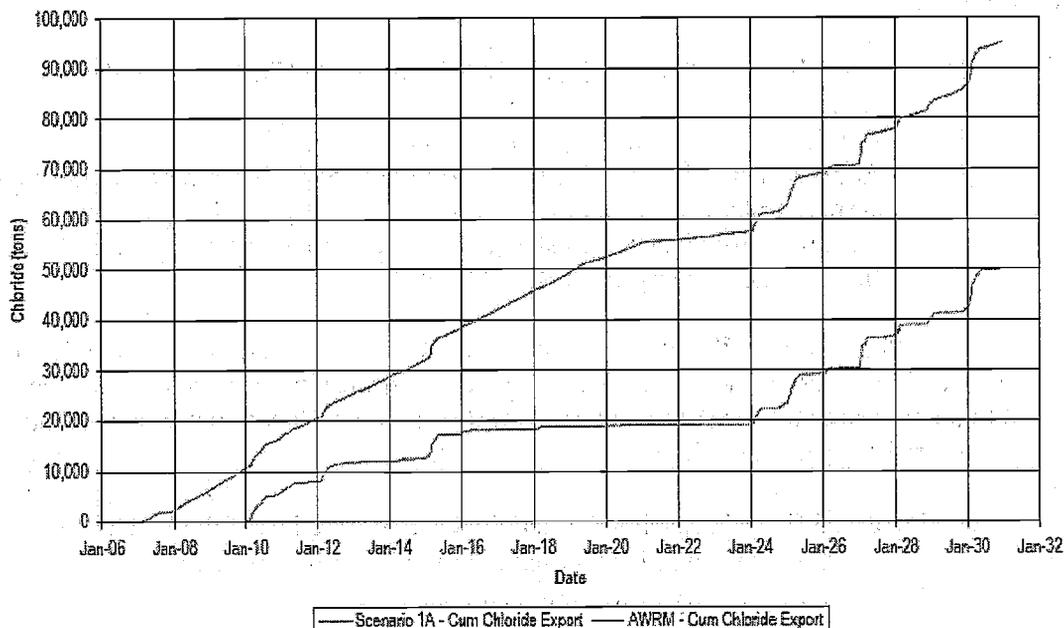
- 1) ~~Compliance with conditional SSOs in the Santa Clara River at the County Line.~~
- 2) Provide alternative water supply to Camulos Ranch.
- 3) Achieve salt-balance in East Piru groundwater basin for past loading from surface water greater than 117 mg/L.
- 4) Achieve salt-balance in East Piru groundwater basin for any future loading from surface water greater than 117 mg/L.

The effects of the AWRM on surface water and groundwater have been evaluated using several tools. For Reaches 4B, 5, and 6 and the Piru basin, the primary tool was the GSWI model. Using the GSWI model, the AWRM has been shown to provide multiple water resource benefits, including:

- Increased flows in reaches 4A and downstream reaches of the USCR
- Improvement of groundwater quality in the Eastern Piru Basin
- Increased availability of irrigation and barrier water

The results of the GSWI model were used to calculate a mass balance to compare the predicted amount of salt exported under the AWRM compliance option with the predicted amount of salt exported under other compliance options to demonstrate the benefits to the East Piru Basin under the AWRM. Figure 4 illustrates the cumulative salt export capabilities of the AWRM compliance option compared with the salt export capabilities of a maximum advanced treatment compliance option to meet the 100 mg/L chloride WQO (Scenario 1A).

**Figure 4. Cumulative Chloride Mass Export from East Piru Groundwater Basin: AWRM Option vs. Advanced Treatment Option (Scenario 1A)**



Additionally, a study was prepared analyzing the effects of the AWRM Program in Ventura County (Bachman, 2008). The report found that the lowering of chloride concentrations in Reach 4B results in improved quality of water recharged to the East Piru Basin. Additionally, high chloride water that is pumped from the basin is recharged by lower chloride water during wet years. Using output from the GSWI model, UWCD's routing and percolation model was used to predict increased yield at the Freeman Diversion from implementation of the AWRM Program. The difference in yield at the Freeman Diversion between the Minimum Discharge option and the AWRM option is 11,500 AFY, which is approximately double the increased yield of 6,000 AFY when the permanent Freeman Diversion was constructed. This could result in a significant decrease in saline intrusion in the Oxnard Plain.

#### 4.1. Conditional Site Specific Objectives to Support AWRM

The AWRM compliance option provides greater benefits than other potential scenarios and compliance options that have been identified. However, it will not result in compliance with the 100 mg/L water quality objectives at all times and in all locations for Reaches 4B, 5 and 6 of the USCR. Given the benefits of chloride reduction and protectiveness of the AWRM compliance option and in the context of achieving a salt balance for the watershed and protecting beneficial uses, staff proposes conditional SSOs that support the AWRM, while still being protective of beneficial uses (see Sections 5 and 6). Conditional SSOs for surface water and groundwater are presented in Tables 5

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and 6. These conditional SSOs shall apply and supersede the existing regional water quality objectives of 100 mg/L only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation provisions in Section 8 of the staff report.

**Table 5. Conditional SSOs for Surface Water to Support AWRM Program**

Reach	Current Instantaneous Chloride Objective (mg/L)	Conditional Chloride SSO (mg/L) <sup>a</sup>	Averaging Period
6	100	150	12-month
5	100	150	12-month
4B	100	117	3-month
4B Critical Conditions	100	130 <sup>b</sup>	3-month <sup>c</sup>

a. The conditional SSOs for chloride in the surface water of Reaches 4B, 5, and 6 shall apply and supersede the existing regional water quality objectives of 100 mg/L only when chloride load reductions and/or chloride export projects are in operation by SCVSD according to the implementation provisions in Section 8.

b. The conditional SSO for Reach 4B under critical condition applies, only if the following conditions and implementation requirements are met:

1. Water supply concentrations measured in Castaic Lake are  $\geq 80$  mg/L.
2. Salt-sensitive agricultural uses that are irrigated with surface water are provided supplemental water during periods when Reach 4B surface water exceeds 117 mg/L.
3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L ( $CNCl_{117}$ )<sup>1</sup> to Reach 4B of the SCR, calculated annually, from the SCVSD Water Reclamation Plants (WRPs) shall be zero or less.

$${}^i CNCl_{117} = Cl_{(Above\ 117)} - Cl_{(Below\ 117)} - Cl_{(Export\ Ews)}$$

Where:

$$Cl_{(Above\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{>117}^3]$$

$$Cl_{(Below\ 117)} = [WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{\leq 117}^4]$$

$$Cl_{(Export\ Ews)} = Cl\ Load\ Removed\ by\ Extraction\ Wells$$

<sup>1</sup> WRP Cl Load is determined as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.

<sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).

<sup>3</sup> Reach 4B Cl Load<sub>>117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is above 117 mg/L.

<sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration in Reach 4B is below or equal to 117 mg/L.

4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Los Angeles Regional Water Quality Control Board (Regional Board) a letter documenting the fulfillment of conditions 1, 2, and 3.

c. The averaging period for the critical condition SSO may be reconsidered based on results of chloride trend monitoring after the alternative water resources management (AWRM) system is applied.

The conditional SSOs for chloride in Reach 4B are applied as 3 month rolling averages because there is salt-sensitive agriculture in the area of Reach 4B and the LRE supplemental study recommended a three-month averaging period for salt-sensitive crops (Newfields, 2008). The conditional SSOs for chloride in Reaches 5 and 6 are applied as 12-month rolling averages since agriculture in these reaches is identified as non-salt sensitive. Twelve-month averaging periods have been used historically in the Los Angeles Region and throughout California for salts objectives, and an 12-month average would protect the groundwater recharge and non-salt sensitive agricultural beneficial uses in Reaches 5 and 6 (LWA, 2008).

**Table 6. Conditional SSOs for Groundwater to Support AWRM Program**

Constituent	Santa Clara--Bouquet & San Francisquito Canyons		Castaic Valley		Lower area east of Piru Creek <sup>1</sup>	
	Conditional SSO (mg/L)	Current Objective (mg/L)	Conditional SSO (mg/L)	Current Objective (mg/L)	Conditional SSO (mg/L)	Current Objective (mg/L)
Chloride	150	100	150	150	150	200
Averaging period	12-month	None	12-month	None	12-month	None

<sup>1</sup> Applies only to San Pedro formation. Existing objective of 200 mg/L applies to shallow alluvium layer above San Pedro formation.

The conditional SSOs for chloride in groundwater in Santa Clara-Bouquet & San Francisquito Canyons, Castaic Valley, and the lower area east of Piru Creek (San Pedro formation) shall apply and supersede the existing regional water quality objectives only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation provisions in Section 8 of the staff report.

**4.2. Conditional Wasteload Allocations to Support AWRM**

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The conditional WLAs for chloride for all point sources shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation provisions in Section 8 of the staff report. If these conditions are not met, WLAs are based on existing water quality objectives for chloride of 100mg/L.

Discharges to Reach 4B by the Saugus and Valencia WRPs will receive the concentration-based conditional wasteload allocations for chloride presented in Table 7.

**Table 7. Conditional Reach 4B Wasteload Allocations for chloride for Saugus and Valencia WRPs**

Reach	Conditional Chloride SSO (mg/L)
4B	117 (3-month Average), 230 (Daily Maximum)
4B Critical Conditions	130 <sup>a</sup> (3-month Average <sup>b</sup> ), 230 (Daily Maximum)

- a. The Conditional WLA under critical conditions shall apply only if the following conditions and implementation requirements are met:
1. Water supply concentrations measured in Castaic Lake are  $\geq 80$  mg/L.
  2. Salt-sensitive agricultural uses that are irrigated with surface water are provided supplemental water during periods when Reach 4B surface water exceeds 117 mg/L.
  3. By May 4, 2020, the 10-year cumulative net chloride loading above 117 mg/L ( $CNCl_{117}$ )<sup>i</sup> to Reach 4B of the SCR, calculated annually, from the Saugus and Valencia WRPs shall be zero or less.

$$^i CNCl_{117} = Cl_{(Above\ 117)} - Cl_{(Below\ 117)} - Cl_{(Export\ Ews)}$$

Where:

$$\begin{aligned} Cl_{(Above\ 117)} &= ([WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{>117}^3]) \\ Cl_{(Below\ 117)} &= ([WRP\ Cl\ Load^1 / Reach\ 4B\ Cl\ Load^2] * [Reach\ 4B\ Cl\ Load_{\leq 117}^4]) \\ Cl_{(Export\ Ews)} &= [Cl\ Load\ Removed\ by\ Extraction\ Wells] \end{aligned}$$

<sup>1</sup> WRP Cl Load is determined as the as the monthly average Cl concentration multiplied by the monthly average flow measured at the Valencia WRP.

<sup>2</sup> Reach 4B Cl Load is determined as the monthly average Cl concentration at SCVSD Receiving Water Station RF multiplied by the monthly average flow measured at USGS Gauging Station 11109000 (Las Brisas Bridge).

<sup>3</sup> Reach 4B Cl Load<sub>>117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration is above 117 mg/L.

<sup>4</sup> Reach 4B Cl Load<sub>≤117</sub> means the calculated Cl load to Reach 4B when monthly average Cl concentration is below or equal to 117 mg/L.

4. The chief engineer of the SCVSD signs under penalty of perjury and submits to the Regional Board a letter documenting the fulfillment of conditions 1, 2, and 3.
  - b. The averaging period for the critical condition WLA may be reconsidered based on results of chloride trend monitoring after the AWRM system is applied.

Beginning May 4, 2015, discharges to Reaches 5 and 6 by the Saugus and Valencia WRPs, will have conditional concentration-based and mass-based WLAs for chloride based on conditional SSOs (Table 8).

**Table 8. Conditional WLAs for Saugus and Valencia WRPs**

WRP	Concentration-based Conditional WLA for Chloride	Mass-based Conditional WLA for Chloride (12-month Average)
Saugus	150 mg/L (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34$
Valencia	150 mg/L (12-month Average), 230 (Daily Maximum)	$Q_{Design} * 150 \text{ mg/L} * 8.34 - AF_{RO}$

$AF_{RO}$  is the chloride mass loading adjustment factor for operation of RO facilities, where:

If RO facilities are operated at  $\geq 50\%$  Capacity Factor<sup>a</sup> in preceding 12 months

$$AF_{RO} = 0$$

If RO facilities are operated at  $< 50\%$  Capacity Factor<sup>b</sup> in preceding 12 months

$$AF_{RO} = (50\% \text{ Capacity Factor} - \%RO \text{ Capacity}) * ChlorideLoadRO^c$$

<sup>a</sup> Capacity Factor is based on 3 MGD of recycled water treated with RO, 90% of the time.

<sup>b</sup> If operation of RO facilities at  $< 50\%$  capacity factor is the result of conditions that are outside the control of SCVSD, then under the discretion of the Executive Officer of the Regional Board, the  $AF_{RO}$  may be set to 0.

<sup>c</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of chloride load based on the following:

$$ChlorideLoadRO = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30 \text{ Days}}{\text{Month}} \right)$$

where:

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$Q_{RO} = 3$  MGD of recycled water treated with RO  
 $C_{WRP} =$  Chloride Concentration in State Water Project + 50 mg/L  
 $r =$  % RO chloride rejection (95% or 0.95)  
8.34 = Conversion factor (ppd/(mg/L\*MGD))

The GSWI model accounted for existing major and minor NPDES dischargers located within the model boundaries. The future modeling scenarios were based on:

- projected flow for the Saugus and Valencia WRPs and chloride concentrations equal to conditional WLAs,
- projected flow for the Newhall WRP and a chloride concentration of 100 mg/L, and
- existing flow and chloride concentrations for the other major and minor NPDES dischargers.

The affect of assigning conditional WLAs to the Newhall WRP and the other major and minor NPDES discharges on net chloride loading was not modeled. Therefore, other major NPDES dischargers (as defined in Table 4-1 of the Basin Plan), including Newhall WRP, receive WLAs equal to 100 mg/L. The Newhall Ranch WRP already has a permit limit of 100 mg/L for chloride in Order No. R4-2007-0046 based on the current WQO. The Regional Board may consider assigning conditional WLAs for other major NPDES dischargers, including Newhall WRP, based on an analysis of the downstream increase in net chloride loading to surface water and groundwater as a result of implementation of conditional WLAs. The Regional Board may require chloride mass removal quantity that is proportional to mass based chloride removal required for the Valencia WRP in order to receive conditional WLAs.

Other minor NPDES dischargers (as defined in Table 4-1 of the Basin Plan) receive conditional WLAs. Minor discharges receive conditional WLAs without the additional analysis because, based on their flows, the impact of minor discharges is negligible compared to the WRPs.

The conditional WLAs for minor point sources are presented in Table 9.

**Table 9. Conditional WLAs for Minor NPDES Discharges**

Reach	Concentration-based Conditional WLA for Chloride (mg/L)
6	150 (12-month Average), 230 (Daily Maximum)
5	150 (12-month Average), 230 (Daily Maximum)
4B	117 (3-month Average), 230 (Daily Maximum)

The WLA of 230 mg/L for daily maximum for chloride is to protect threatened and endangered species. The Endangered Species Protection study indicates that the existing US EPA chronic chloride criteria of 230 mg/L can be considered to be fully protective of local biota.

The final WLAs for TDS and sulfate are equal to existing surface water and groundwater quality objectives for TDS and sulfate in Tables 3-8 and 3-10 of the Basin Plan. The Regional Board may revise the final WLAs based on review of trend monitoring data as detailed in the monitoring section (Section 8.7) of this staff report.

**4.3. Conditional Load Allocations to Support AWRM**

The source analysis indicates nonpoint sources are not a major source of chloride. The conditional load allocations (LAs) for nonpoint sources are presented in Table 10.

**Table 10. Conditional LAs for Nonpoint Sources**

Reach	Concentration-based Conditional LA for Chloride (mg/L)
6	150 (12-month Average), 230 (Daily Maximum)
5	150 (12-month Average), 230 (Daily Maximum)
4B	117 (3-month Average), 230 (Daily Maximum)

The conditional LAs shall apply only when chloride load reductions and/or chloride export projects are in operation by the SCVSD according to the implementation

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provisions in Section 8 of the Staff Report. If these conditions are not met, LAs are based on existing water quality objectives of 100 mg/L.

The LA of 230 mg/L for daily maximum for chloride is to protect threatened and endangered species. The Endangered Species Protection study indicates that the existing US EPA chronic chloride criteria of 230 mg/L can be considered to be fully protective of local biota.

## 5. Water Code Section 13241 Analysis

In setting site specific objectives, Porter-Cologne section 13241 requires consideration of six factors relating to beneficial uses, economics, the environmental setting, water quality that can be reasonably attained, housing and the need for recycled water. Further, because some of these site specific objectives are greater than the existing water quality objectives, state and federal antidegradation provisions must be considered. These considerations were provided in the Task 7 and 8 Report (LWA, 2008) and are summarized below. Because the agricultural beneficial use of water has been determined to be the most sensitive use under the chloride TMDL, the 13241 analysis focused on salt sensitive agricultural uses. Based on an analysis of the Task 7 and 8 Report, staff concludes that the conditional SSOs, when implemented with the AWRM Program, will support beneficial uses and is in the best interests of the people of California.

### 5.1. Past, present, and probable future beneficial uses of water

Probable future beneficial uses of the surface waters in Reaches 4, 5, and 6 are likely to remain consistent with past and present uses with the exception of agriculture supply. Agricultural uses in Reaches 5 and 6 will likely decline over time due to increasing urbanization. Agricultural uses in Reaches 4A and 4B will likely remain constant.

The proposed conditional SSOs of 150 mg/L for surface and groundwater within Reaches 5 and 6 are protective of the AGR beneficial use because these waters are not currently and have not historically been used as an irrigation supply for salt-sensitive crops. Newhall Land and Farm is the only landowner with existing agricultural operations that could potentially be impacted by groundwater-surface water interactions within Reach 5 of the Santa Clara River. Newhall has not historically and does not plan in the future to cultivate salt-sensitive crops in Reaches 5 or 6 because of adverse climatic conditions. A number of commercial and wholesale nurseries are located in the Santa Clarita Valley along the Castaic Creek and South Fork tributaries and east of Reach 6, but these nurseries are not likely impacted by surface flows from the Santa Clara River. This situation is unlikely to change due to climatic conditions that impact the ability to grow salt sensitive crops and because the use of irrigation water for crops is anticipated to decline in Reaches 5 and 6 due to planned urban development.

When implemented with the AWRM compliance option, the proposed conditional SSOs of 117 mg/L during normal conditions and 130 mg/L during drought conditions in Reach 4B and the underlying groundwater will protect agricultural uses in the area. Local growers in this area irrigate crops primarily with groundwater from local aquifers fed by releases from Lake Piru and the Santa Clara River, as well as surface diversions from the Santa Clara River. Agricultural supply water originating from Lake Piru are unaffected by chloride levels in the Santa Clara River because Lake Piru is fed with State Water Project water and local runoff. Camulos Ranch is the only known avocado grower that irrigates crops using water originating from Reach 4B waters. The proposed

conditional SSOs in Reach 4B and the underlying groundwater are fully protective of agricultural uses in this area based on the result of the LRE for salt-sensitive crops (a 117 mg/L chloride threshold value) and supplemental water supply to Camulos during drought conditions.

## 5.2. Environmental characteristics

The environmental setting of the proposed conditional SSOs and TMDL conditional WLA revisions is presented in Section 2.3. The proposed conditional SSOs and TMDL revisions will impact reaches 4B, 5, and 6 of the Santa Clara River and the groundwater basins underlying those reaches. The proposed conditional SSOs, when implemented with the AWRM Program, will ensure protection of beneficial uses considering the environmental characteristics of and the water quality available to the USCR.

Surface flows in the USCR correspond to seasonal precipitation within the region. Portions of the river are perennial, but various reaches are ephemeral and intermittent and flow only during significant storm events. Base flow in the USCR is comprised of surfacing groundwater, discharges from the Saugus and Valencia WRPs, conservation releases of imported and local waters from reservoirs, and agricultural and urban runoff. Base flow in Reach 6 is largely dependent on discharges from the Saugus WRP. Base flows in Reaches 5 and 4B are dependent on Saugus and Valencia WRP discharges as well as rising ground water. Further downstream, in Reach 4A between the confluence at Piru Creek and Las Brisas, surface flow is typically present only during parts of the wet season, which varies by water year. This "dry gap" seasonally separates the upper Santa Clara River hydrologically from the lower river, which, during normal or below normal water years, impedes inter-reach migration and movement of aquatic life. The Vern Freeman Diversion, at the bottom of Reach 3, diverts up to 375 cubic feet per second (cfs) from the Santa Clara River to the El Rio and Saticoy spreading grounds, where the water recharges the underground aquifers and is distributed for agricultural irrigation.

The largest source of chloride to the Upper Santa Clara River is the water supply (see Section 2.5). Dry and critically dry periods affecting the Sacramento and San Joaquin River Valleys reduce fresh-water flow into the Sacramento-San Joaquin Delta and result in higher than normal chloride concentrations in the SWP supply within the California aqueduct system. Typically, water pumped through the Sacramento-San Joaquin Delta takes approximately 1 to 2 years to show up as deliverable SWP water sold by the Santa Clarita Valley wholesaler, CLWA, to local retail water purveyors, due to reservoir storage and turnover time. Salinity fluctuations in the SWP are reflected in both the imported water treated and delivered by the CLWA and the WRP effluent quality. The quality of the SWP water can be high enough to cause or contribute to exceedances of the current water quality objective.

The proposed conditional SSOs are more stringent than historical effluent limitations for the Saugus and Valencia WRPs and would result in improved water quality over existing conditions. In addition, the proposed conditional SSOs are below

the USEPA aquatic life chloride criteria, which according to the TES Study are protective of the most chloride-sensitive organisms for which data are available. Therefore, it is not expected that the proposed conditional SSOs will harm in-stream or riparian species or habitat.

### **5.3. Water quality conditions that could reasonably be achieved**

A detailed discussion of the compliance options and water quality that can be achieved through different approaches to compliance is presented in the Task 2B-1 and Task 2B-2 Reports (Geomatrix, 2008a, CH2MHill 2008, and Geomatrix 2008b). As discussed in Section 5, the AWRM compliance strategy will result in compliance with the proposed conditional SSOs. Other compliance measures, such as large scale advanced treatment facilities, could achieve 100 mg/L in Reaches 5 and 6, but would not meet 100 mg/L during all times in Reach 4B. Given the technical constraints on large scale advanced treatment facilities and the environmental and water resource benefits of the AWRM, staff recommends the adoption of conditional SSOs. Implementation of the AWRM will protect beneficial uses, improve the water quality in the Eastern Piru groundwater basin through export of salts, and result in an overall salt balance in the watershed.

### **5.4. Economic Considerations**

Costs of complying with the existing WQOs were compared with costs of complying with conditional SSOs, including with facility upgrades to the Saugus and Valencia WRPs and other AWRM actions and summarized below.

#### **5.4.1 Compliance with existing WQOs**

The costs of two advanced treatment alternatives were analyzed for compliance with existing WQOs. One alternative involves constructing a 3.6 MGD MF/RO facility at the Saugus and WRP and a 15.4 MF/RO facility at the Valencia WRP, so that the entire discharge at each plant meets 100 mg/L in all conditions. This alternative would require brine waste disposal through a pipeline and ocean outfall. A second alternative involves reducing the amount of discharge from each WRP, so that only the minimum amount of discharge necessary to maintain habitat complies with 100 mg/L under all conditions. In this alternative, approximately 6 MGD would be treated with MF/RO at both plants and the remaining balance of effluent would be disposed to a pipeline to the ocean. The estimated capital and operation and maintenance (O&M) costs for these treatment alternatives are in Table 11.

**Table 11: Costs for Advanced Treatment to Comply with Existing Objectives**

<b>Facility</b>	<b>Capital Cost</b>	<b>Annual O&amp;M</b>
Maximum Advanced Treatment	\$118,000,000	\$9,00,000
Brine Disposal	\$230,000,000	\$700,000
<b>Total Maximum Advanced Treatment and Brine Disposal</b>	<b>348,000,000</b>	<b>\$9, 700,000</b>
Minimum Advanced Treatment	\$52,000,000	\$4, 400,000
Ocean Discharge	\$419,000,000	\$500,000
<b>Total Minimum Advanced Treatment and Ocean Discharge</b>	<b>\$471,000,000</b>	<b>\$4, 900,000</b>

Assuming an interest rate of 5.5% and a period of 20 years, the combined present worth of the estimated Capital and O&M Costs for compliance by providing maximum advanced treatment and brine disposal is approximately \$470 Million and by providing minimum advanced treatment and ocean discharge is \$530 Million. Therefore, the range of costs for facilities required to comply with the existing water quality objectives is between \$470 Million and \$530 Million.

#### **5.4.2 Compliance with Conditional SSOs**

Cost estimates were prepared for the various elements of the AWRM Program (Table 12). The costs of source control measures are based on SRWS removal and conversion of bleach-based disinfection processes at the WRPs to UV disinfection facilities. The AWRM program also includes construction and operation of a 3-MGD MF/RO facility at the Valencia WRP and brine waste disposal through deep well injection technology. During periods of extreme drought and prior to construction and operation of the MF/RO facility, the AWRM Program includes supplemental water from local water purveyors to reduce chloride levels in the surface water in Reach 4B. Costs for this element were estimated based on a need for approximately 30,000 acre-feet of supplemental water at an assumed cost of approximately \$1,000 per acre-feet (based on discussions with local water purveyors) as well as infrastructure for conveyance of the supplemental water at a cost of approximately \$7.5 Million. Finally, the costs of water supply facilities needed to achieve salt export from the Piru groundwater basin and blend groundwater with RO permeate include the costs of 10 groundwater extraction wells, a 12-mile RO permeate conveyance pipeline, and a 6-mile blended water supply pipeline.

**Table 12. Costs for AWRM Program**

<b>AWRM Element</b>	<b>Capital Cost</b>	<b>Present Worth O&amp;M</b>	<b>TOTAL</b>
Source Control Measures	\$18,900,000	\$6,000,000	\$24,900,000
Advanced Treatment and Brine Disposal	\$78,400,000	\$44,200,000	\$122,600,000
Supplemental Water	\$37,500,000	N/A	\$37,500,000
Ventura Water Supply Facilities	\$70,100,000	\$3,600,000	\$73,700,000
<b>TOTAL AWRM Program</b>	<b>\$204,900,000</b>	<b>\$53,800,000</b>	<b>\$258,700,000</b>

Note: All costs are as of September 2007

Assuming an interest rate of 5.5% and a period of 20 years, the combined present worth of the Capital and O&M cost for the AWRM facilities required to comply with the proposed site-specific objectives is estimated at approximately \$259 Million.

Amortizing the total costs at 5.5% per year for 20 years yields an annual cost estimate of \$36.40 per month per connection for maximum advanced treatment and brine disposal, \$41.55 for minimum advanced treatment and ocean discharge, and \$20.30 for the AWRM. Amortizing the total costs at 5.5% per year for 30 years yields an annual cost estimate of \$31.54 per month per connection for maximum advanced treatment and brine disposal, \$34.97 for minimum advanced treatment and ocean discharge, and \$17.43 for AWRM. This rate analysis does not include additional costs related to procurement of bonds, provision for rate ramp-up periods, nor actual increased costs of project implementation that can occur in the field (e.g., construction change orders, increased cost of materials, and increased cost of construction).

Regional Board staff also reviewed the State Board report, Wastewater User Charge Survey Report F.Y. 2007-2008. This report is prepared annually by the State Board and summarizes and analyzes cost data from a survey of California wastewater agencies. The report shows that the monthly user charge for the City of Santa Clarita was \$16.29 per month. The report also shows the statewide monthly service charge average is \$33.82 per month and the median is \$26.83 per month, with a high of \$231.92. For Los Angeles County, the monthly service charge average is \$23.90 per month and the median is \$12.28 per month. For Ventura County, the monthly service charge average is \$38.47 per month and the median is \$35.35 per month. The rate will likely increase to a level not substantially above the statewide average if applying the AWRM program, and to a level substantially higher than the statewide average if applying the other two options. Potential cost savings to community residents which could be acquired through funding programs to assist in the construction costs, and avoidance of additional treatment costs for other pollutants (i.e. future TMDL requirements) are not included.

### **5.5. The Need to Develop Housing**

The proposed water quality objectives would not restrict the development of housing near the reaches of the Santa Clara River affected by the proposed conditional SSOs because they do not result in discharge requirements that affect housing or housing development. The proposed conditional SSOs and AWRM Program were developed based on projected population and housing growth in the Santa Clarita Valley. The GSWI model considered increased effluent flow from the WRPs and the effects of this growth on the chloride levels in the Santa Clara River and underlying aquifers. The proposed conditional SSOs will support water recycling and the use of the AWRM compliance option in the USCR. Both of these factors will provide water resources to support housing that may be lost with other compliance options.

### **5.6. The Need to Develop and Use Recycled Water**

The proposed water quality objectives will support the expansion of recycled water uses in the Santa Clarita Valley consistent with the California's stated goal of increasing the use of recycled water to help meet the state's growing demand for potable water. The CLWA 2005 Urban Water Management Plan projects that water demand in the area will continue to increase, and that additional sources of water including recycled water will be necessary to meet projected demand. Recycled water use in CLWA's service area is projected to increase from 448 acre-feet per year (actual use in 2004) to 17,400 acre-feet per year by 2030. This 2030 figure represents 70% of the imported water portion of the ultimate wastewater flow projected for the Saugus and Valencia WRPs of approximately 34 MGD. The increased flow from the WRPs from current flows of 21 MGD to future flows of 34 MGD is expected to accommodate most of the increased recycled water demand in the watershed.

The proposed conditional SSOs will support the expansion of recycled water uses by protecting municipal supply. For groundwater recharge reuse projects, Maximum Contaminant Level (MCL) codified in California Administrative Code, Title 22 provide reasonable protection of groundwater quality for the beneficial use of municipal supply. The proposed groundwater objectives for chloride are below the Recommended Secondary Maximum Contaminant Levels for drinking water sources codified in Title 22. Given the demonstrated need to expand recycling in the USCR to meet the region's future water requirements, the proposed conditional SSOs are needed to ensure the required compliance mechanisms allow for the recycling to take place. Additionally, the proposed conditional SSOs are consistent with the secondary MCLs in Title 22 and will not result in water quality for chloride that exceeds these levels.

## 6. Antidegradation Analysis

State Board Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality Water" in California, known as the "Antidegradation Policy," protects surface and ground waters from degradation. It states that waters having quality that is better than that established in effective policies shall be maintained unless any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial uses, and will not result in water quality less than that prescribed in the policies.

The federal antidegradation policy (40 CFR 131.12) requires states to maintain and protect existing instream water uses and the water quality necessary to protect the existing uses (Tier I), maintain high quality waters unless the State finds after satisfaction of intergovernmental and public participation provisions of the states continuous planning process that allowing lowering water quality is necessary to accommodate important economic and social development (Tier II), and maintain and protect water quality in waters the state has designated as outstanding National resource waters (Tier III).

Adoption of proposed conditional SSOs, when implemented the AWRM Program, would be consistent with the state and federal antidegradation policies. Staff worked with stakeholders to develop a complete antidegradation analysis that is contained in the Task 7 and 8 report (LWA, 2008). The following contains a summary of the antidegradation analysis.

The proposed conditional site specific surface and groundwater objectives are protective of present and anticipated beneficial uses. The proposed conditional SSOs in Reaches 5 and 6 of 150 mg/L are protective of present and anticipated uses for irrigation of non-salt sensitive crops in the area, municipal supply, and aquatic life. The proposed conditional SSOs for Reach 4B, when implemented with the AWRM compliance option, are protective of the present and anticipated beneficial uses of these waters, including the most sensitive beneficial use, salt sensitive agriculture. The proposed SSO of 117 mg/L is within the LRE guidelines for protection of salt sensitive agricultural uses. The proposed SSO of 130 mg/L, which applies during critical conditions when source water is greater than 80 mg/L chloride, is protective when alternative water supplies are provided to salt sensitive agriculture uses (conditional SSO = 130 mg/L) and salt export projects as described in Section 8 are operated such that the net chloride loading above 117 mg/L is zero or less.

The proposed implementation activities, which will increase chloride export from the East Piru groundwater basin, will offset any increases in chloride discharges. If higher water quality objectives (130 mg/L) are in place in Reach 4B due to elevated concentrations in source water, the groundwater basin will be protected from degradation through the required salt export. The AWRM proposal will improve water quality in the basin over time and offset any increase in chloride concentrations that result from the

higher objective during some periods. The AWRM proposal was evaluated based on design capacities at Valencia WRP and Saugus WRP of 27.6 MGD and 6.5 MGD, for a total system design capacity of 34.1 MGD. If the capacity of the WRPs ever exceeds the current total system design capacity of 34.1 MGD, then the amount of water required for salt reduction and/or export should increase proportionally to the increase in the total system design capacity, and an additional antidegradation analysis should be conducted.

Under the AWRM Program, the blended extraction well and RO permeate discharge into Reach 4A will not exceed a chloride concentration of 95 mg/L. The current chloride WQO of 100 mg/L in Reaches 3 and 4A is within the LRE guidelines and will protect salt-sensitive agricultural uses. Therefore, the blended extraction well and RO permeate discharge into Reach 4A will not exceed the WQO of the receiving water at the point of discharge (Reach 4A) or in the reach downstream of the discharge point (Reach 3) and the designated beneficial uses for the reaches are still protected. This satisfies EPA's Tier 1 requirements in 40 CFR 131.12(a). Ongoing trend monitoring and additional modeling will determine whether the blended extraction well and RO permeate discharge would increase chloride concentrations in high quality waters downstream in Reaches 4A and 3 and in the Fillmore and Santa Paula groundwater basins. The GSWI model will be extended to the Freeman Diversion to assess the interaction of groundwater and surface water through the Piru, Fillmore, and Santa Paula groundwater basins and the overlying surface waters.

The proposed conditional SSOs and implementation of the AWRM are consistent with the maximum benefit to the people of the state and will result in social and economic benefits. It has been shown that AWRM Program will support water recycling and provide for additional water resources for agriculture and aquatic habitat. The GSWI model demonstrates that the AWRM compliance option results in benefits from the County Line to the area of seawater intrusion on the Oxnard Plain. The model shows that the AWRM option allows for more water diverted at the Freeman Diversion than conventional advanced treatment options, which then has a significant effect on saline intrusion in the Oxnard Plain. At the downstream end of the Piru basin, modeled surface water chloride concentrations are higher in the river about 40% of the time with the AWRM operating, but still in compliance with the existing water quality objective of 100 mg/L. Groundwater chloride concentrations in Piru Basin are improved by pumping and replacing groundwater with stormwater recharge during wet years when chloride concentrations are lower. As a result, surfacing groundwater from the Piru basin in Reach 4A may decrease over time as a result of the AWRM. The AWRM will also result in increased surface water flows in Reaches 3 and 4A as compared to other compliance options. Additionally, the proposed groundwater and surface water objectives for Reaches 5 and 6 will support the expansion of recycled water uses in the Santa Clarita Valley, which is consistent with the maximum public benefit and not unreasonably adverse to present and anticipated beneficial uses. Finally, in general, the AWRM compliance option has more water quality benefits to Ventura County than do the conventional advanced treatment based compliance options.

The proposed conditional SSOs will not result in water quality less than that prescribed in the policies. The proposed conditional SSOs comport with the Chloride Policy in Regional Board resolution 97-002 and its requirements for a watershed chloride reduction plan.

Finally, the proposed conditional SSOs will be implemented through NPDES permits, including effluent limits and required minimum salt export requirements. The effluent limits will ensure that the current performance of the WRPs continues at a minimum and will most likely require additional actions to achieve the water quality objectives. Additionally, receiving water limits will ensure that downstream water quality is not degraded as a result of wastes discharged. Finally, minimum salt export requirements will be included to ensure that excess salt loadings to the groundwater basin due to periods of elevated water supply concentrations are removed from the groundwater basin through pumping and export.

## 7. Alternatives Analysis and Staff Recommendation

Based on the results of the TMDL special studies, Regional Board staff analyzed two alternatives for Regional Board consideration. The first entails a TMDL based on the existing surface water Basin Plan objectives; the second alternative entails a TMDL based on a suite of site specific objectives for both surface water and groundwater underlying the Upper Santa Clara River to support the AWRM approach. Both alternatives rely on implementation of RO technology; however, the first alternative requires larger capacity RO facilities and ocean brine disposal while the second alternative requires smaller capacity RO facilities and no ocean disposal.

### 7.1. Alternative 1 - Maintain Current Basin Plan Objectives – No Action

Under this alternative, the Regional Board takes no action at this time to adopt SSOs or amend the TMDL Wasteload Allocations and Implementation Schedule. Staff notes several concerns with Alternative 1.

First, a key factor in implementation of RO is safe disposal of the resultant brine waste. Several options for brine disposal include ocean discharge, deep well injection, and drying and subsequent landfill disposal. Cost-effective brine disposal is based on several factors including the brine quantity generated and proximity to available disposal facilities. Because it requires larger capacity RO to meet more stringent objectives, the first alternative would require brine disposal via an ocean discharge. The second alternative, which requires smaller capacity RO, would enable disposal via deep well injection. Ocean disposal options generally provide greater capacity than disposal wells, but for the Santa Clarita Valley, would require construction of a large pipeline through two counties over 43-miles. Deep well injection involves retrofitting abandoned oil production wells or constructing new injection wells in areas near the Santa Clarita Valley and injecting the brine into stable geological formations. Local disposal of the smaller volumes brine associated with second alternative through deep well injection or landfilling is likely more cost effective and would likely have less environmental impacts than ocean disposal for this site. In particular, facilities for deep well injection are closer to the RO facilities than ocean disposal sites and therefore require a shorter pipeline. Further, the capacity limits the size of the RO plant so that electrical resources are lower than the first option.

Another concern with the first alternative is under an ocean disposal scenario, a pipeline and outfall could potentially be used for discharge of treated wastewater rather than the discharge of brine. If the SCVSD were to discharge wastewater directly to the Ocean, this option would reduce flows in the Upper Santa Clara River.

## **7.2. Alternative 2 - Adopt Conditional SSOs and Revised TMDL Conditional WLAs**

Under this alternative, the Regional Board adopts a suite of site specific objectives that are conditioned on implementing a chloride balance that is based on advanced treatment of the Valencia WRP effluent to reduce chloride loading to the USCR by a level greater than any loading contributed by the Valencia WRP in excess of loading corresponding to 117 mg/L (see section 8.2). TMDL conditional WLAs for chloride are revised to reflect the conditional SSOs. In addition, interim WLAs for sulfate and TDS are included to facilitate the use of supplemental water to Reach 4B when chloride objectives exceed 117 mg/L.

The AWRM Program uses smaller-scale reverse osmosis to provide greater flexibility for disposal of brine generated by the reverse osmosis system. The AWRM Program also provides capability for aquifer restoration and resource conservation through blending the advanced treated wastewater with extracted groundwater from degraded underlying basin in the upper Santa Clara River. In order to implement an alternative implementation plan, conditional SSOs that are in excess of the existing WQOs for surface water are required. However, because the AWRM facilitates the feasibility of aquifer restoration, the groundwater WQOs can be more stringent. This alternative is analyzed in accordance with a salt balance in the Upper Santa Clara River Watershed.

## **7.3. Staff Recommendation**

Staff recommends the adoption of Alternative 2- adopt conditional site specific objectives and revised TMDL conditional WLAs. The conditional site specific objectives will maintain beneficial uses and the implementation of the AWRM program will result in decreased salt loading to the USCR with fewer environmental and economic impacts than Alternative 1. Additional benefits in both water supply and water quality accrue in areas downstream of the USCR.

- Staff finds that the key technical issues of cumulative chloride impacts to groundwater have been addressed by GSWI. Details of staff's findings on the GSWI model are presented in Appendix I, "GSWI Study for the USCR Chloride TMDL – Staff Report."
- Staff find that the GSWI model has been adequately calibrated by 88 groundwater level, 50 groundwater chloride, 6 streamflow, and 12 surface-water quality target locations that are spatially distributed throughout the GSWI domain and it has been considered as an appropriate model for groundwater and surface water interaction modeling purposes.
- Staff finds that, based on the GWSI model, none of the simulated chloride concentrations derived from the proposed compliance options result in chloride concentrations less than the existing WQO of 100 mg/L in surface water at all

times over 24-year simulation periods (2007-2030) and at all locations in Reaches 4B, 5 and 6. All of the predicted chloride concentrations in groundwater for all compliance options consistently met the existing WQO of 200 mg/L in groundwater of the Piru Basin except the area between Blue Cut and SCR-RF monitoring locations.

- Staff finds that the model predicted high chloride concentrations of 350 mg/L or greater in the alluvial groundwater (thickness of 50-100 ft) in the areas between Blue Cut and receiving water station SCR-RF during drought periods for all proposed compliance options. The high chloride concentration in this area will migrate downstream through the pumping activity in the proposed extraction well locations for the AWRM compliance option and will affect the chloride concentration of the mixed water with RO and then will affect the chloride concentration in SCR in Reach 4A. Geomatrix has prepared a technical memo stating that there is no current or expected future use of the shallow groundwater for beneficial uses in this area (Geomatrix, 2008c). The memo states that groundwater production in Reach 4B for existing beneficial uses occurs downstream of Blue Cut area, where the aquifer has a greater saturated thickness, yields more water, and has lower chloride concentrations. The memo also states that the alluvial groundwater concentrations are predicted to quickly recover once the drought period has ended. Staff therefore recommends that the proposed SSOs of 150 mg/L be set for the deeper San Pedro Formation and that the existing WQOs of 200 mg/L be retained for the shallow alluvium layer.
- Staff finds that the predicted chloride concentrations in both groundwater and surface water at Blue Cut were generally related to concentrations of chloride in the discharges to the SCR from the Saugus and Valencia WRPs.
- Staff finds that the Advanced Treatment and Brine Disposal Compliance Option can not result in full attainment of the 100 mg/L WQO for the USCR at Blue Cut at all times and in all locations of the receiving water. In addition, other compliance options like conveying all recycled water discharges from the Valencia and Saugus WRPs to the ocean outfall (Zero Discharge Compliance Option), limiting discharges from the WRPs and conveying the balance of WRPs recycled water discharges to ocean outfall (Minimal Discharge Compliance Option), and moving the discharge location of WRPs to the beginning of Reach 7 near Lang gauge (Alternative WRP Discharge Location Compliance Option) are also not likely to achieve attainment of the existing 100 mg/L WQO at all times and all locations.
- Staff notes that an alternative compliance option is required to achieve the site specific objectives (SSOs) when the original proposed compliance options were not able to achieve the existing WQO of 100 mg/L. Staff also notes that the SSOs shall be carefully evaluated based on the GSWI model results of different averaging periods to ensure they are fully protective of the agricultural beneficial uses in the study area.

- Staff finds that the AWRM compliance option can produce better chloride concentrations than other proposed compliance options during drought periods and the salt export capability of the AWRM compliance option will help to substantially reduce the amount of chloride loading from salt-water intrusion in the Oxnard Plain.
- Staff finds that the AWRM compliance alternative will result in timely attainment of conditional SSOs and reduce the chloride load to the USCR and underlying groundwater basins during the TMDL implementation period. Staff further finds that the AWRM will help provide enough mass loading to protect the SCR downstream from sea water intrusion.
- Staff finds that the proposed conditional SSOs would be consistent with state and federal antidegradation policies. The antidegradation analysis shows that the Alternative Water Resources Management Plan, involving conditional SSOs that are less stringent than existing WQOs used in conjunction with advanced treatment and salt export, are protective of beneficial uses in the USCR.
- Staff finds that the proposed conditional SSOs considered section 13241 requirements including: (a) past, present, and probable future beneficial uses of water, (b) environmental characteristics of the hydrographic unit under consideration, (c) water quality conditions that could reasonably be achieved, (d) economic considerations, (e) the need for developing housing within the Region, and (f) the need to develop and use recycled water.
- Staff finds that the AWRM Program is consistent with the draft State Board Water Recycling Policy. A stakeholder draft of the policy was presented to the State Board on September 3, 2008. This draft policy states that salts from all sources should be managed on a basin-wide or sub basin-wide basis to attain water quality objectives and support beneficial uses through the development of regional salt management plans. The draft policy provides some specific requirements to be met in the salt management plans, including:
  1. Basin or sub basin-wide monitoring;
  2. Determination of all sources and loading of salts, the basin's assimilative capacity of salts, and fate and transport of salts;
  3. Implementation measures to manage salt loading on a sustainable basis;
  4. An antidegradation analysis demonstrating that projects included with the plan will satisfy State Board Resolution 68-16; and
  5. Water recycling and stormwater recharge/reuse goals and objectives.

Although no salt management plan has yet been developed for the Santa Clara River watershed, the AWRM program can serve as a basis for a future salt management plan. The AWRM Program elements have many similarities to the required salinity management plan elements. The AWRM Program was developed using the GSWI model. Based on the total system design capacity of 34.1 MGD for the Saugus and Valencia WRPs and accommodated future growth, the GSWI model assessed the fate and transport of chloride from all sources in the surface waters and groundwater in the Santa Clara River watershed. The GSWI model also assessed water quality impacts associated with the planned recycled water uses in the future. Given that the AWRM program will eventually be implemented through various NPDES permits issued in the future, it also will involve a number of monitoring requirements to assess actual fate and transport of chloride during and after project implementation. While the GSWIM was developed specifically to assess the fate and transport of chloride, the evaluations and assessments will largely apply to other salts in the region, which behave similarly to chloride. The facilities that will be implemented through the AWRM (i.e., advanced treatment of wastewater, salt export facilities) will also remove and manage other salts. Hence, with some minor modifications and assessments, the AWRM program could be deemed a salinity management plan for the watershed, since it would provide for (1) watershed-wide monitoring, (2) determination of all sources, loading, fate and transport of salts, (3) salt management measures and implementation, (4) an antidegradation analysis; and (5) water recycling goals and objectives.

## 8. Implementation

The conditional SSOs proposed in Section 4.1 are conditioned on implementation of the AWRM program; if the AWRM system is not built, the water quality objectives revert back to the current levels in the Basin Plan (100 mg/L). These conditions comport with the Chloride Policy in Regional Board resolution 97-002 and its requirements for a watershed chloride reduction plan. The watershed chloride reduction plan will be implemented through NPDES permits for the Valencia WRP and a new NPDES permit for discharge into Reach 4A. The conditional site specific objectives for chloride in the USCR watershed shall apply and supersede the regional water quality objectives only when chloride load reductions and/or chloride export projects are in operation and reduce chloride loading in accordance with Table 13.

**Table 13. Watershed Chloride Reduction Plan**

<b>Water Supply Chloride<sup>1</sup></b>	<b>Chloride Load Reductions<sup>2</sup></b>
40 mg/L	58,000 lbs per month
50 mg/L	64,000 lbs per month
60 mg/L	71,000 lbs per month
70 mg/L	77,000 lbs per month
80 mg/L	83,000 lbs per month
90 mg/L	90,000 lbs per month
100 mg/L	96,000 lbs per month

<sup>1</sup> Based on measured chloride of the SWP water stored in Castaic Lake

<sup>2</sup> Chloride load reduction is based on operation of a RO treatment plant treating 3 MGD of recycled water with chloride concentration of 50 mg/L + Water Supply Chloride. Assumes operational capacity factor of 90% and RO membrane chloride rejection rate of 95%. Determination of chloride load based on the following:

$$ChlorideLoad = 90\% \times [(Q_{RO} \times C_{WRP} \times 8.34) \times r] \times \left( \frac{30Days}{Month} \right)$$

where r = % chloride rejection (95%)  
 Q<sub>RO</sub> = 3 MGD of recycled water treated with RO  
 C<sub>WRP</sub> = SWP Cl + 50 mg/L

### 8.1. Implementation of Reach 4B Conditional WLAs

The Saugus and Valencia WRP NPDES permits will have receiving water limits for the District's receiving water station, RF, located in Reach 4B of the Santa Clara River. The receiving water limits will be based on the Reach 4B conditional WLAs for chloride as presented in section 4.2.

**8.2. Implementation of Reach 5 and 6 Conditional WLAs**

Beginning May 4, 2015, Reach 5 and 6 conditional WLAs for the Saugus and Valencia WRPs (Table 5) will become effective. Prior to May 4, 2015, Saugus and Valencia WRPs will have interim WLAs for chloride equal to the interim limit for chloride specified in order No. R4-04-004.

**Table 14. Interim WLAs for Valencia and Saugus WRPs**

Reach	Interim Chloride WLA (mg/L)	Interim Sulfate WLA (mg/L)	Interim TDS WLA (mg/L)	Averaging Period
5	[SWP] + 114 not to exceed 230	450	1000	12-month
6	[SWP] + 134 not to exceed 230	450	1000	12-month

In addition, in order to support water recycling in the USCR, which is critical to the success of and stakeholder support for the AWRM Program, the Saugus and Valencia WRPs will receive interim WLAs for sulfate and TDS (Table 14). When the water reclamation requirements for these WRPs are renewed, they will likely contain limits based on groundwater WQOs. Current levels of sulfate and TDS in the WRP effluent will not meet limits based on existing WQOs. Instead the Saugus and Valencia WRPs must meet interim WLAs equal to 450 mg/L sulfate and 1000 mg/L TDS, which will apply for discharges to the Santa Clara River and recycled water uses from the Saugus Valencia WRPs. This will allow the SCVSD time to conduct special studies on the impacts of sulfate and TDS concentrations at these levels on groundwater quality and the potential for sulfate and TDS SSOs. These interim WLAs will expire on May 4, 2015 and will be replaced either with final WLAs based on the results of SSOs, if developed, or existing WQOs.

The interim WLAs are protective of beneficial uses and consistent with historical surface and groundwater objectives for basins underlying Reaches 5 and 6. A recent report prepared for the SCVSD used a weight of evidence approach to demonstrate that the interim WLAs for sulfate are protective of USCR aquatic life uses, including threatened and endangered fish and amphibians, and their prey organisms (Environ, 2008). The report states that the species mean acute value of the most acutely sulfate-sensitive invertebrate species was more than four times greater than the interim WLA of 450 mg/L. The report also states that the available toxicity data for sulfate confirm the relatively low sensitivity of fish, including threatened and endangered species in the USCR, to sulfate. Thus, protective values based on highly sensitive invertebrates will be additionally protective of TES fish and amphibians given their low sensitivity to ions.

Additionally, the interim WLAs are protective of groundwater recharge uses. These levels are consistent with the upper range of the secondary MCLs in Title 22.

### 8.3. Blended RO and Groundwater Discharge to Reach 4A

An NPDES permit and associated Monitoring and Reporting Program (MRP) will be required for any new discharge of the blend of RO-treated recycled water and extracted groundwater from the east Piru Basin, as contemplated in the AWRM Program. The Permittee shall submit a report of waste discharge and initiate an application to receive an NPDES permit for these facilities prior to their discharge to the SCR. Permit writers will consider ambient water quality when establishing permit limits to meet WQOs for Reach 4A.

### 8.4. Supplemental Water

Supplemental water released to Reach 6 of the Santa Clara River will require an NPDES permit. The AWRM contemplates the use of existing Saugus aquifer wells to deliver low chloride supplemental water directly to the USCR because infrastructure already exists and would not need to be constructed. These supplemental waters would be delivered through contractual arrangements between the SCVSD and the Upper Basin Water Purveyors and would be discharged directly to the USCR. However, although chloride concentrations in these alternative supplemental water wells are very low (20 to 42 mg/L), sulfate concentrations consistently exceed the existing surface water quality objective of 300 mg/L for Reach 6 and the TDS groundwater objectives of 700 mg/L for the groundwater basin underlying Reach 6.

Interim wasteload allocations (Table 12) are developed for sulfate and TDS for the dilution water discharges. These wasteload allocations would apply until the end of the TMDL Implementation period in order to allow (1) time for construction of infrastructure to connect the supplemental water to the Valencia WRP and be diluted with the RO permeate, or (2) time for the SCVSD to conduct additional special studies to provide adequate justification for SSOs for sulfate and TDS. If infrastructure to remove the direct discharge of supplemental water to the USCR is not constructed or if the Regional Board does not approve SSOs for sulfate and TDS, the interim WLAs would expire.

**Table 12. Interim WLAs for Reach 6 Supplemental Water Discharges**

Reach	Interim Sulfate WLA (mg/L)	Interim TDS WLA (mg/L)	Averaging Period
6	450	1000	12-month

The interim WLAs are protective of beneficial uses and consistent with historical surface and groundwater objectives for Reach 6 (see discussion in section 8.2).

The final WLAs for TDS and sulfate are equal to existing surface water and groundwater quality objectives for TDS and sulfate in Tables 3-8 and 3-10 of the Basin Plan. The Regional Board may revise the final WLAs based on review of trend monitoring data as detailed in the monitoring section (Section 8.7) of this staff report.

### 8.5. Downstream Effects of TMDL Implementation

Implementation of the USCR Chloride TMDL, including implementation of AWRM and the discharge to Reach 4A of the blended RO permeate and pumped groundwater will not cause exceedances of surface water quality objectives for downstream reaches. The water discharged to Reach 4A will meet the WQO of 100 mg/L for Reaches 4A and 3. Furthermore, US EPA has established a TMDL for chloride in Reach 3 of the Santa Clara River (US EPA, 2003). The TMDL for Reach 3 sets a numeric target of 80 mg/L of chloride. The linkage analysis for the Reach 3 TMDL demonstrates that the numeric target of 80 mg/L will be attained if upstream discharges from Reach 4 have a chloride concentration of 100 mg/L.

Although the discharge to Reach 4A will have a concentration below the surface WQO of 100 mg/L, it will have a concentration greater than the existing chloride concentrations in Reach 4A and the Fillmore groundwater basin downstream. The average chloride concentration in Reach 4A is 59 mg/L, based on data collected from 1992 to 2006 downstream of the Fillmore Fish Hatchery. The GWSI model was used to calculate the average mass loading, average chloride concentration, and average flow from the discharge to 4A of blended RO permeate and extracted groundwater. This was compared with historic chloride concentration and flow data to determine the incremental increase in Reach 4A surface water chloride concentrations caused by the blended discharge. Depending on the flows and existing surface chloride concentrations, the discharge could increase chloride concentrations by up to 20 mg/L in Reach 4A.

The increased concentrations in surface water could impact groundwater quality in the Fillmore Basin, depending on how much surface water recharges the groundwater. The average chloride concentration in the Fillmore Basin is 49 mg/L, 62 mg/L, and 46 mg/L based on data collected at wells V-0309, V-0340, and V-0342, respectively, located in the eastern portion of the Fillmore Basin from 1987 to 2006. Therefore, there is a potential to degrade water quality below existing ambient conditions in groundwater by implementation of the AWRM compliance option. The extent of this potential degradation needs to be further assessed through an evaluation of hydrology and the amount of surface water recharge that occurs in Reach 4A and downstream.

In addition, the potential increases in chloride concentrations in the Fillmore Basin, which is the water supply for the City of Fillmore, could impact the levels of chloride in Fillmore treatment plant effluent discharged to Reach 3.

Therefore, it is likely that an antidegradation analysis will be required during the permitting stage for the discharge to Reach 4A. The permit will require further evaluation of this discharge and any impacts on downstream uses, groundwater and surface water monitoring, and enforceable effluent limits. An initial antidegradation analysis is presented here. State and federal antidegradation requirements include the following conditions:

- The reduction in water quality will not unreasonably affect actual or potential beneficial uses.
- The proposed action is necessary to accommodate important economic or social development in the area.
- The reduction in water quality is consistent with maximum public benefit.
- Water quality will not increase above water quality objectives prescribed in the Basin Plan.

The current chloride WQO of 100 mg/L in Reaches 3 and 4A will protect the most sensitive beneficial use of the river's water, which is salt-sensitive agricultural use and has threshold value of 117 mg/L. Under the AWRM Program, the blended extraction well and RO permeate discharge into Reach 4A will not exceed a chloride concentration of 95 mg/L, and may be further adjusted downward as needed to protect water quality. Therefore, the blended extraction well and RO permeate discharge into Reach 4A will not exceed the water quality objective of the receiving water at the point of discharge or in the reach downstream of the discharge point.

Further water quality assessments will be used to determine whether the discharge to 4A would increase chloride concentrations in groundwater in the Fillmore and Santa Paula Basins. Responsible parties, including SCVSD and the ultimate permit holder for the 4A discharge, will be required to conduct chloride trend monitoring in the Fillmore Basin and in Reaches 3, 4A to evaluate impacts of compliance measures to downstream groundwater and surface water quality, including areas downstream of the Fillmore treatment plant. This TMDL shall be reconsidered if chloride trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.

The water quality analyses discussed above will be utilized in conjunction with an extension of the GSWI model to assess the interaction of groundwater and surface water and any potential impacts to downstream water quality by the AWRM option. Specifically, key stakeholders have agreed through a memorandum of understanding to extend the GSWI model through the Piru, Fillmore, and Santa Paula groundwater basins and the overlying surface waters to the Freeman Diversion. If the extended GSWI model results indicate the blended extraction well and RO permeate discharge as currently proposed by the AWRM option would cause an exceedance of water quality objectives, the GSWIM will be utilized to determine the level of chloride in the blended extraction well and RO permeate discharge necessary to preclude such an exceedance.

The important social and economic benefits of the AWRM Program could warrant some degradation of the downstream reaches. It has been shown that AWRM Program will support water recycling and provide for additional water resources for agriculture and aquatic habitat. Additionally, chloride concentrations in the Santa Clara River will be lower at the Ventura-Los Angeles County Line, and will result in better-quality recharge to the east Piru basin. As a result, surfacing groundwater from the Piru basin in Reach 4A may decrease over time as a result of the AWRM. The AWRM will also result in increased surface water flows in Reaches 3 and 4A as compared to other compliance options. Finally, in general, the AWRM compliance option has more water quality benefits to Ventura County than do the conventional advanced treatment based compliance options.

It is important to note that any degradation in water quality can be averted by operating the extraction wells in the Piru basin in a manner that will not cause increases in the baseline water quality for the Fillmore and Santa Paula groundwater basins and surface water reaches (4A and 3). For example, the maximum concentration of the extraction well and RO permeate blend could be adjusted downward from 95 mg/L, as warranted based on GSWIM modeling.

The Reach 3 Chloride TMDL may be re-evaluated in the context of the findings of the Upper Santa Clara River Chloride TMDL studies, chloride trend monitoring, and the extended GSWI model results.

#### **8.6. Implementation Schedule**

The TMDL provides a ten-year schedule to attain compliance with the conditional SSOs and conditional wasteload allocations. Key uncertainties at this point relate to identification of the optimum method for brine disposal. Several options, including deep-well injection in the vicinity of old oil fields in the Santa Clarita Valley, and drying and landfill disposal will be considered by the SCVSD in the first two years of the TMDL Implementation Plan.

The Implementation schedule includes 6 years for implementation of compliance measures including planning, completing Environmental Impact Report, engineering design, and construction. The Regional Board will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs at year 6 (2011) and year 9.5 (2014) after the effective date of the TMDL.

#### **8.7. Monitoring for the AWRM Program**

NPDES Permittee will conduct TDS, chloride, and sulfate monitoring to ensure that water quality objectives are being met. This monitoring will be consistent with and at least equivalent to monitoring specified in existing permits.

The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.

The Reach 4A permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.

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# **ATTACHMENT 65**



STATE OF CALIFORNIA  
LOS ANGELES  
REGIONAL WATER QUALITY CONTROL BOARD

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CITY OF SIMI VALLEY COUNCIL CHAMBERS  
2929 TAPO CANYON ROAD  
SIMI VALLEY, CALIFORNIA

THURSDAY, DECEMBER 11, 2008

9:10 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

APPEARANCES

BOARD MEMBERS

Ms. Francine Diamond, Chairperson  
Ms. Mary Ann Lutz, Vice Chairperson  
Mr. Steve Blois  
Ms. Madelyn Glickfeld  
Ms. Maribel Marin  
Ms. Maria Mehranian  
Mr. F.W. Dick Richardson

STAFF

Ms. Tracy J. Egoscue, Executive Officer  
Ms. Debbie Smith, Chief Deputy Executive Officer  
Mr. David Bacharowski, Assistant Executive Officer  
Mr. Michael J. Levy, Senior Staff Counsel  
Mr. Stephen Cain, Senior Environmental Planner  
Ms. Ronji Harris, Executive Assistant  
Mr. Jack Price, Supervisor, Surface Water Division  
Ms. Blythe Ponek-Bacharowski, Chief, Municipal  
Permitting Unit  
Mr. Samuel Unger, Section Chief, Regional Programs  
Ms. Jenny Newman, Senior Environmental Scientist, TMDL  
Unit Chief

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STAFF continued

Dr. Ching-Piau Lai

Dr. Yanjie Chu

Ms. Cassandra Owens, Chief, Industrial Permitting  
Unit

Ms. Rosario Aston, Project Engineer

Mr. David Hung, Chief, Water Regulatory Section

Ms. Elizabeth Erickson, Permitting Unit

Ms. Wendy Phillips, Chief, Groundwater  
Permits/Cleanup

Ms. Rebecca Chou, Chief, Groundwater Permitting Unit

ALSO PRESENT

Ms. Marty Robinson, County of Ventura

Mr. John Flynn, Supervisor, Ventura County

Mr. Stephen Maguin, Sanitation Districts of Los  
Angeles County

Mr. Philip Friess, Sanitation Districts of Los  
Angeles County

Dr. Steven Bachman, United Water Conservation  
District

Ms. Kathy Long, Ventura County Board of Supervisors

Mr. Robert Roy, Ventura County Agricultural Water  
Quality Coalition

Mr. Rex Laird, Farm Bureau

Mr. Brad Bowers, Valley Crest Tree Company

Ms. Linda Johnson, office of Senator George Runner

Mr. Bruce Dandy, United Water Conservation District

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ALSO PRESENT continued

Mr. Jim Lloyd-Butler, Lloyd-Butler Ranch

Mr. Matthew Freeman, Camulos Ranch

Mr. Jarrod DeGonia, office of Assemblymember Cameron Smyth

Mr. Dan Masnada, Castaic Lake Water Agency

Mr. Mauricio Guardado, Santa Clarita Water Division

Mr. Steve Cole, Newhall County Water District

Mr. Robert DiPrimio, Valencia Water Company

Ms. Patty Walker, City of Fillmore

Mr. Travis Lange, City of Santa Clarita

Mr. Dan Pfeifer, City of Ventura

Dr. Howard Bailey, Nautilus Environmental

Ms. Kirsten James, Heal the Bay

Mr. Steve Hoch, Brownstein Hyatt Farber Schreck

Ms. Tracy Quinn, Kennedy/Jenks Consultants

Mr. Gene Lucero, Latham & Watkins

Mr. John Yaroslaski, Ensitu Engineering, Inc.

Dr. Richard Laton, California State University,  
Fullerton

Dr. Mark Gold, Heal the Bay

Mr. Tom Ford, Santa Monica Baykeeper

Mr. Jim Thorsen, City of Malibu

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1 the Consideration of the Proposed Basin Plan Amendment  
2 to Revise the Upper Santa Clara River Chloride TMDL.

3 And this is Item number 14.

4 I'm going to ask Ms. Harris to open up the  
5 hearing --

6 BOARD MEMBER RICHARDSON: Madam Chair?

7 CHAIRPERSON DIAMOND: Yes.

8 BOARD MEMBER RICHARDSON: On advice of  
9 counsel, because I sit as a member and director of the  
10 United Water Conservation District and because United  
11 is directly involved in what is going to be discussed  
12 here in Item 14, unfortunately I'm going to have to  
13 recuse myself. So.

14 CHAIRPERSON DIAMOND: All right. We'll see  
15 you in a little bit.

16 BOARD MEMBER RICHARDSON: Okay.

17 (Whereupon, Board Member Richardson left  
18 the area of the proceedings.)

19 CHAIRPERSON DIAMOND: So I'm going to ask  
20 Ms. Harris to please open up this hearing. Right after  
21 we gave you the award.

22 (Laughter)

23 EXECUTIVE ASSISTANT HARRIS: This the public  
24 hearing for consideration of a proposed resolution to  
25 revise the Upper Santa Clara River chloride TMDL



1 including interim waste load allocations for sulfate  
2 and total dissolved solids and to adopt conditional  
3 site specific objectives for chloride to support the  
4 TMDL.

5 Copies of the proposed resolution were sent to  
6 the Environmental Protection Agency, State Water  
7 Resources Control Board, and other known interested  
8 agencies and organizations.

9 All persons appearing before the Board today  
10 should leave written copies of their testimony if  
11 available.

12 The Board will consider all testimony;  
13 however, in the interests of time, it is requested that  
14 all repetitive and redundant statements be avoided.

15 Madam Chair, would you now please open the  
16 hearing and administer the oath?

17 CHAIRPERSON DIAMOND: Yes. Will all those who  
18 intend to testify on Item 14 please raise your right  
19 hand and repeat after me:

20 I promise to tell the truth --

21 PROSPECTIVE WITNESSES: I promise to tell the  
22 truth --

23 CHAIRPERSON DIAMOND: -- the whole truth --

24 PROSPECTIVE WITNESSES: -- the whole truth --

25 CHAIRPERSON DIAMOND: -- and nothing but the



1 truth --

2 PROSPECTIVE WITNESSES: -- and nothing but the

3 truth --

4 CHAIRPERSON DIAMOND: -- under penalty of

5 perjury.

6 PROSPECTIVE WITNESSES: -- under penalty of

7 perjury.

8 CHAIRPERSON DIAMOND: Thank you.

9 The order of this item will be the following,  
10 and we're going to keep to the time allotted so that we  
11 have enough time to do this and with full Board  
12 consideration.

13 The staff presentation will be 30 minutes;  
14 followed by Santa Clarita Valley Sanitation District,  
15 15 minutes; United Water Conservation District, 15  
16 minutes.

17 And then we will have the speaker cards which  
18 will be three minutes per person. And that will be  
19 followed by Board questions and discussion.

20 So thank you, Mr. Unger.

21 SECTION CHIEF UNGER: Thank you. Good  
22 morning, Chair Diamond and members of the Regional  
23 Board.

24 I am Sam Unger, Chief of the Regional Programs  
25 Section of the Board, and today we are presenting a



1 reconsideration of the Upper Santa Clara River chloride  
2 TMDL.

3 As we will describe in this presentation, this  
4 Board has previously adopted a TMDL for chloride in the  
5 Upper Santa Clara River, and that TMDL is currently in  
6 effect.

7 The TMDL requires a number of special studies  
8 to have been completed, and based on these studies a  
9 reconsideration to establish site-specific objectives  
10 for salts in the Upper Santa Clara River and to revise  
11 the waste load allocations for the Saugus and Valencia  
12 Water Reclamation Plants. Those are the major  
13 dischargers of chloride to the Upper Santa Clara River.

14 The TMDL special studies are now complete, and  
15 today's item presents for your consideration a suite of  
16 conditional site-specific objectives for chloride,  
17 dissolved solids, and sulfate in surface and  
18 groundwaters of the Upper Santa Clara River and a suite  
19 of revised waste load allocations for the Saugus and  
20 Valencia Water Reclamation Plants.

21 These conditional site-specific objectives and  
22 revised waste load allocations are designed to protect  
23 the beneficial uses of the Upper Santa Clara River for  
24 the beneficial use of agriculture and for aquatic  
25 habitat and to facilitate the development of



1 cost-effective, environmentally sound remedies to  
2 reduce the chloride loadings.

3           These remedies will support increased water  
4 reclamation in the Santa Clarita Valley and increase  
5 local water supplies for agricultural irrigation and  
6 domestic use throughout the Santa Clara River; and it  
7 will also increase water supply down to the Lower Santa  
8 Clara River and help offset seawater intrusion which is  
9 a current problem in the Oxnard area.

10           Before I get started, I would like to  
11 acknowledge the contributions of three Regional Board  
12 staff members. I think two of them are here that I  
13 know.

14           The first is Dr. C.P. Lai, and I hope he can  
15 stand up for us, please. Dr. Lai has been at the Board  
16 for more than nine years and is a nationally known  
17 expert in water quality modeling.

18           This TMDL includes some of the most complex  
19 modeling to date in any of our work; and his direct  
20 input on the Board's behalf, his modeling effort, has  
21 essentially led to a lot of information that we'll be  
22 presenting here today. Dr. Lai is our representative  
23 on surface water quality.

24           Dr. Yanjie Chu -- I'm not sure if he's here  
25 today -- he is. Dr. Yanjie Chu has earned a bachelor's



1 degree in agricultural chemistry from the preeminent  
2 university in agriculture in China, and he has gone on  
3 to earn a PhD in plants and soil sciences from the  
4 University of Delaware. He works on all of our  
5 pesticide-related issues and works on our Conditional  
6 Waiver as well.

7           And finally, we have significant contributions  
8 from Jenny Newman, the Unit Chief of TMDL Unit 3; and  
9 Ms. Newman has an MS degree in environmental sciences,  
10 and she'll making part of this presentation with me.

11           For the staff presentation today, I'll first  
12 go over the background of the TMDL and why we're  
13 proposing the adoption of conditional site-specific  
14 objectives and revision of the waste load allocations.

15           Then Jenny Newman will discuss the specific  
16 suite of objectives and waste load allocations that has  
17 been developed for your consideration.

18           Two stakeholders, as Chair Diamond mentioned,  
19 the Santa Clarita Valley Sanitation Districts and  
20 United Water Conservation District, will present the  
21 details of the plan in order to conserve time today so  
22 that we don't have to be redundant there.

23           Next slide, please.

24           This slide shows a map of the Upper Santa  
25 Clara River including the reaches that are subject to



1 this TMDL consideration.

2           The Santa Clara River is the largest river  
3 system in southern California that remains in a  
4 relatively natural state. The river originates on the  
5 northern slope of the San Gabriel Mountains in Los  
6 Angeles County and transverses Ventura County and flows  
7 to the Pacific Ocean between the cities of Ventura and  
8 Oxnard.

9           This map just shows the portion that we're  
10 considering today and shows the major hydrological,  
11 geographical, and jurisdictional features of the Upper  
12 Santa Clara River.

13           From right to left, the purple area is Los  
14 Angeles County, and the yellow area is Ventura County.  
15 And going from right to left, the yellow line  
16 represents Reach 6, the green line represents Reach 5,  
17 and the red line is Reach 4.

18           Two managed reservoirs, the Castaic Lake and  
19 Piru Lake, both shown on this map, are tributaries to  
20 the Upper Santa Clara River through Castaic Creek and  
21 Piru Creek, and the flows here are managed by various  
22 agencies.

23           The major chloride sources are the Saugus and  
24 Valencia Water Reclamation Plants which are shown on  
25 the map right above the legend. And a major feature of



1 Reach 4, the dry gap, approximately six miles long, is  
2 shown in red there in Reach 4.

3 The Board took action a year and a half ago to  
4 stop the dry gap reach into Reach 4A and 4B. This is  
5 an area where the surface flow typically infiltrates  
6 into the underlying groundwater basin which then  
7 exfiltrates back into the surface flow downstream.

8 The middle of the dry gap is the Piru Creek  
9 confluence; and this too mostly infiltrates into the  
10 underlying groundwater basin during dry weather.

11 The major groundwater basins are also shown on  
12 the map with the east basin which underlies Reaches 5  
13 and 6 in red, and the light green and blue green  
14 represent the eastern and western sides of the Piru  
15 Basin.

16 The major land uses vary considerably by  
17 county. In Los Angeles County, the predominant land  
18 uses are commercial, industrial, and residential;  
19 whereas in Ventura County, the predominant land use in  
20 the vicinity of the river is agricultural.

21 In both counties, there is considerable open  
22 space under the jurisdiction of the National Forest  
23 Service surrounding the river.

24 Beneficial uses established in the Basin Plan  
25 for this watershed include agricultural supply,



1 groundwater recharge, aquatic life habitat, and  
2 endangered species habitat.

3           The water quality objective for chloride  
4 include -- present water quality objectives for surface  
5 water for Reaches 4, 5, and 6 is 100 milligrams per  
6 liter for chloride. And the groundwater objectives are  
7 100 milligrams per liter for the western part of Piru  
8 but 200 milligrams per liter for the eastern part of  
9 Piru Basin.

10           For those of you who have been Board Members,  
11 have been through this for a few years, I apologize for  
12 this slide; but I think it's a good idea to try to get  
13 everyone up to speed on the history.

14           The issue of chloride in our region's waters  
15 has a long history. Chloride is a mineral that is  
16 naturally occurring in the water, but as concentrations  
17 of chloride increase in fresh water, it impairs the use  
18 of that water to irrigate agricultural crops. At even  
19 higher levels, it can impair aquatic life and drinking  
20 water uses.

21           The Santa Clara River, as I mentioned, flows  
22 through some of the most important agricultural areas  
23 of our region, and the increasing levels of chloride in  
24 the river over the past decades are impairing its use  
25 for irrigation of salt-sensitive crops such as avocado,



1 strawberries and nursery stock.

2 Chlorine is contained in imported water which  
3 is distributed to residences and discharged by POTWs  
4 through the region and to surface and groundwaters. In  
5 addition to chloride contained in imported water,  
6 chloride loading is increased by domestic household  
7 practices including the use of self-regenerating water  
8 softeners, by industrial uses, and by disinfection of  
9 wastewater with chlorine at the treatment plants before  
10 it's discharged into the rivers.

11 Over the past several decades, growth in our  
12 region has necessitated increasing amounts of imported  
13 water, and that water has got chloride levels which  
14 have increased and are discharged throughout the  
15 region.

16 The POTWs throughout our region could no  
17 longer comply with the original chloride objectives set  
18 in 1975, and the Board's response at that time was to  
19 adopt chloride and drought policies which relaxed the  
20 chloride objectives in many areas of the region.

21 However, these policies were not applied to  
22 the Santa Clara River and to the Piru Creek watersheds  
23 due to the heavy agricultural use of water in these  
24 watersheds and the sensitivity of crops to chloride.

25 Rather, the Board took a TMDL approach to



1 dealing with the chloride build-up in the Santa Clara  
2 River and Calleguas Creek. And the Board first adopted  
3 a TMDL for chloride in 2002.

4 That TMDL identified the wastewater discharges  
5 from the two Santa Clarita Valley Sanitation Districts,  
6 Saugus and Valencia Water Reclamation Plants, as the  
7 primary sources of chloride and set forth numeric  
8 targets of 100 milligrams per liter of chloride.

9 This TMDL met with quite a bit controversy  
10 over several issues.

11 The first was the need for a numeric target of  
12 100 to protect salt-sensitive agriculture. It did not  
13 appear to be fully vetted through the scientific  
14 literature, and the fact that implementation actions to  
15 attain this level would require advanced treatment --  
16 that is, reverse osmosis -- of the full effluent from  
17 the Saugus and Valencia plants with discharge into the  
18 ocean through a 43-mile brine line. The cost of that  
19 system is considerable, which we'll discuss later.

20 So for those two reasons, the State Board  
21 remanded the TMDL back to the Regional Board in 2003.

22 And in response to the remand, the Regional  
23 Board readopted the TMDL to include a phased  
24 implementation approach where we first do the studies  
25 that were necessary to set the proper site-specific



1 objectives and waste load allocations, and there would  
2 be mandatory reconsiderations by the Regional Board  
3 before the implementation design is initiated.

4           Essentially, that's where we are today.

5           Because the core standard of 100 milligrams  
6 per liter was controversial, the special studies first  
7 focused on determining the chloride threshold for  
8 salt-sensitive crops and endangered and threatened  
9 species.

10           It then focussed on determining the chloride  
11 loading from surface waters to the underlying  
12 groundwater basins which are also a major source of  
13 irrigation water for the agricultural growers in Santa  
14 Clara River.

15           The TMDL was then considered, reconsidered in  
16 2004, to comport the TMDL to the NPDES permits in the  
17 Saugus and Valencia WRPs and to revise the  
18 implementation schedule and set this two-phase approach  
19 in place.

20           As part of its approval of the 2006 TMDL  
21 amendment, the State Board directed the Regional Board  
22 to develop site-specific objectives that take into  
23 account the variability of chloride concentrations in  
24 imported water and also consider provisions for  
25 increased chloride concentrations during critical



1 drought conditions.

2 This slide is just a brief slide to show you  
3 how the chloride in the wastewater treatment plant  
4 effluent, in the reddish line, tracks the water supply  
5 which is State Water Project chloride levels in the  
6 lower line.

7 Of course, we're taking actions to try to  
8 minimize the gap between the two as much as possible.  
9 That's what added by the domestic use. But in general,  
10 one of the big challenges of this TMDL has been to deal  
11 with the chloride that is imported with the State Water  
12 Project water supplies.

13 This slide provides a summary of some of the  
14 key findings of the special studies that we've been  
15 doing for the past three years.

16 I want to say that the studies were conducted  
17 over a three-year period in a publicly accessible  
18 venue. Monthly meetings were held in Fillmore and  
19 Santa Clarita where a wide variety of stakeholders  
20 participated.

21 Public members, representatives from Ventura  
22 County Agricultural Water Coalition, and individual  
23 growers, municipal representatives, state and county  
24 elected staffs, water purveyors, landowners,  
25 groundwater management agencies, and environmental



1 groups all participated in these meetings over the past  
2 three years.

3 Stakeholders had direct input on the scopes of  
4 work and an opportunity to comment on the draft  
5 reports, and they also had direct contact to the  
6 consultant team who were performing the work.

7 The meetings were managed and recorded by a  
8 professional facilitation team, and the Regional Board  
9 staff greatly appreciates the expertise and dedication  
10 of all who participated in these studies. And I think  
11 a lot of these people who participated in these studies  
12 and gave up their time are here today.

13 And I'd also like to recognize the  
14 facilitator. Will you please stand up? Paul Downs. I  
15 think all of those who participated are greatly  
16 appreciative of the talent in bringing a group like  
17 this together, and he's available to address any  
18 questions that you may have.

19 So as previously reported to this Board, the  
20 literature study, which is what we did, we looked at  
21 all the available scientific literature to try to set a  
22 chloride threshold for avocado, strawberries and  
23 nursery stock was found to be 117 milligrams per liter.

24 The study also found there was not exactly  
25 analogous studies for strawberries and nursery stock,



1 but there was available information to support best  
2 professional judgment regarding the use of the avocado  
3 threshold level of 117 to be appropriate for other  
4 salt-sensitive crops.

5 The endangered species special study showed  
6 that a chloride level of 117 protects the sensitive  
7 aquatic and rare and endangered organisms in the Upper  
8 Santa Clara River, the trout. We stick with that fish.

9 The Groundwater Surface Water Interaction  
10 study again was probably one of the most intensive  
11 modeling efforts that's been undertaken by this Board  
12 and that this Board has participated in, and it shows  
13 quite clearly that the surface flows in the river  
14 recharge Piru Basin, and these result in accumulation  
15 in that groundwater basin of chloride.

16 We call it the GSWI, Groundwater Surface Water  
17 Interaction, study. That was used to simulate future  
18 potential chloride impacts based on various compliance  
19 alternatives.

20 GSWI also showed that no compliance  
21 alternative could mitigate the magnitude of the advance  
22 treatment process and project that would be required to  
23 protect the existing beneficial uses and -- which,  
24 again, would require advance treatment and flow through  
25 a 43-mile pipeline to the ocean.



1           In general, chloride reduction actions fall  
2 into one of four categories: Source reduction, advance  
3 treatment, increased use of reclaimed water, and  
4 management of the assimilative capacity of the river.

5           The nature of the specific plan, how we mix  
6 all four of these elements together, is determined by  
7 the effectiveness of these actions individually and  
8 also by the site-specific objectives and the waste load  
9 allocations that will be established by this Board.

10           Some of these implementation approaches have  
11 already begun, and we'll hear about them shortly.

12           The Sanitation Districts implemented a buyback  
13 program for self-regenerating water softeners in the  
14 Santa Clarita Valley and has recently sponsored  
15 legislation to ban the use of existing water softeners.  
16 And in last November's election, I'm happy to report  
17 that that measure was passed by the voters by almost a  
18 two-thirds majority.

19           Additional chloride load reductions are also  
20 being planned by converting the water reclamation plans  
21 to ultraviolet disinfection rather than chlorine  
22 disinfection.

23           Water purveyors in the Santa Clarita Valley  
24 are already planning increased uses for recycled water  
25 from the plants and are reviewing their water



1 management plans for Castaic and Piru Lakes to modify  
2 discharge requirements and flows to provide  
3 assimilative capacity in critical dry months.

4 And finally, there's the issue of the most  
5 costly and largest issue, that of the advanced  
6 treatment system.

7 Again, the sizing and cost of the advance  
8 treatment team can be optimized by optimizing the  
9 effectiveness of these other chloride reduction actions  
10 and by setting water quality objectives and waste load  
11 allocations based on special study results required to  
12 protect beneficial adjusts.

13 During the last year while these special  
14 studies were being completed, the upper watershed water  
15 purveyors and groundwater management agency for Piru  
16 Basin started discussions on what is termed an  
17 Alternative Water Resources Management plan.

18 And these discusses then came over to our  
19 group. These stakeholders, after they had formulated  
20 the genesis of this plan, they approached the Board  
21 staff and management about an alternative plan and to  
22 determine the regulatory framework that would be  
23 necessary to support this approach.

24 Our response was that the plan must protect  
25 the existing beneficial uses. We also have the



1 requirement that we would like to see the plan restore  
2 the Piru Basin back to its original levels of low  
3 chloride so it could be a source of supply of water for  
4 agriculture for many years to come.

5           With these requirements in mind, the  
6 stakeholders and staff undertook new studies to  
7 evaluate the AWRM, the Alternative Water Resources  
8 Management plan, which will require higher  
9 site-specific objectives than the current objective,  
10 100 milligrams per liter.

11           As these new studies were also completed, key  
12 stakeholders executed a Memorandum of Understanding  
13 that delineates their responsibilities in  
14 implementing the MOU and -- implementing the AWRM, and  
15 that Memorandum of Understanding is included in your  
16 Board package.

17           In the interest of time, I'm just going to go  
18 through this slide very the quickly because the  
19 Sanitation Districts will talk about it.

20           But what you see in the red dot there really  
21 is the desalination facilities. And essentially what  
22 can happen with desalination facilities, depending on  
23 whether the State Water Project is above or below 80  
24 milligrams per liter of chloride, can be used in a  
25 number of different ways.

Unreadable text line

1           It can be essentially blended right back in  
2 with the effluent from the plants when -- the bottom  
3 slide -- when the supply's above 80 milligrams per  
4 liter to attain compliance with the 117 milligrams per  
5 liter objective we're proposing in Reach 4B.

6           In the top one, basically what happens, when  
7 the supplies are lower -- when the water supplies are  
8 lower in chloride, that water can then be used with  
9 extracted wells from Piru Basin and delivered  
10 downstream for better uses in the Lower Santa Clara  
11 River.

12           This will also provide similar capacity during  
13 precipitation events for low chloride water to  
14 infiltrate into Piru Basin and start restoration.

15           However, the main point is: In analyzing the  
16 AWRM, it was concluded that to increase the surface  
17 water objectives and revised groundwater objectives  
18 would be required in order to restore the Piru Basin.

19           And I think with that, I will turn it over to  
20 Jenny to talk about the specific issues of what you're  
21 actually going to be looking at today.

22           CHAIRPERSON DIAMOND: Thank you.

23           SENIOR ENVIRONMENTAL SCIENTIST NEWMAN: Good  
24 morning.

25           Staff is proposing two amendments to the Basin



1 Plan to reflect the regulatory scheme that Sam just  
2 went over. The amendments are included as Attachments  
3 A and B to the Tentative Resolution in your Board  
4 package.

5 Attachment A contains the conditional  
6 site-specific objectives for chloride in Reaches 4B and  
7 5 and 6 and the groundwater basins underlying those  
8 reaches.

9 And Attachment B includes the changes to the  
10 TMDL, changes to the waste load allocation and the  
11 implementation plan that are based on the conditional  
12 site-specific objectives.

13 The revised TMDL provides conditional waste  
14 load allocations for chloride as well interim waste  
15 load allocations for sulfate and TDS that support the  
16 supplemental water and the water recycling components  
17 of the AWRM.

18 The revised TMDL also requires trend  
19 monitoring to ensure that the goal of chloride export  
20 in the watershed is being achieved, water quality  
21 objectives are being met, and that downstream  
22 groundwater and surface water quality is not degraded.

23 This slide shows the proposed surface water  
24 site-specific objectives.

25 The site-specific objectives are only put in



1 place if significant salt removal from the Valencia  
2 plant effluent or from the East Piru Basin is  
3 implemented; hence, they are termed conditional site  
4 specific objectives.

5 Reaches 5 and 6 are assigned a conditional  
6 site-specific objective of 150 because there are no  
7 current or potential future salt-sensitive agriculture  
8 uses in these reaches, and the 150 objective will  
9 protect all other beneficial uses in these reaches.

10 The site-specific objectives are applied as  
11 12-month rolling averages which have been historically  
12 used in the Los Angeles region in California for salts  
13 objectives, and they will protect the groundwater  
14 recharge and nonsalt-sensitive agriculture beneficial  
15 uses in the lower reaches.

16 Reach 4B is assigned a conditional  
17 site-specific objective of 117 to protect the  
18 salt-sensitive agriculture in this reach. And under  
19 critical conditions, this is defined as the period when  
20 the water supply concentration is greater than or equal  
21 to 80 milligrams per liter. Reach 4B is assigned a  
22 conditional site-specific objective of 130 milligrams  
23 per liter.

24 To ensure that there is no net accumulation of  
25 chloride in the watershed, the TMDL -- excuse me -- the



1 TMDL contains implementation language requiring  
2 sanitation district to export the cumulative mass of  
3 chloride that's added by these temporary increases in  
4 chloride concentrations above 117.

5 Also during these critical conditions, the  
6 sanitation district shall provide alternate water  
7 supply to salt-sensitive agriculture that uses surface  
8 water. The conditional SSOs in Reach 4B are applied as  
9 three-month rolling average based on the  
10 recommendations of the LRE studies.

11 This slide shows the proposed groundwater  
12 site-specific objectives.

13 The groundwater objective in the Santa  
14 Clara-Bouquet and San Francisquito Canyons, which  
15 underlie Reach 6, it's proposed to increase from 100 to  
16 150 milligrams per liter. This is based on review of  
17 historical data and will protect the beneficial uses of  
18 those basins.

19 The groundwater objective in the lower area  
20 east of Piru Creek which underlies 4B is proposed to  
21 decrease from 200 to 150 milligrams per liter. And  
22 this is also based on a review of historical data and  
23 is set to require chloride export to restore this  
24 basin.

25 The objective in Castaic Valley is unchanged



1 except to specify a 12-month averaging period, and  
2 12-month averaging periods are proposed for all  
3 groundwater basins listed in this table.

4           These are the changes to the TMDL based on  
5 conditional SSOs.

6           Conditional chloride waste load allocations  
7 for the Saugus and Valencia plants are set equal to the  
8 site-specific objectives. These conditional waste load  
9 allocations will be implemented as effluent limits with  
10 12-month averaging periods.

11           Conditions for the waste load allocations  
12 include operation of a three million gallon per day  
13 reverse osmosis facility the Valencia plant as well as  
14 dilution water to ensure attainment of the 117  
15 objective in Reach 4B.

16           In addition, a Reach 4B waste load allocation  
17 of 117 is assigned to the Valencia and Saugus plants as  
18 a receiving water limit with a three-month averaging  
19 period to further ensure attainment of the Reach 4B  
20 objectives.

21           Also the daily maximum waste load allocations  
22 equal to 230 milligrams per liter are assigned to  
23 Reaches 5 and 6 and 4B to protect the aquatic life  
24 beneficial uses in those reaches.

25           Other major NPDES discharges receive waste



1 load allocation equal to 100 milligrams per liter.  
2 This is because the effect of assigning conditional  
3 waste load allocations to these permits was not  
4 analyzed by the GSWI model.

5 Minor NPDES discharges do receive conditional  
6 waste load allocations without mass removal  
7 requirements because the impact of minor discharges is  
8 negligible compared to the water reclamation plants.

9 Finally, in order to accommodate the discharge  
10 of supplemental water to Reach 6 to attain the  
11 objective, interim waste load allocations are provided  
12 for sulfate of 450 milligrams per liter and TDS of 1000  
13 milligrams per liter as 12-month averages.

14 This will allow the permittee to conduct trend  
15 monitoring and analysis to justify possible conditional  
16 SSO and waste load allocations for these constituents  
17 when the TMDL is reconsidered.

18 For now, the final waste load allocations are  
19 equal to the existing objectives for these constituents  
20 in the Basin Plan.

21 This slide shows the chloride reductions that  
22 are required as the condition of the waste load  
23 allocations for the Valencia and Saugus plants.

24 The table shows that the chloride reductions  
25 are based on the concentration of chloride in the water



1 supply and are also based on operation of the 3 MGD RO  
2 plant at the Valencia facility.

3 This table is also provided in the attachment,  
4 if it's not showing up too clear here.

5 The condition are if the AWRM system is not  
6 built and these reductions not achieved, then the water  
7 quality objective and waste load allocations will  
8 revert back to the current level of 100 milligrams per  
9 liter.

10 So in addition to the special studies that  
11 were required by the TMDL, staff needed to conduct  
12 three additional analyses to support the AWRM and  
13 conditional SSOs. These are the antidegradation  
14 analysis, the environmental analysis, and the cost  
15 analysis.

16 Staff worked with stakeholders to develop the  
17 antidegradation analysis. It shows that adoption of  
18 the proposed conditional SSOs, when implemented with  
19 all of the AWRM components, would be consistent with  
20 state and federal antidegradation policies.

21 First, the proposed conditional SSOs protect  
22 present and anticipated beneficial uses.

23 Second, the proposed SSOs will not result in  
24 water quality that's less than prescribed in policies.  
25 The conditional SSOs comport with the chloride policy



1 and the Regional Board resolution 97-002 and its  
2 requirements for a watershed chloride reduction plan.

3 Third, the proposed implementation activities,  
4 which will increase chloride export from the East Piru  
5 groundwater basin, would significantly offset any  
6 temporary increases in chloride during drought  
7 conditions.

8 Fourth, the blended extraction well and RO  
9 permeate discharge into Reach 4A under the AWRM program  
10 will not exceed the water quality objectives for Reach  
11 4A or 3 downstream of this discharge. The beneficial  
12 uses for these reaches are still protected, and ongoing  
13 trend monitoring and additional modeling will determine  
14 the impact of the discharges on high quality waters  
15 downstream.

16 Finally, the proposed conditional  
17 site-specific objectives and implementation of the AWRM  
18 are consistent with maximum benefit to the people of  
19 the state and will result in social and economic  
20 benefits.

21 Next, staff conducted a CEQA analysis to  
22 analyze potential alternatives, mitigation measures,  
23 and significant environmental effects from  
24 implementation of the revised TMDL.

25 Staff held a CEQA scoping meeting on July 29



1 of this year to receive comments on the substitute  
2 environmental document; and based on the comments  
3 received, staff prepared final substitute environmental  
4 document.

5           These compare the environmental impacts of the  
6 proposed TMDL and site-specific objectives to support  
7 the AWRM program with the impacts from a no-action  
8 alternative.

9           And the no-action alternative, as Sam  
10 discussed, will likely require the construction of 19  
11 million gallons per day advanced RO facilities at both  
12 the Saugus and Valencia plants to achieve the existing  
13 water quality objective of 100 milligrams per liter.

14           This level of treatment would result in a  
15 significant amount of brine waste that would require  
16 disposal by the development of a 43-mile brine  
17 discharge pipeline and a three-mile ocean outfall.

18           Therefore, staff found that the AWRM is the  
19 preferred alternative. It's the most environmentally  
20 feasible alternative, and it has the least significant  
21 adverse impacts.

22           Implementation of the AWRM could have  
23 potentially significant adverse impacts; however, there  
24 are feasible mitigation measures that would  
25 substantially lessen the impacts.



1           Staff then compared the cost of complying with  
2 the existing water quality objectives, which would  
3 require the maximum advanced treatment, with the cost  
4 of complying with the conditional SSO which would  
5 include facility upgrades to the Saugus and Valencia  
6 plants and the other AWRM actions.

7           Staff estimated a cost of \$38.96 per month per  
8 connection for the maximum advanced treatment  
9 alternative and \$19.50 for the AWRM alternative.

10           Staff also reviewed the State Board wastewater  
11 User Charge Survey Report for fiscal year 2007-2008.  
12 This report summarizes and analyzes cost data from a  
13 survey of California wastewater agencies.

14           Staff found the current wastewater user charge  
15 for the Santa Clarita area would likely increase above  
16 the statewide average under the maximum treatment  
17 alternative and would likely be similar to the  
18 statewide average under the AWRM program.

19           The cost analysis thus supports the  
20 conditional SSOs and AWRM program as the prefer  
21 alternative.

22           Staff received a total of 13 comment letters  
23 from agricultural groups, municipalities, the  
24 Sanitation Districts, landowners, and water purveyors.  
25 The majority of these comments were in support of the



1 AWRM program, the proposed SSOs, and TMDL revisions  
2 that support this program. However, there were a few  
3 issues raised, and I'll go over those now.

4 First, the City of Fillmore and a resident of  
5 Fillmore expressed concern that the downstream  
6 groundwater quality in the Fillmore Basin, which lies  
7 beneath Reaches 4A and 3, may be degraded by the  
8 implementation of the AWRM, specifically the discharge  
9 of the RO permeate blend and groundwater to Reach 4A.

10 Staff's response is that the TMDL maintains  
11 the surface water and groundwater objectives in Reach  
12 4A in the Fillmore Basin. And chloride trend  
13 monitoring will be conducted, and the TMDL should be  
14 reopened if the monitoring indicates degradation of the  
15 high quality groundwater or surface water downstream.

16 The second comment was raised by Newhall Land  
17 & Farming.

18 The TMDL as proposed assigns to Newhall a  
19 waste load allocation equal to the existing water  
20 quality objective of 100 milligrams per liter. In  
21 order to receive a conditional waste load allocation,  
22 the TMDL would require Newhall to remove a chloride  
23 mass quantity that is proportional to the chloride  
24 removal required for the Valencia plant.

25 Newhall asked for language allowing them



1 conditional waste load allocations based on analysis of  
2 the significance of the downstream impact.

3 But staff's response is that the GSWI Model  
4 was run with a Newhall discharge of 100 milligrams per  
5 liter, and additional analysis of the significance of  
6 assigning a conditional waste load allocation of 150  
7 milligrams per liter would need to be conducted to  
8 justify a conditional waste load allocation.

9 The third comment received was that the AWRM  
10 program could reduce groundwater levels in the Piru  
11 Basin due to the extraction wells.

12 Staff's response is that we found that the  
13 drawdown ranges under the AWRM program would operate  
14 within the historic drawdown ranges for Piru Basin, and  
15 that any potential impacts could be managed through the  
16 MOU.

17 Alternatively, the Regional Board may consider  
18 imposing flow restrictions on the forthcoming NPDES  
19 permit for the discharge of the RO groundwater blend to  
20 Reach 4A.

21 Staff proposes a few changes that were made  
22 after you received your agenda package. This is  
23 because it's a very complicated TMDL, and there are a  
24 lot of deadlines for various implementation tasks and  
25 compliance milestones.



1 Working with our permitting staff, we felt it  
2 was necessary to make a few nonsubstantive changes just  
3 to clarify where the waste load allocations apply.

4 There are three changes on the change sheet we  
5 gave you this morning.

6 The first change is to correct a typo. The  
7 other two changes are to link up the compliance dates  
8 to make the compliance deadlines more clear.

9 And if you have any questions on these  
10 changes, staff can answer them at the end.

11 So there are two alternatives before the  
12 Board. The first is no action. Under this  
13 alternative, the Board will take no action at this time  
14 to adopt the conditional SSOs or amend the TMDL waste  
15 load allocation and the current implementation plan.

16 This would likely require the construction of  
17 the maximum advance treatment facilities and would  
18 require the brine disposal via a 43-mile discharge  
19 pipeline to the ocean.

20 The second alternative is to adopt a suite of  
21 conditional site-specific objectives and to revise the  
22 TMDL to include conditional waste load allocations and  
23 an implementation plan that would facilitate the AWRM  
24 program implementation.

25 Staff is recommending Alternative 2 with



1 the changes that we provide in the change sheet. We  
2 find that the conditional site-specific objectives will  
3 protect beneficial uses, and implementation of the AWRM  
4 will result in decreased salt loading to the watershed  
5 with fewer environmental impacts and economic impacts  
6 than Alternative 1.

7 Additional benefits in both water supply and  
8 water quality will accrue in areas downstream as a  
9 result of the AWRM.

10 And in the interest of time the Sanitation  
11 Districts and unity water will discuss these benefits  
12 in their presentation.

13 This concludes staff's presentation.

14 CHAIRPERSON DIAMOND: Thank you.

15 SENIOR STAFF COUNSEL LEVY: Chair Diamond?

16 CHAIRPERSON DIAMOND: Yes.

17 SENIOR STAFF COUNSEL LEVY: One more  
18 nonsubstantive change, if I may, which is on pages  
19 14-17 and 14-18. We refer to the table as 7.6-1. It  
20 should be 7-6.1.

21 CHAIRPERSON DIAMOND: Thanks.

22 I'm going to ask the first speaker to be  
23 Supervisor John Flynn.

24 MR. FLYNN: Yes. Good morning, Madam Chair  
25 and Board Members. Thank you very much.



1 I'm just going to be very brief. We've  
2 listened to this issue many, many times. And today, I  
3 support Alternative 2. I hope that you move with that  
4 issue.

5 Chloride issues in the Santa Clara River  
6 Valley, as you have learned and are concerned about and  
7 have shown that, are very significant to agricultural  
8 production and certain crops.

9 And not only in the United States and our area  
10 and our region, but countries throughout the world,  
11 agricultural areas are very sensitive about chloride  
12 issues. And I've read some of the literature on it.  
13 So I hope you support Alternative 2, and I say that  
14 with some experience.

15 I initiated the order from the State Water  
16 Board to create a groundwater management agency in  
17 Ventura County; so I've been involved with that issue  
18 for about 30 years, so have some of that experience in  
19 looking at the issue here before us today.

20 But I would like to end by saying to you, even  
21 though it doesn't relate directly to this issue, that I  
22 want to thank the staff for all the assistance they  
23 have given to me and to Ventura County on the El Rio  
24 sewer project, which is a very sensitive project.

25 And I especially want to thank and single out



1 Wendy Phillips who has been so great in helping us with  
2 that issue. You know, it's not been an issue with  
3 quiet residents. Quite concerned about it. She's  
4 helped very much pull us through that, and we're making  
5 progress.

6 Thank you for allowing me to speak.

7 CHAIRPERSON DIAMOND: Thank you for that. We  
8 appreciate all the comments.

9 Now we're going to go on to the discharger  
10 presentation in the order that I have. We'll begin  
11 with supervisor Kathy -- oh, who is going to do the  
12 presentation for the dischargers?

13 Okay. Sorry. Come on up. I was moving to  
14 the Public Comments.

15 MR. MAGUIN: Chair Diamond and Members of the  
16 Board, my name is Steve Maguin. I'm the chief engineer  
17 and general manager of the Sanitation Districts of Los  
18 Angeles County, and I'm here today as the chief  
19 engineer of the Santa Clarita Valley Sanitation  
20 District which is the agency that owns and operates the  
21 two water reclamation plants that serve the Santa  
22 Clarita Valley and discharge to the Santa Clara River.

23 My purpose for being here, and I'm extremely  
24 happy to say this, is to give unequivocal support to  
25 the recommendation of your staff on this item.



1           Let me give you just a couple minutes of  
2 background. We have 15 minutes, and you're going to  
3 hear a more extensive presentation from my associate,  
4 Phil Friess. I just wanted to give you a little bit of  
5 background context for this.

6           As Mr. Unger said, it's a long process to  
7 develop the current TMDL that just became effective in  
8 2005. Even before it became effective, we did embark  
9 on a number of programs aimed towards compliance and  
10 resolution of the chloride issue.

11           First, we embarked on and completed all of the  
12 studies that were required in the TMDL your Board  
13 adopted. And I think Mr. Unger gave you some -- a feel  
14 for just how extensive and difficult those were.

15           Second, we are still involved in a three-phase  
16 program to eliminate the single largest controlled  
17 source of chloride to our system, automatic water  
18 softeners that are recharged with salt and discharge  
19 very salty brine to the sewer system.

20           We sponsored -- and not without difficulty,  
21 and not that we were successful the first time -- but  
22 we sponsored legislation to get the authority in 2003  
23 to prohibit new automatic water softeners in our  
24 service area.

25           We implemented a program of both public



1 education and an incentive program, a buyback program,  
2 to encourage folks to voluntarily get rid of their  
3 water softeners.

4 Those two programs to date have gotten more  
5 than half of the water softeners in the valley out.  
6 We're down to less than 3,000 from a high of between 6-  
7 and 7,000. Very successful program.

8 And as Mr. Unger mentioned, we're very pleased  
9 that last month Proposition S on the ballot that was  
10 sponsored by the Santa Clarita Valley Sanitation  
11 District had a very large aye vote.

12 It will become effective January 1st. It will  
13 give our board of directors the authority to order the  
14 removal of existing water softeners in the valley.

15 But note, since that election, the number of  
16 voluntary removals has peaked. We're now getting about  
17 a hundred a week.

18 (Laughter)

19 MR. MAGUIN: That's what happens. The  
20 incentive drops when there's a mandate. So it's more  
21 valuable to volunteer today than it will be next month.

22 We also, about the time of your TMDL, began  
23 the evaluation of how we comply with the Board's order.  
24 We defined two different projects that could achieve  
25 compliance.



1           One, Mr. Unger mentioned, was the installation  
2 of large scale desalination to desalt the WRP effluent.

3           The other was to minimize flow to the river to  
4 as small a flow as possible and waste the rest of the  
5 water to the Pacific Ocean, and thus avoid the TMDL and  
6 avoid the discharge of chloride to the river.

7           Both those options had tremendous negatives  
8 associated with them. Let me just list some of them.

9           They either -- they wasted some or most of the  
10 very valuable recycled water resource, something that  
11 we shouldn't allow.

12           Both required substantial new quantities of  
13 electricity.

14           Both created substantial new carbon  
15 footprints.

16           And both diverted or would likely divert the  
17 bulk of the reclaimed water from the downstream  
18 agricultural users, all bad ramifications of the  
19 projects identified to comply.

20           That was the origin of what became the  
21 stakeholder process, a very long, very challenging  
22 process involving all the interests, the water  
23 interests, in the Santa Clarita Valley, the water  
24 interests in Ventura County, and most importantly the  
25 agricultural interests in Ventura County, your staff,



1 and our staff.

2           The proposal before you today is the result  
3 and culmination of that stakeholder process. And I'm  
4 just going to give you the qualitative benefits as  
5 opposed to the negatives of what would have to have  
6 been done without the proposed action today.

7           It will result in greater, not less, flow of  
8 water to the downstream agricultural users in Ventura  
9 County.

10           It will help reduce chloride in a very high  
11 chloride groundwater basin, the Piru Basin.

12           It will reduce or help reduce saltwater  
13 intrusion in the Oxnard Plain.

14           It will operate a substantially lower new  
15 electrical requirement and have a very much smaller  
16 carbon footprint than projects earlier described.

17           In a nutshell, I think this has been a  
18 difficult process with an extremely good outcome.  
19 Again, it's going to be all the components, very  
20 complex -- and I'll let Phil who is much more  
21 technically competent describe them to you.

22           But in an overview, I think we have developed  
23 something very, very good. You're going to hear a lot  
24 of people support it because it has a bright -- a lot  
25 of very good ramifications.



1           Thank you. And with that, I'm going to  
2 introduce Mr. Phil Friess who is head of our technical  
3 services department and who has been our lead in this  
4 entire stakeholder process to define this project.

5           CHAIRPERSON DIAMOND: Thank you very much.

6           MR. MAGUIN: That you Madam Chair.

7           MR. FRIESS: Chair Diamond, Members of the  
8 Board. Again, my name is Phil Friess, tech services  
9 department head for the Sanitation Districts.

10           I'm very happy to be here today to describe  
11 the recommended Alternative Water Resources Management  
12 TMDL compliance option, the MOU among the watershed  
13 stakeholders, and the commitments that have been made  
14 by the stakeholders should you adopt conditional  
15 site-specific objectives to support implementation of  
16 this Alternative Water Resources Management compliance  
17 plan.

18           On this slide, very similar to the slide that  
19 Sam Unger showed. On the right-hand side is the City  
20 of Santa Clarita, our two water reclamation plants, the  
21 discharge to the Santa Clara River, the Saugus and  
22 Valencia Water Reclamation Plants, the Los  
23 Angeles/Ventura County line.

24           Just over the county line is Camulos Ranch  
25 which is a large agricultural operation, surface



1 diverting agricultural operation, that includes  
2 salt-sensitive agriculture, avocados and strawberries  
3 among the crops that they grow.

4 Camulos Ranch overlies the east Piru Basin  
5 groundwater basin, and downstream to the west is the  
6 City of Fillmore.

7 The alternative water resources management  
8 compliance option is a watershed-based solution that  
9 incorporates five major elements.

10 The first of those elements, as Steve alluded  
11 to, is to reduce the levels of chloride in the effluent  
12 from the treatment plants by removing all the remaining  
13 self-regenerating water softeners in the surface area  
14 for the two plants. And we hope to reduce the chloride  
15 level in the effluent by 25 milligrams per liter by  
16 that action.

17 And in converting the current bleached-based  
18 disinfection systems at the two plants to an  
19 ultraviolet system, with that action, we hope to reduce  
20 the chloride level another 8 milligrams per liter.

21 The second element of the AWRM option is to  
22 implement a 3 million gallon per day microfiltration  
23 reverse osmosis advance treatment upgrade at the  
24 Valencia Water Reclamation Plant.

25 The brine waste produced by this process would



1 be disposed of locally, in Los Angeles County, through  
2 deep well injection.

3           The desalinated recycled water produced by  
4 this process would be used first to achieve water  
5 quality objectives by blending with the discharge from  
6 the Valencia plant by co-discharging with the tertiary  
7 effluent to the Santa Clara River, also be used as a  
8 first priority to protect beneficial uses.

9           When those objectives have been achieved,  
10 desalinated recycled water which is left over will be  
11 used to achieve and maintain the salt balance in the  
12 watershed, the East Piru Groundwater Basin as the point  
13 of action, and to provide a water supply benefit.

14           The third element of the AWRM program is the  
15 implementation of salt management facilities in Ventura  
16 County. Those consist of a large new extraction well  
17 field in the East Piru Groundwater Basin and the  
18 pipelines that you see in yellow and orange.

19           When the desalinated recycled water is not  
20 needed for compliance with water quality objectives, it  
21 will be delivered down the yellow pipeline to the  
22 extraction well field where it can be blended with high  
23 chloride East Piru Groundwater.

24           The blend will have a chloride concentration  
25 of less than 100 milligrams per liter, and it can be



1 discharged through the orange pipeline downstream of  
2 the dry gap of the Santa Clara River.

3 This ability to extract, blend, and discharge  
4 not only exports salt from the East Piru Basin, it also  
5 creates a water supply benefit that will increase yield  
6 at Freeman Diversion and, as you've heard, reduce the  
7 need for groundwater pumping on the Oxnard Plain and  
8 reduce seawater intrusion on the Oxnard Plain.

9 It's because of these benefits that the  
10 Ventura County stakeholders, who previously opposed any  
11 relaxation in water quality standards, now support the  
12 conditional site-specific objectives and the AWRM plan.

13 The fourth element to AWRM the plan is to use  
14 supplemental dilution water to lower levels of chloride  
15 in the river, both before or after implementation of  
16 the AWRM infrastructure.

17 After implementation of the AWRM  
18 infrastructure, the use of supplemental dilution water  
19 will allow us to meet water quality objectives when  
20 State Water Project chloride levels are very high  
21 without constructing large-scale desalination  
22 facilities.

23 The source for this supplemental dilution  
24 water is proposed to be low chloride Saugus aquifer  
25 groundwater, local groundwater.



1           The last major element of the AWRM plan is to  
2 provide an alternative water supply to Camulos Ranch  
3 whenever the surface water quality does not support  
4 Camulos' salt-sensitive agricultural operations.

5           Again, when State Water Project water chloride  
6 levels are high, the chloride levels in the river can  
7 be driven to above 117 milligrams per liter. That's  
8 the level that's needed to protect the avocados and  
9 strawberries that Camulos grows.

10           So whenever the surface water is above 117, we  
11 would provide an alternative source of water of  
12 sufficient quality to fully protect that use. The  
13 proposed source for that alternative water is a blend  
14 of desalinated recycled water from the desalination  
15 facility, Valencia Water Reclamation Plant, blended  
16 with local groundwater or diverted surface water.

17           This slide contrasts the energy and water  
18 resources impacts of large scale reverse osmosis and  
19 AWRM planning.

20           The large scale reverse osmosis upgrades would  
21 essentially double electrical consumption in Saugus and  
22 Valencia Water Reclamation Plants and substantially  
23 reduce flows to the river, as Steve pointed out.

24           Due to brine losses and due to projected  
25 demand to that desalinated, recycled water to augment



1 water supplies in Los Angeles County, it's projected  
2 that the large scale RO upgrade would eventually reduce  
3 flows to the river by about 71 percent.

4 And that level of discharge to the river would  
5 not only adversely impact water quantity in the river  
6 of Ventura County during drought conditions, it would  
7 also seriously impact water quality.

8 In contrast, the AWRM option increases  
9 electrical consumption to plants by only 15 percent and  
10 wastes very, very little water as brine, essentially  
11 maintaining current flow levels to the river.

12 This slide shows that the AWRM facilities will  
13 be very effective tools with which to manage salts in  
14 the Santa Clara watershed. The existing water quality  
15 objective of 100 would allow a certain amount of salt  
16 loading to the river. The projected annual average  
17 amount above that that would be associated with AWRM  
18 discharge would be 325 tons a year, so the difference  
19 between a hundred and the site-specific objectives  
20 would result in an estimated 325 tons a year of  
21 additional salt loading.

22 But the amount of chloride that can be  
23 exported by the extraction wells at East Piru is about  
24 2,000 tons per year, and the amount of chloride loading  
25 that can be prevented by preventing seawater intrusion



1 is about 6,000 tons a year. So the additional salt  
2 loading associated with this project is much more than  
3 overcome by the salt export capability and seawater  
4 intrusion prevention capability of the project.

5 On October 23rd of this year, a group of the  
6 key stakeholders in the watershed executed a Memorandum  
7 of Understanding to implement the Alternative Water  
8 Resources Management solution.

9 The commitments are summarized in this slide.  
10 As the discharger seeking site-specific objectives,  
11 obviously the Santa Clarita Valley Sanitation District  
12 is going to fund the AWRM elements, including source  
13 control, the facility upgrades, the Ventura County salt  
14 management facilities, purchase of supplemental water  
15 provision of alternative water supply to Camulos Ranch.

16 In addition, we will financially incentivize  
17 additional water -- is that my time?

18 We will financially incentivize additional  
19 water recycling in the Santa Clarita area and co-fund  
20 with United Water Conservation District extension of  
21 that groundwater surface water interaction model out to  
22 Freeman Diversion so it can be used to model impacts in  
23 the Fillmore and Santa Paula areas.

24 The Santa Clarita Valley area water purveyors  
25 and United Water Conservation District have agreed to,



1 on behalf of Santa Clarita Valley Sanitation District,  
2 purchase imported water and transfer it to replace  
3 Saugus aquifer groundwater that's delivered to this  
4 project as supplemental dilution water.

5 They've also agreed to support site-specific  
6 objectives and AWRM implementation.

7 It should be noted that United Water  
8 Conservation District's mission is to manage the water  
9 resources to the maximum benefit of all the  
10 stakeholders in Ventura County, and they will  
11 incorporate AWRM operations into their effort to carry  
12 out that mission.

13 CHAIRPERSON DIAMOND: I don't want to  
14 interrupt you. I just want to know if you're coming  
15 toward the close because we are trying to keep to a  
16 timeline this morning so that we have enough time for  
17 Board questions.

18 MR. FRIESS: Yes, ma'am. One or two minutes  
19 at the most.

20 CHAIRPERSON DIAMOND: Okay. Thank you.

21 MR. FRIESS: Thank you.

22 And last, Ventura County Agricultural Water  
23 Quality Coalition, which represents farming interests  
24 throughout Ventura County, will agree to support the  
25 SSOs and AWRM implementation.



1 Last slide.

2 There's important works still to be done to  
3 actually implement this solution.

4 During 2009, the district will work to reach  
5 agreement with the water purveyors for provision of  
6 supplemental dilution water.

7 We will work with Camulos Ranch to address  
8 their concerns and to reach agreement with them on  
9 provision of alternative water supply to Camulos.

10 United will have to work with Camulos to reach  
11 agreement on construction and operation of those  
12 extraction wells.

13 We will -- also during 2009, we will extend  
14 our groundwater surface water interaction model to  
15 address stakeholder concerns over water levels and  
16 water quality in the Piru, Fillmore, and Santa Paula  
17 Basins and to identify any measures needed to control  
18 and mitigate any adverse impacts.

19 2009 to 2011, pursuant to state law  
20 requirements, we will develop the facilities, plans,  
21 and environmental documents.

22 2011 to 2015, will be design and construction  
23 of facilities, completion in May of 2015, one year  
24 ahead of the current TMDL implementation schedule.

25 But in closing, we think the AWRM will improve



1 surface water and groundwater quality, conserve water  
2 and electricity, and it will protect all beneficial  
3 uses. It's the only option that can increase yield at  
4 Freeman and reduce seawater intrusion. We think it  
5 does the best overall job, and we hope you'll adopt  
6 site-specific objectives to support it.

7 And last, I'd just like to recognize the hard  
8 work of your staff, their openness, their willingness  
9 to consider recommending this option. They met with us  
10 almost every Friday for the last 18 months, and we  
11 truly appreciate their efforts.

12 CHAIRPERSON DIAMOND: Thank you. As do we.

13 I'm going to ask United Water Conservation  
14 District, and you will also have 15 minutes. This is a  
15 15-minute presentation, I understand.

16 DR. BACHMAN: Actually a little less than  
17 that.

18 CHAIRPERSON DIAMOND: Great.

19 (Laughter)

20 MR. BACHMAN: I'm still surprised I'm standing  
21 here and agreeing with anything that has happened with  
22 the County Sanitation Districts.

23 As many of you who are Board Members and have  
24 been here for a while know, this has been very  
25 contentious for a long time; and over the last two or



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# **ATTACHMENT 66**



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013  
(213)576-6600 • Fax (213)576-6660  
<http://www.waterboards.ca.gov/losangeles/>

**ORDER NO. R4-2009-0074**  
**NPDES NO. CA0054216**

**WASTE DISCHARGE REQUIREMENTS  
FOR THE SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY,  
VALENCIA WATER RECLAMATION PLANT  
DISCHARGE TO SANTA CLARA RIVER**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	Santa Clarita Valley Sanitation District of Los Angeles County
<b>Name of Facility</b>	Valencia Water Reclamation Plant
<b>Facility Address</b>	28185 The Old Road
	Santa Clarita, CA 91355
	Los Angeles County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board (Regional Water Board) have classified this discharge as a major discharge.	

The discharge by the Santa Clarita Valley Sanitation District of Los Angeles County from the discharge points identified below is subject to waste discharge requirements as set forth in this Order:

**Table 2. Discharge Location**

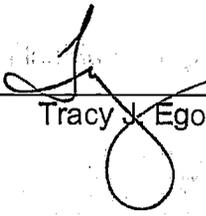
<b>Discharge Point</b>	<b>Effluent Description</b>	<b>Discharge Point Latitude</b>	<b>Discharge Point Longitude</b>	<b>Receiving Water</b>
001	Tertiary treated effluent	34 °, 25', 49.6" N	118°, 35',33.37" W	Santa Clara River
002	Tertiary treated effluent	34 °, 25', 48.27" N	118°, 35',31.95" W	Santa Clara River

February 25, 2009  
Revised: 04/07/09, 4/20/09, 5/14/09, and 6/4/09

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Board on:	June 4, 2009
This Order shall become effective on:	July 24, 2009
This Order shall expire on:	May 10, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date (Title 40, Code of Federal Regulations, part 122.21(d))

I, Tracy J. Egoscue, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Board, Los Angeles Region, on June 4, 2009.

  
\_\_\_\_\_  
Tracy J. Egoscue, Executive Officer

February 25, 2009  
Revised: 04/07/09, 4/20/09, 5/14/09, and 6/4/09

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

#### IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

##### A. Effluent Limitations – Discharge Points 001 and 002

##### 1. Final Effluent Limitations – Discharge Points 001 and 002

- a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Points 001 and 002 into Santa Clara River, with compliance measured at Monitoring Locations EFF001 and EFF002, respectively, as described in the attached Monitoring and Reporting Program:

**Table 6. Effluent Limitations**

Parameter	Units	Effluent Limitations				
		Average Monthly	Ave. Weekly	Maximum Daily	Instant. Minimum	Instant. Maximum
Biochemical Oxygen Demand 5-day @ 20 °C	mg/L	20	30	45	--	--
	lbs/day <sup>1</sup>	3600	5400	8100	--	--
Total Suspended Solids	mg/L	15	40	45	--	--
	lbs/day <sup>1</sup>	2700	7200	8100	--	--
pH	standard units	--	--	--	6.5	8.5
Settleable Solids	ml/L	0.1	--	0.3	--	--
Oil and grease	mg/L	10	--	15	--	--
	lbs/day <sup>1</sup>	1800	--	2700	--	--
Total Residual Chlorine	mg/L	--	--	0.1	--	--
Total dissolved solids (TDS)	mg/L	1,000	--	--	--	--
	lbs/day <sup>1</sup>	180,000	--	--	--	--
Sulfate	mg/L	400	--	--	--	--
	lbs/day <sup>1</sup>	72,000	--	--	--	--
Boron	mg/L	1.5	--	--	--	--
	lbs/day <sup>1</sup>	270	--	--	--	--
MBAS	mg/L	0.5	--	--	--	--
	lbs/day <sup>1</sup>	90	--	--	--	--

<sup>1</sup> The mass emission rates are based on the plant design flow rate of 21.6 MGD, and are calculated as follows: Flow(MGD) x Concentration (mg/L) x 8.34 (conversion factor) = lbs/day. During wet-weather storm events in which the flow exceeds the design capacity, the mass discharge rate limitations shall not apply, and concentration limitations will provide the only applicable effluent limitations.

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

Parameter	Units	Effluent Limitations				
		Average Monthly	Ave. Weekly	Maximum Daily	Instant. Minimum	Instant. Maximum
Chloride	mg/L	--	--	100 <sup>2</sup>	--	--
Ammonia Nitrogen (NH <sub>3</sub> -N)	mg/L	1.75 <sup>3</sup>	--	5.2 <sup>3</sup>	--	--
Nitrate + Nitrite as Nitrogen (NO <sub>3</sub> -N + NO <sub>2</sub> -N)	mg/L	6.8 <sup>3</sup>	--	--	--	--
Nitrite as Nitrogen (NO <sub>2</sub> -N)	mg/L	0.9 <sup>3</sup>	--	--	--	--
Nitrate as N (NO <sub>3</sub> -N)	mg/L	6.8 <sup>3</sup>	--	--	--	--
Arsenic	µg/L	10	--	--	--	--
	lbs/day	1.8	--	--	--	--
Mercury	µg/L	0.051	--	0.094	--	--
	lbs/day	0.0092	--	0.017	--	--
Selenium	µg/L	4.4	--	7.3	--	--
	lbs/day	0.79	--	1.3	--	--
Iron	µg/L	300	--	--	--	--
	lbs/day	54	--	--	--	--
Total trihalomethanes <sup>4</sup>	µg/L	80	--	--	--	--
	lbs/day	14	--	--	--	--

**b. Percent Removal:** The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 85 percent.

<sup>2</sup> This limitation is derived from the waste load allocation for chloride, as set forth in the *Chloride TMDL for the Upper Santa Clara River*, Resolution No. 004-004, Revision of Interim waste load allocations and implementation plan for chloride in the Amendment to the Water Quality Control Plan for the Los Angeles Region to include a TMDL for Chloride in the Upper Santa Clara River (Resolution No. 03-008), adopted by the Regional Water Board on May 6, 2004. This effluent limitation is superceded by the interim effluent limit for chloride, based upon the interim waste load allocation, shown in Table 7 of this NPDES Order. According to Resolution No. R4-2006-016, *Amendment to the Water Quality Control Plan for the Los Angeles Region through revision of the Implementation Plan for the Upper Santa Clara River Chloride TMDL*, which proposed to shorten the compliance period by two years, the WLA-based final effluent limit for chloride shall become operative 11 years after the effective date of the Upper Santa Clara River Chloride TMDL.

<sup>3</sup> This limitation is derived from the final waste load allocation, as set forth in Resolution No. 03-011, *Amendment to the Water Quality Control Plan for the Los Angeles Region to include a TMDL for Nitrogen Compounds in the Santa Clara River*, adopted by the Regional Water Board on August 7, 2003. The TMDL Implementation section specifies that the Waste Load Allocation shall become operative after the completion of additional treatment or modifications to achieve WLAs by POTWs, in as short a period of time as possible, but no later than eight years after the effective date of the TMDL (before March 23, 2012). At the Regional Water Board's discretion, interim limits based upon the interim waste load allocations, were allowed for a period not to exceed five years from the effective date of the TMDL. Since the Valencia WRP has completed its nitrification/denitrification upgrades, this effluent limitation is in effect.

<sup>4</sup> Total trihalomethanes is the sum of concentrations of the trihalomethane compounds: bromodichloromethane, bromoform, chloroform, and dibromochloromethane. This limit is based on the Basin Plan WQO incorporation of MCLs by reference.

- c. The temperature of wastes discharged shall not exceed 86 °F except as a result of external ambient temperature.
- d. The radioactivity of the wastes discharged shall not exceed the limits specified in Title 22, Chapter 15, Article 5, Section 64443, of the California Code of Regulations (CCR), or subsequent revisions.
- e. The wastes discharged to water courses shall at all times be adequately disinfected. For the purpose of this requirement, the wastes shall be considered adequately disinfected if: 1) the median number of total coliform bacteria measured in the disinfected effluent does not exceed an MPN or CFU of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed; 2) the number of total coliform organisms does not exceed an MPN or CFU of 23 per 100 milliliters in more than one sample in any 30-day period; and, 3) no sample exceeds 240 MPN or CFU of total coliform bacteria per 100 milliliters. Samples shall be collected at a time when wastewater flow and characteristics are most demanding on treatment facilities and the disinfection processes.
- f. For the protection of the water contact recreation beneficial use, the wastes discharged to water courses shall have received adequate treatment, so that the turbidity of the treated wastewater does not exceed: (a) an average of 2 Nephelometric turbidity units (NTUs) within a 24 hour period; (b) 5 NTUs more than 5 percent of the time (72 minutes) during any 24 hour period; and (c) 10 NTUs at any time.
- g. To protect underlying ground water basins, pollutants shall not be present in the wastes discharged at concentrations that pose a threat to ground water quality.
- h. Acute Toxicity Limitation and Effluent Requirements:
  - i. The acute toxicity of the effluent shall be such that:
    - (a) The average survival in the undiluted effluent for any three (3) consecutive 96-hour static renewal bioassay tests shall be at least 90%, and
    - (b) No single test produces less than 70% survival.
  - ii. If either of the above requirements (h)(i)(a) or (h)(i)(b) is not met, the Discharger shall conduct six additional tests over a twelve-week period. The Discharger shall ensure that they receive results of a failing acute toxicity test within 24 hours of the completion of the test and the additional tests shall begin within 5 business days of the receipt of the result. If the additional tests indicate compliance with acute toxicity limitation, the Discharger may resume testing at the regular frequency as specified in the monitoring and reporting program. However, if the results of any two of the six accelerated tests are less than 90% survival, then the Discharger shall begin a Toxicity

Identification Evaluation (TIE). The TIE shall include all reasonable steps to identify the sources of toxicity. Once the sources are identified, the Discharger shall take all reasonable steps to reduce toxicity to meet the limits.

iii. If the initial test and any of the additional six acute toxicity bioassay tests result in less than 70 % survival, the Discharger shall immediately implement the Initial Investigation Toxicity Reduction Evaluation (TRE) Workplan described later in this section.

iv. The Discharger shall conduct acute toxicity monitoring as specified in Attachment E - Monitoring and Reporting Program (MRP).

i. Chronic Toxicity Trigger and Requirements:

i. The chronic toxicity of the effluent shall be expressed and reported in toxic units, where:

$$TU_c = \frac{100}{NOEC}$$

The No Observable Effect Concentration (NOEC) is expressed as the maximum percent effluent concentration that causes no observable effect on test organisms, as determined by the results of a critical life stage toxicity test.

ii. There shall be no chronic toxicity in the effluent discharge.

iii. If the chronic toxicity of the effluent exceeds the 1.0 TUc monthly median trigger, the Discharger shall immediately implement accelerated chronic toxicity testing according to Attachment E - MRP, Section V.B.3. If any three out of the initial test and the six accelerated test results exceed 1.0 TUc, the Discharger shall initiate a TIE and implement the Initial Investigation TRE Workplan, as specified in Attachment E - MRP, Sections V.D and V.E.

iv. The Discharger shall conduct chronic toxicity monitoring as specified in Attachment E - MRP.

## 2. Interim Effluent Limitations

a. Consistent with the Santa Clara River Watershed Chloride TMDL, during the period beginning July 24, 2009 (permit effective date) and ending on May 10, 2014<sup>5</sup> (permit expiration date), the Discharger shall maintain compliance with the

<sup>5</sup> Should this NPDES permit be administratively extended, beyond the May 10, 2014 expiration date, then the chloride compliance date shall also be administratively extended, but not beyond the compliance date established in the Upper Santa Clara River Chloride TMDL.

following interim effluent limitation in Table 7 of this NPDES Order, at Discharge Points 001 and 002 compliance measured at Monitoring Location EFF-001 and EFF-002, as described in the attached MRP. This interim effluent limitation shall apply in lieu of the corresponding final effluent limitations, until the final effluent limitation becomes operative as delineated in Footnote 2 of Table 6, for the same parameter during the time period indicated in this provision.

**Table 7. Interim Effluent Limitations**

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Chloride	mg/L	<sup>6</sup>	--	--	--

**B. Land Discharge Specifications**

[Not Applicable.]

**Table 8. Land Discharge Specifications**

Parameter	Units	Discharge Specifications		
		Average Monthly	Maximum Daily	Average Annual
N/A				

**C. Reclamation Specifications**

**Water Reclamation Requirements for Irrigation & Industrial Use.** The discharger currently recycles treated effluent and plans on increasing the amount of water it recycles. The production, distribution, and reuse of recycled water for direct, non-potable applications are presently regulated under Water Reclamation Requirements (WRR) Order No. 87-48, adopted by this Regional Water Board on April 27, 1987.

**Table 9. Reclamation Discharge Specifications**

Parameter	Units	Discharge Specifications		
		Average Monthly	Maximum Daily	Average Annual
N/A				

<sup>6</sup> The chloride interim limit is equal to the sum of the State Water Project treated water supply chloride concentration plus 134 mg/L, expressed as a 12-month rolling average, not to exceed a daily maximum of 230 mg/L.



Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

**Attachment K**  
 TMDL-Related Tasks

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
11 <sup>3</sup>	Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.	4 years after Effective Date of TMDL (05/04/2009)
12 <sup>3</sup>	Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is	Submitted with permit application

<sup>1</sup> The annual report shall include a statement verifying which of the applicable TMDL tasks, included in Attachment K, have been completed.

<sup>2</sup> The dates may be modified by the Regional Board for just cause.

<sup>3</sup> This Task was not included in Resolution No. 2006-016. The task was added when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, then the Discharger does not have to complete this task.

K-1

2/25/09  
 Revised: 04/07/09 & 4/20/09  
 Adopted: 06/04/09

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
	being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.	
13 <sup>3</sup>	Begin monitoring per approved SVCSD monitoring plan completed in Task 11.	One year after Executive Officer approval of Task 11 monitoring plan for SVCSD
14 <sup>3</sup>	Begin monitoring per approved Reach 4A Permittee monitoring plan.	One year after Executive Officer approval of Task 12 monitoring plan for Reach 4A Permittee
15 a)	Implementation of Compliance Measures, Planning: The SCVSD shall submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Wastewater	5 years after Effective Date of TMDL (05/04/2010)

K-2

2/25/09  
 Revised: 04/07/09 & 4/20/09  
 Adopted: 06/04/09

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
	Facilities Plan and Programmatic EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Wastewater Facilities Plan and Programmatic EIR and incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision	
15 b)	Implementation of Compliance Measures, Planning: The SCVSD shall provide a schedule of related tasks and subtasks related to Task 15a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Wastewater Facilities Plan and Programmatic EIR.	5 years after Effective Date of TMDL (05/04/2010)
16	The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion date of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task.	6 years after Effective Date of TMDL (05/04/2011)
17 a)	Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.	6 years after Effective Date of TMDL (05/04/2011)
17 b)	Implementation of Compliance Measures, Engineering Design: The SCVSD will begin the engineering design of the recommended project wastewater facilities	6 years after Effective Date of TMDL (05/04/2011)
17 c)	Implementation of Compliance Measures, Engineering Design: The SCVSD will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition the SCVSD will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of	7 years after Effective Date of TMDL (05/04/2012)

K-3

2/25/09  
 Revised: 04/07/09 & 4/20/09  
 Adopted: 06/04/09

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
	recommended project wastewater facilities.	
17 d) <sup>4</sup>	Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of the recommended project wastewater facilities.	9.5 years after Effective Date of TMDL (11/04/2014)
17 e) <sup>3</sup>	Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of the recommended project wastewater facilities.	10 years after Effective Date of TMDL (05/04/2015)
18 <sup>3</sup>	The Regional Board Executive Officer may consider conditional SSOs for TDS and sulfate for Reaches 4B, 5, and 6 based on results of groundwater-surface water interaction studies on accumulation of TDS and sulfate in groundwater, potential impacts to beneficial uses, and an anti-degradation analysis.	7 years after Effective Date of TMDL (05/04/2012)
19 <sup>3</sup>	The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted for chloride pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task. The Regional Board will also consider conditional SSOs and final conditional WLAs for TDS and sulfate based on results of Task 18.	9.5 years after Effective Date of TMDL (11/04/2014)
20 <sup>5</sup>	The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final	10 years after Effective Date of

<sup>4</sup> This Task was similar to Task 13d in Resolution No. 2006-016. However, it was modified when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, the Discharger would have to complete Task 13d of Resolution No. 2006-016, instead of Task 17d of Resolution No. R4-2008-012.

K-4

2/25/09  
 Revised: 04/07/09 & 4/20/09  
 Adopted: 06/04/09

Santa Clarita Valley Sanitation District of Los Angeles County  
 Valencia Water Reclamation Plant

ORDER NO. R4-2009-0074  
 NPDES NO. CA0054216

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
	conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.	TMDL (05/04/2015)
21 <sup>3</sup>	The interim WLAs for TDS and sulfate contained in this BPA (Resolution No. R4-2008-012) shall be implemented no sooner than the effective date of this BPA, and shall remain in effect until May 4, 2015. Final WLAs shall apply by May 5, 2015 unless conditional SSOs and final conditional WLAs for TDS and sulfate are adopted as described in Task 19.	10 years after Effective Date of TMDL (05/04/2015)

<sup>5</sup> This Task was similar to Task 14 in Resolution No. 2006-016. However, it was modified when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, the Discharger would have to complete Task 14 of Resolution No. 2006-016, instead of Task 20 of Resolution No. R4-2008-012.

K-5

2/25/09  
 Revised: 04/07/09 & 4/20/09  
 Adopted: 06/04/09



# **ATTACHMENT 67**



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013  
 (213)576-6600 • Fax (213)576-6660  
<http://www.waterboards.ca.gov/losangeles/>

**ORDER NO. R4-2009-0075**  
**NPDES NO. CA0054313**

**WASTE DISCHARGE REQUIREMENTS  
 FOR THE SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY,  
 SAUGUS WATER RECLAMATION PLANT  
 DISCHARGE TO SANTA CLARA RIVER**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	Santa Clarita Valley Sanitation District of Los Angeles County
<b>Name of Facility</b>	Saugus Water Reclamation Plant
<b>Facility Address</b>	26200 Springbrook Avenue
	Santa Clarita, CA 91350
	Los Angeles County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.	

The discharge by the Santa Clarita Valley Sanitation District of Los Angeles County from the discharge point identified below is subject to waste discharge requirements as set forth in this Order:

**Table 2. Discharge Location**

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Tertiary treated effluent	34°25'23" N	-118°32'24" W	Santa Clara River

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	June 4, 2009
This Order shall become effective on:	July 24, 2009
This Order shall expire on:	May 10, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date (Title 40, Code of Federal Regulations, part 122.21(d))

Adopted: June 4, 2009

I, Tracy J. Egoscue, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on June 4, 2009.

  
\_\_\_\_\_  
Chief Deputy EO  
Tracy J. Egoscue, Executive Officer  
fe

Adopted: June 4, 2009

#### IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

##### A. Effluent Limitations – Discharge Point 001

##### 1. Final Effluent Limitations – Discharge Point 001

- a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001 into Santa Clara River, with compliance measured at Monitoring Location EFF001, as described in the attached Monitoring and Reporting Program:

**Table 6. Effluent Limitations**

Parameter	Units	Effluent Limitations				
		Average Monthly	Ave. Weekly	Maximum Daily	Instant. Minimum	Instant. Maximum
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	20	30	45	--	--
	lbs/day <sup>1</sup>	1080	1630	2440	--	--
Total Suspended Solids	mg/L	15	40	45	--	--
	lbs/day <sup>1</sup>	810	2170	2440	--	--
pH	standard units	--	--	--	6.5	8.5
Settleable Solids	ml/L	0.1	--	0.3	--	--
Oil and grease	mg/L	10	--	15	--	--
	lbs/day <sup>1</sup>	540	--	810	--	--
Total Residual Chlorine	mg/L	--	--	0.1	--	--
Total dissolved solids (TDS)	mg/L	1,000	--	--	--	--
	lbs/day <sup>1</sup>	54,210	--	--	--	--
Sulfate	mg/L	300	--	--	--	--
	lbs/day <sup>1</sup>	16,260	--	--	--	--
Chloride	mg/L	--	--	100 <sup>2</sup>	--	--

<sup>1</sup> The mass emission rates are based on the plant design flow rate of 6.5 MGD, and are calculated as follows: Flow(MGD) x Concentration (mg/L) x 8.34 (conversion factor) = lbs/day. During wet-weather storm events in which the flow exceeds the design capacity, the mass discharge rate limitations shall not apply, and concentration limitations will provide the only applicable effluent limitations.

<sup>2</sup> This limitation is derived from the waste load allocation for chloride, as set forth in the *Chloride TMDL for the Upper Santa Clara River*, Resolution No. 004-004, Revision of interim waste load allocations and implementation plan for chloride in the Amendment to the Water Quality Control Plan for the Los Angeles Region to include a TMDL for Chloride in the Upper Santa Clara River (Resolution No. 03-008), adopted by the Regional Board on May 6, 2004. This effluent limitation is superseded by the interim effluent limit for chloride, based upon the interim waste load allocation, shown in Table 7 of this NPDES Order. According to Resolution No. R4-2006-016, *Amendment to the Water Quality Control Plan for the Los Angeles Region through revision of the Implementation Plan for the Upper Santa Clara River Chloride TMDL*, which proposed to shorten the compliance period by two years, the WLA-based final effluent limit for chloride shall become operative 11 years after the effective date of the Upper Santa Clara River Chloride TMDL.

Santa Clarita Valley Sanitation District of Los Angeles County  
 Saugus Water Reclamation Plant

ORDER NO. R4-2009-0075  
 NPDES NO. CA0054313

Parameter	Units	Effluent Limitations				
		Average Monthly	Ave. Weekly	Maximum Daily	Instant. Minimum	Instant. Maximum
Boron	mg/L	1.5	--	--	--	--
	lbs/day <sup>1</sup>	81.3	--	--	--	--
MBAS	mg/L	0.5	--	--	--	--
	lbs/day <sup>1</sup>	27.1	--	--	--	--
Ammonia Nitrogen (NH <sub>3</sub> -N)	mg/L	2.0 <sup>3</sup>	--	5.6 <sup>3</sup>	--	--
	lbs/day <sup>1</sup>					
Nitrate + Nitrite as Nitrogen (NO <sub>3</sub> -N + NO <sub>2</sub> -N)	mg/L	7.1 <sup>3</sup>	--	--	--	--
	lbs/day <sup>1</sup>		--	--	--	--
Nitrite as Nitrogen (NO <sub>2</sub> -N)	mg/L	0.9 <sup>3</sup>	--	--	--	--
	lbs/day <sup>1</sup>		--	--	--	--
Nitrate as N (NO <sub>3</sub> -N)	mg/L	7.1 <sup>3</sup>	--	--	--	--
	lbs/day <sup>1</sup>		--	--	--	--
Antimony	µg/L	6	--	--	--	--
	lbs/day <sup>1</sup>	0.33	--	--	--	--
Cadmium	µg/L	5	--	--	--	--
	lbs/day <sup>1</sup>	0.27	--	--	--	--
Cyanide	µg/L	3.9		9.4		
	lbs/day <sup>1</sup>	0.21		0.51		
Iron	µg/L	300	--	--	--	--
	lbs/day <sup>1</sup>	16.26	--	--	--	--
Perchlorate	µg/L	6	--	--	--	--
	lbs/day <sup>1</sup>	0.33	--	--	--	--
Total Trihalomethanes <sup>4</sup>	µg/L	80	--	--	--	--
	lbs/day <sup>1</sup>	4.34	--	--	--	--

b. **Percent Removal:** The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 85 percent.

c. The temperature of wastes discharged shall not exceed 86°F except as a result of external ambient temperature.

<sup>3</sup> This limitation is derived from the final waste load allocation, as set forth in Resolution No. 03-011, *Amendment to the Water Quality Control Plan for the Los Angeles Region to include a TMDL for Nitrogen Compounds in the Santa Clara River*, adopted by the Regional Board on August 7, 2003. The TMDL Implementation section specifies that the Waste Load Allocation shall become operative after the completion of additional treatment or modifications to achieve WLAs by POTWs, in as short a period of time as possible, but no later than eight years after the effective date of the TMDL (before March 23, 2012). At the Regional Board's discretion, interim limits based upon the interim waste load allocations, were allowed for a period not to exceed five years from the effective date of the TMDL. Since Saugus WRP has completed its nitrification/denitrification upgrades, this effluent limitation is in effect.

<sup>4</sup> Total trihalomethanes is the sum of concentrations of the trihalomethane compounds: bromodichloromethane, bromoform, chloroform, and dibromochloromethane. This limit is based on the Basin Plan WQO incorporation of MCLs by reference.

- d. The radioactivity of the wastes discharged shall not exceed the limits specified in Title 22, Chapter 15, Article 5, Section 64443, of the California Code of Regulations (CCR), or subsequent revisions.
- e. The wastes discharged to water courses shall at all times be adequately disinfected. For the purpose of this requirement, the wastes shall be considered adequately disinfected if: 1) the median number of total coliform bacteria measured in the disinfected effluent does not exceed an MPN or CFU of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed; 2) the number of total coliform bacteria does not exceed an MPN or CFU of 23 per 100 milliliters in more than one sample in any 30-day period; and 3) no sample exceeds 240 MPN or CFU of total coliform bacteria per 100 milliliters. Samples shall be collected at a time when wastewater flow and characteristics are most demanding on treatment facilities and the disinfection processes.
- f. For the protection of the water contact recreation beneficial use, the wastes discharged to water courses shall have received adequate treatment, so that the turbidity of the treated wastewater does not exceed: (a) an average of 2 Nephelometric turbidity units (NTUs) within a 24 hour period; (b) 5 NTUs more than 5 percent of the time (72 minutes) during any 24 hour period; and (c) 10 NTUs at any time.
- g. To protect underlying ground water basins, pollutants shall not be present in the wastes discharged at concentrations that pose a threat to ground water quality.
- h. Acute Toxicity Limitation and Effluent Requirements:
  - i. The acute toxicity of the effluent shall be such that:
    - (a) The average survival in the undiluted effluent for any three (3) consecutive 96-hour static renewal bioassay tests shall be at least 90%, and
    - (b) No single test produces less than 70% survival.
  - ii. If either of the above requirements (h)(i)(a) or (h)(i)(b) is not met, the Discharger shall conduct six additional tests over a twelve-week period. The Discharger shall ensure that they receive results of a failing acute toxicity test within 24 hours of the completion of the test and the additional tests shall begin within 5 business days of the receipt of the result. If the additional tests indicate compliance with acute toxicity limitation, the Discharger may resume testing at the regular frequency as specified in the monitoring and reporting program. However, if the results of any two of the six accelerated tests are less than 90% survival, then the Discharger shall begin a Toxicity Identification Evaluation (TIE). The TIE shall include all reasonable steps to identify the sources of toxicity. Once the sources are identified, the Discharger shall take all reasonable steps to reduce toxicity to meet the limits.

- iii. If the initial test and any of the additional six acute toxicity bioassay tests result in less than 70 % survival, the Discharger shall immediately implement the Initial Investigation Toxicity Reduction Evaluation (TRE) Workplan described later in this section.
- iv. The Discharger shall conduct acute toxicity monitoring as specified in Attachment E - Monitoring and Reporting Program (MRP).

i. Chronic Toxicity Trigger and Requirements:

- i. The chronic toxicity of the effluent shall be expressed and reported in toxic units, where:

$$TU_c = \frac{100}{NOEC}$$

The No Observable Effect Concentration (NOEC) is expressed as the maximum percent effluent concentration that causes no observable effect on test organisms, as determined by the results of a critical life stage toxicity test.

- ii. There shall be no chronic toxicity in the effluent discharge.
- iii. If the chronic toxicity of the effluent exceeds the 1.0 TU<sub>c</sub> monthly median trigger, the Discharger shall immediately implement accelerated chronic toxicity testing according to Attachment E –MRP, Section V.B.3. If any three out of the initial test and the six accelerated test results exceed 1.0 TU<sub>c</sub>, the Discharger shall initiate a TIE and implement the Initial Investigation TRE Workplan, as specified in Attachment E – MRP, Sections V.D and V.E.
- iv. The Discharger shall conduct chronic toxicity monitoring as specified in Attachment E – MRP.

**2. Interim Effluent Limitations**

- a. Consistent with the Santa Clara River Watershed Chloride TMDL, during the period beginning July 24, 2009 (permit effective date) and ending on May 10, 2014<sup>5</sup> (permit expiration date), the Discharger shall maintain compliance with the following interim effluent limitations in Table 7 of this NPDES Order, at Discharge Point 001 compliance measured at Monitoring Location EFF-001, as described in the attached MRP. This interim effluent limitation shall apply in lieu of the corresponding final effluent limitations, until the final effluent limitation becomes operative as delineated in Footnote 2 of Table 6, for the same parameter during the time period indicated in this provision.

<sup>5</sup> Should this NPDES permit be administratively extended, beyond the May 10, 2014 expiration date, then the chloride compliance date shall also be administratively extended, but not beyond the compliance date established in the Upper Santa Clara River Chloride TMDL.

**Table 7. Interim Effluent Limitations**

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Chloride	mg/L	<sup>6</sup>	230	--	--

**B. Land Discharge Specifications**

[Not Applicable.]

**Table 8. Land Discharge Specifications**

Parameter	Units	Discharge Specifications		
		Average Monthly	Maximum Daily	Average Annual
N/A		--	--	--

**C. Reclamation Specifications**

**Water Reclamation Requirements for Irrigation & Industrial Use.** The treated effluent is also regulated under Water Reclamation Requirements (WRR) Order No. 87-49, adopted by this Regional Water Board on April 27, 1987. Currently, there is no offsite, direct reuse of the final treated effluent.

**Table 9. Reclamation Discharge Specifications**

Parameter	Units	Discharge Specifications		
		Average Monthly	Maximum Daily	Average Annual
N/A		--	--	--

<sup>6</sup> The chloride interim limit is equal to the sum of the State Water Project treated water supply chloride concentration plus 114 mg/L, expressed as a 12-month rolling average, not to exceed a daily maximum of 230 mg/L.



**Attachment K**  
 TMDL-Related Tasks

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
11 <sup>3</sup>	<p>Trend monitoring: The SCVSD will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and surface water quality is not degraded due to implementation of compliance measures. The SCVSD monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer, in the following locations: (a) Shallow alluvium layer in east Piru Basin, (b) San Pedro Formation in east Piru Basin, and (c) groundwater basins under Reaches 5 and 6, which shall be equivalent or greater than existing groundwater monitoring required by NPDES permits for Saugus and Valencia WRPs. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 4B, 5 and 6. The monitoring plan shall include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that extends beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.</p>	<p>4 years after Effective Date of TMDL (05/04/2009)</p>
12 <sup>3</sup>	<p>Trend monitoring: The Reach 4A Permittee will submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to ensure that the goal of chloride export in the watershed is being achieved, water quality objectives are being met, and downstream groundwater and</p>	<p>Submitted with permit application</p>

<sup>1</sup> The annual report shall include a statement verifying which of the applicable TMDL tasks, included in Attachment K, have been completed.

<sup>2</sup> The dates may be modified by the Regional Board for just cause.

<sup>3</sup> This Task was not included in Resolution No. 2006-016. The task was added when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, then the Discharger does not have to complete this task.

K-1

Santa Clarita Valley Sanitation District of Los Angeles County  
 Saugus Water Reclamation Plant

ORDER NO. R4-2009-0075  
 NPDES NO. CA0054313

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
13 <sup>3</sup>	surface water quality is not degraded due to implementation of compliance measures. The Reach 4A permittee monitoring plan shall include plans to monitor chloride, TDS, and sulfate in groundwater and identify representative wells to be approved by the Regional Board Executive Officer in the following locations (a) Fillmore Basin, and (b) Santa Paula Basin. The monitoring plan shall also include a plan for chloride, TDS, and sulfate trend monitoring for surface water for Reaches 3 and 4A. The monitoring plan should include plans to monitor chloride, TDS, and sulfate at a minimum of once per quarter for groundwater and at a minimum of once per month for surface water. The plan should propose a monitoring schedule that shall extend beyond the completion date of this TMDL to evaluate impacts of compliance measures to downstream groundwater and surface water quality. This TMDL shall be reconsidered if chloride, TDS, and sulfate trend monitoring indicates degradation of groundwater or surface water due to implementation of compliance measures.	One year after Executive Officer approval of Task 11 monitoring plan for SCVSD
14 <sup>3</sup>	Begin monitoring per approved Reach 4A Permittee monitoring plan.	One year after Executive Officer approval of Task 12 monitoring plan for Reach 4A Permittee
15 a)	Implementation of Compliance Measures, Planning: The SCVSD shall submit a report of planning activities which include but are not limited to: (1) identifying lead state/federal agencies; (2) administering a competitive bid process for the selection of EIR/EIS and Engineering Consultants; (3) Development of Preliminary Planning and Feasibility Analyses; (4) Submittal of Project Notice of Preparation/Notice of Intent; (5) Preparation of Draft Wastewater Facilities Plan and Programmatic EIR; (6) Administration of Public Review and Comment Periods; (7) Development of Final Wastewater Facilities Plan and Programmatic EIR and	5 years after Effective Date of TMDL (05/04/2010)

K-2

Adopted Version: June 4, 2009

Santa Clarita Valley Sanitation District of Los Angeles County  
 Saugus Water Reclamation Plant

ORDER NO. R4-2009-0075  
 NPDES NO. CA0054313

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
15 b)	incorporation and response to comments; (8) Administration of final public review and certification process; and (9) Filing a Notice of Determination and Record of Decision	
	Implementation of Compliance Measures, Planning: The SCVSD shall provide a schedule of related tasks and subtasks related to Task 15a), and provide semi-annual progress reports on progress of planning activities, thereafter, until completion of Final Wastewater Facilities Plan and Programmatic EIR.	5 years after Effective Date of TMDL (05/04/2010)
16	The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion date of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task.	6 years after Effective Date of TMDL (05/04/2011)
17 a)	Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.	6 years after Effective Date of TMDL (05/04/2011)
17 b)	Implementation of Compliance Measures, Engineering Design: The SCVSD will begin the engineering design of the recommended project wastewater facilities	6 years after Effective Date of TMDL (05/04/2011)
17 c)	Implementation of Compliance Measures, Engineering Design: The SCVSD will provide a design schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of design activities, thereafter, until completion of Final Design. In addition the SCVSD will provide a construction schedule of related tasks and sub-tasks, and provide semi-annual progress reports on progress of construction activities, thereafter, until completion of recommended project wastewater facilities.	7 years after Effective Date of TMDL (05/04/2012)

K-3

Adopted Version: June 4, 2009

Santa Clarita Valley Sanitation District of Los Angeles County  
 Saugus Water Reclamation Plant

ORDER NO. R4-2009-0075  
 NPDES NO. CA0054313

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
17 d) <sup>4</sup>	Implementation of Compliance Measures, Construction: The SCVSD shall have applied and received all appropriate permits and have completed construction of the recommended project wastewater facilities.	9.5 years after Effective Date of TMDL (11/04/2014)
17 e) <sup>3</sup>	Implementation of Compliance Measures, Start-Up: The SCVSD shall have completed start-up, testing and certification of the recommended project wastewater facilities.	10 years after Effective Date of TMDL (05/04/2015)
18 <sup>3</sup>	The Regional Board Executive Officer may consider conditional SSOs for TDS and sulfate for Reaches 4B, 5, and 6 based on results of groundwater-surface water interaction studies on accumulation of TDS and sulfate in groundwater, potential impacts to beneficial uses, and an anti-degradation analysis.	7 years after Effective Date of TMDL (05/04/2012)
19 <sup>3</sup>	The Regional Board staff will re-evaluate the schedule to implement control measures needed to meet final conditional WLAs adopted pursuant to Task 10 d) and the schedule for Task 17. The Regional Board, at a public meeting will consider extending the completion of Task 17 and reconsider the schedule to implement control measures to meet final conditional WLAs adopted for chloride pursuant to Task 10 d). The SCVSD will provide the justification for the need for an extension to the Regional Board Executive Officer at least 6 months in advance of the deadline for this task. The Regional Board will also consider conditional SSOs and final conditional WLAs for TDS and sulfate based on results of Task 18.	9.5 years after Effective Date of TMDL (11/04/2014)
20 <sup>4,5</sup>	The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.	10 years after Effective Date of TMDL (05/04/2015)

<sup>4</sup> This Task was similar to Task 13d in Resolution No. 2006-016. However, it was modified when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, the Discharger would have to complete Task 13d of Resolution No. 2006-016, instead of Task 17d of Resolution No. R4-2008-012.

K-4

Santa Clarita Valley Sanitation District of Los Angeles County  
Saugus Water Reclamation Plant

ORDER NO. R4-2009-0075  
NPDES NO. CA0054313

Task No. <sup>1</sup>	Implementation Action and Required Submission from the Upper Santa Clara River Chloride TMDL (Resolution No. R4-2008-012)	Completion Date <sup>2</sup>
21 <sup>3</sup>	The interim WLAs for TDS and sulfate contained in this BPA (Resolution No. R4-2008-012) shall be implemented no sooner than the effective date of this BPA, and shall remain in effect until May 4, 2015. Final WLAs shall apply by May 5, 2015 unless conditional SSOs and final conditional WLAs for TDS and sulfate are adopted as described in Task 19.	10 years after Effective Date of TMDL (05/04/2015)

<sup>3</sup> This Task was similar to Task 14 in Resolution No. 2006-016. However, it was modified when Resolution No. R4-2008-012 was adopted by the Regional Board on December 11, 2008. If Resolution No. R4-2008-012 does not go into effect, the Discharger would have to complete Task 14 of Resolution No. 2006-016, instead of Task 20 of Resolution No. R4-2008-012.

K-5

Adopted Version: June 4, 2009



# **ATTACHMENT 68**



1998 CALIFORNIA 303(d) LIST AND TMDL PRIORITY SCHEDULE

Approved by USEPA: 12-May-99

REGION TYPE	NAME	HYDRO UNIT	POLLUTANT/STRESSOR*	SOURCE	PRIORITY	SIZE AFFECTED	UNIT	START DATE	END DATE
1 E	EEL RIVER DELTA	111.110	Sedimentation/Siltation	Range Land Silviculture Nonpoint Source	Low	6350	Acres	0204	1206
1 E	ESTERO AMERICANO	115.300	Temperature Nutrients <i>Water Quality Attainment strategy is attempting to increase voluntary measures for attainment of standards and objectives, as was done in the Estero de San Antonio / Stemple Creek TMDL Water Quality Attainment Strategy, adopted by the North Coast Regional Water Quality Control Board at the December 11, 1997 meeting.</i>	Nonpoint Source	Low	6350	Acres	0204	1206
				Pasture Land Manure Lagoons	Medium	692	Acres	0497	0206
				<b>Sedimentation/Siltation</b> <i>Water Quality Attainment strategy is attempting to increase voluntary measures for attainment of standards and objectives, as was done in the Estero de San Antonio / Stemple Creek TMDL Water Quality Attainment Strategy, adopted by the North Coast Regional Water Quality Control Board at the December 11, 1997 meeting.</i>	Medium	692	Acres	0497	0206
1 E	ESTERO DE SAN ANTONIO	115.400	Nutrients <i>This water body/pollutant was relisted by USEPA.</i>	Pasture Land Manure Lagoons	Low	319	Acres	0496	0498
1 E	NAVARRO RIVER DELTA	113.500	Sedimentation/Siltation	Erosion/Siltation	Medium	20	Acres	0298	1200
1 L	LAKE PILLSBURY	111.630	Mercury	Natural Sources	Low	2280	Acres	1209	1211
1 R	ALBION RIVER	113.400	Sedimentation/Siltation <i>USEPA is preparing TMDL for Albion River.</i>	Silviculture Nonpoint Source	Medium	14	Miles	0299	1201

\* Comments presented under each pollutant/stressor are not required under Clean Water Act Section 303(d). In a few cases, they provide necessary information.



Approved by USEPA: 12-May-09

1998 CALIFORNIA 303(d) LIST AND TMDL PRIORITY SCHEDULE

REGION TYPE	NAME	HYDRO UNIT	POLLUTANT/STRESSOR*	SOURCE	PRIORITY	SIZE AFFECTED	UNIT	START DATE	END DATE
4 R	SAN JOSE CREEK REACH 1 (SG CONFL. TO TEMPLE STREET)	405.41	Algae	Nonpoint/Point Source	Medium	13.12	Miles		
			Ammonia	Nonpoint/Point Source	High	13.12	Miles		
			High Coliform Count	Nonpoint/Point Source	Low	13.12	Miles		
4 R	SAN JOSE CREEK REACH 2 (TEMPLE TO I-70 AT WHITE AVE.)	405.51	Algae	Nonpoint/Point Source	Medium	4.93	Miles		
			Ammonia	Nonpoint/Point Source	High	4.93	Miles		
			High Coliform Count	Nonpoint/Point Source	Low	4.93	Miles		
4 R	SANTA CLARA RIVER ESTUARY	403.11	ChemA	Nonpoint Source	Medium	2.07	Miles		
			High Coliform Count	Nonpoint Source	Low	2.07	Miles		
			Toxaphene	Nonpoint Source	Medium	2.07	Miles		
4 R	SANTA CLARA RIVER REACH 3 (DAM TO ABV SP CRK/BLW TIMBER CYN)	403.21	Ammonia	Nonpoint/Point Source	Medium	13.24	Miles		
			Chloride	Nonpoint/Point Source	Medium	13.24	Miles	1297	
4 R	SANTA CLARA RIVER REACH 7 (BLUE CUT TO WEST PIER HWY 99)	403.51	Ammonia	Nonpoint/Point Source	Medium	9.21	Miles		
			Chloride	Nonpoint/Point Source	Medium	9.21	Miles	1297	
			High Coliform Count	Nonpoint/Point Source	Low	9.21	Miles		
			Nitrate and Nitrite	Nonpoint/Point Source	Medium	9.21	Miles		

\* Comments presented under each pollutant/stressor are not required under Clean Water Act Section 303(d). In a few cases, they provide necessary information.

1998 CALIFORNIA 303(d) LIST AND TMDL PRIORITY SCHEDULE

Approved by USEPA: 12-May-99

REGION	TYPE	NAME	HYDRO UNIT	POLLUTANT/STRESSOR*	SOURCE	PRIORITY	SIZE AFFECTED	UNIT	START DATE	END DATE
4	R	SANTA CLARA RIVER REACH 8-W PIER HY 99 TO BOUQUET CYN RD BRG	403.51	Ammonia	Nonpoint/Point Source	Medium	3.42	Miles		
				Chloride	Nonpoint/Point Source	Medium	3.42	Miles	1297	
				<i>Chloride was relisted by USEPA.</i>						
				High Coliform Count	Nonpoint/Point Source	Low	3.42	Miles		
				Nitrate and Nitrite	Nonpoint/Point Source	Medium	3.42	Miles		
				Org. enrichment/Low D.O.	Nonpoint/Point Source	Medium	3.42	Miles		
4	R	SANTA CLARA RIVER REACH 9 (BOUQUET CYN RD TO ABY LANG GANG)	403.51	High Coliform Count	Nonpoint/Point Source	Low	12.69	Miles		
4	R	SANTA MONICA CANYON	405.13	High Coliform Count	Nonpoint Source	High	2.9	Miles		
				Lead	Nonpoint Source	Low	2.9	Miles		
4	R	SEPULVEDA CANYON	405.13	Ammonia	Nonpoint Source	Low	6.8	Miles		
				High Coliform Count	Nonpoint Source	High	6.8	Miles		
				Lead	Nonpoint Source	Low	6.8	Miles		
4	R	STOKES CREEK	404.22	High Coliform Count	Nonpoint Source	High	5.33	Miles		
4	R	TAPO CANYON REACH 1	403.67	Boron	Nonpoint/Point Source	Medium	5.23	Miles		
				Chloride	Nonpoint/Point Source	Medium	5.23	Miles	0197	1200
				Sulfates	Nonpoint/Point Source	Medium	5.23	Miles		
				Total Dissolved Solids	Nonpoint/Point Source	Medium	5.23	Miles		

\* Comments presented under each pollutant/stressor are not required under Clean Water Act Section 303(d). In a few cases, they provide necessary information.

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# **ATTACHMENT 69**



STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO  
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

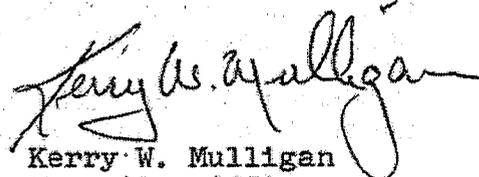
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968



Kerry W. Mulligan  
Executive Officer  
State Water Resources  
Control Board

# Other Documents

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

# **ATTACHMENT 70**



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**DRAFT TASK 2B-2 REPORT – ASSESSMENT OF  
ALTERNATIVES FOR COMPLIANCE OPTIONS USING THE  
GROUNDWATER/SURFACE WATER INTERACTION MODEL**

Upper Santa Clara River Chloride TMDL Collaborative Process  
Upper Santa Clara River Valley  
Los Angeles and Ventura Counties, California

*Prepared for:*

**The Santa Clarita Valley Sanitation District of Los Angeles County**  
1955 Workman Mill Road  
Whittier, CA 90601

*Prepared by:*

**Geomatrix Consultants, Inc.**  
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(303) 534-8722

June 17, 2008

Project No. 10354.000.0

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**Geomatrix**

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## EXECUTIVE SUMMARY

This report identifies potential alternatives to achieve compliance with various water quality objectives (WQOs) within the Upper Santa Clara River (USCR) watershed and describes results of the assessment of those alternatives utilizing the numerical Groundwater/Surface Water Interaction Model (the GSWI model, or GSWIM). This work was performed as part of the Groundwater/Surface Water Interaction Model Study that is being jointly conducted by the Santa Clarita Valley Sanitation District (SCVSD, or the District) and the Los Angeles Regional Water Quality Control Board (Regional Board) as part of the USCR Chloride Total Maximum Daily Load (TMDL). This report also satisfies the requirements of Task 9 of the USCR Chloride TMDL Implementation Schedule requiring the SCVSD to develop a report on conceptual compliance measures to meet different chloride WQOs and final waste load allocations.

This report presents the potential compliance options to the chloride TMDL issues in the SCR and the results of the assessment of those alternatives, utilizing the GSWIM. The GSWI numerical model was developed by CH2M Hill and HydroGeoLogic, Inc (HGL) (2008) for a portion of the USCR watershed to evaluate fate and transport of chloride in surface water and groundwater basins underlying Reaches 4, 5, 6 and 7 (as designated by the Regional Board) of the SCR in accordance with the chloride TMDL collaborative process. The compliance alternatives evaluated as part of this effort include:

- 1) Advanced Treatment and Brine Disposal;
- 2) Minimal Advanced Treatment / Zero Discharge and Secondary Effluent Pipeline and Outfall;
- 3) Alternate Water Reclamation Plant (WRP) Discharge Location; and
- 4) Alternative Water Resource Management (AWRM)

As required in Task 9 of the Chloride TMDL process, the report evaluated these potential chloride control measures in terms of complying with existing and revised WQOs. The Advanced Treatment and Brine Disposal alternative, the Minimal Advanced Treatment / Zero Discharge and Secondary Effluent Pipeline and Outfall alternatives, and the Alternate WRP

Discharge Location alternative were evaluated for compliance with the existing WQOs. The results of this evaluation are summarized in Table E-1.

As shown on the table, none of the alternatives were predicted to achieve compliance with the 100 mg/L WQO for chloride at all times and at all locations. Because compliance with the existing WQO was not possible at all times and all locations in the SCR receiving waters, revisions to these WQOs were considered that would still be protective of all beneficial uses in Reaches 4B, 5 and 6. An AWRM alternative was jointly developed by various TMDL stakeholders, which will achieve compliance with proposed Site-Specific Objectives (SSOs) and provide for a diverse mix of water quality and water supply benefits. The key elements of the AWRM alternative include:

- implementing measures to reduce chloride in the recycled water from the District's WRPs;
- constructing advanced treatment for a portion of the recycled water from the District's Valencia WRP;
- procuring local groundwater for release to the SCR as supplemental water during drought periods;
- constructing water supply facilities in Ventura County to facilitate export of existing salts in groundwater;
- providing alternative water supply to protect salt-sensitive agricultural beneficial uses of the SCR;
- supporting the expansion of recycled water uses within the Santa Clarita Valley; and
- revising surface water and groundwater WQOs to support all of these elements.

The AWRM alternative provides for a regional watershed solution for chloride as an alternative to compliance with the existing 100 mg/L WQO, considers the use of SSOs and water resource management facilities that would allow for the full protection of all beneficial uses, while simultaneously providing a more feasible compliance solution, maintains a chloride balance in the USCR Watershed, and provides salt export and water supply benefits to Los Angeles and

Ventura County stakeholders. The proposed SSOs are summarized on Figures E-1 and E-2. The results of the evaluation for the AWRM compliance with proposed SSOs are summarized in Table E-2. As shown on the table, the GWSWIM analysis predicts that the AWRM alternative provides for compliance with the proposed SSOs for chloride under both drought and non-drought conditions.

**TABLE E-1**  
**SUMMARY OF COMPLIANCE ALTERNATIVE ATTAINMENT FREQUENCIES**  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

Compliance Alternative	Surface Water at Blue Cut		East Piru Basin Groundwater			West Piru Basin Groundwater		
	Surface Water WQO	LRE Threshold	Surface Water WQO	LRE Threshold	Groundwater WQO	Surface Water WQO	LRE Threshold	Groundwater WQO
	100 mg/L	120 mg/L	100 mg/L	120 mg/L	200 mg/L	100 mg/L	120 mg/L	100 mg/L
Scenario 1g_UV	41.2	77.8	43.5	76.3	100.0	100.0	100.0	100.0
Advanced Treatment - 1a	66.8	99.0	55.0	99.6	100.0	100.0	100.0	100.0
Advanced Treatment - 2a	66.4	100.0	54.2	99.6	100.0	100.0	100.0	100.0
Advanced Treatment - 3a	66.1	100.0	55.3	99.8	100.0	100.0	100.0	100.0
Minimal Discharge	65.5	87.8	62.1	98.8	100.0	100.0	100.0	100.0
Zero Discharge	63.8	80.7	68.3	97.5	100.0	100.0	100.0	100.0
Alternate WRP Location	48.9	76.0	46.1	80.5	100.0	100.0	100.0	100.0

Note: Value represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

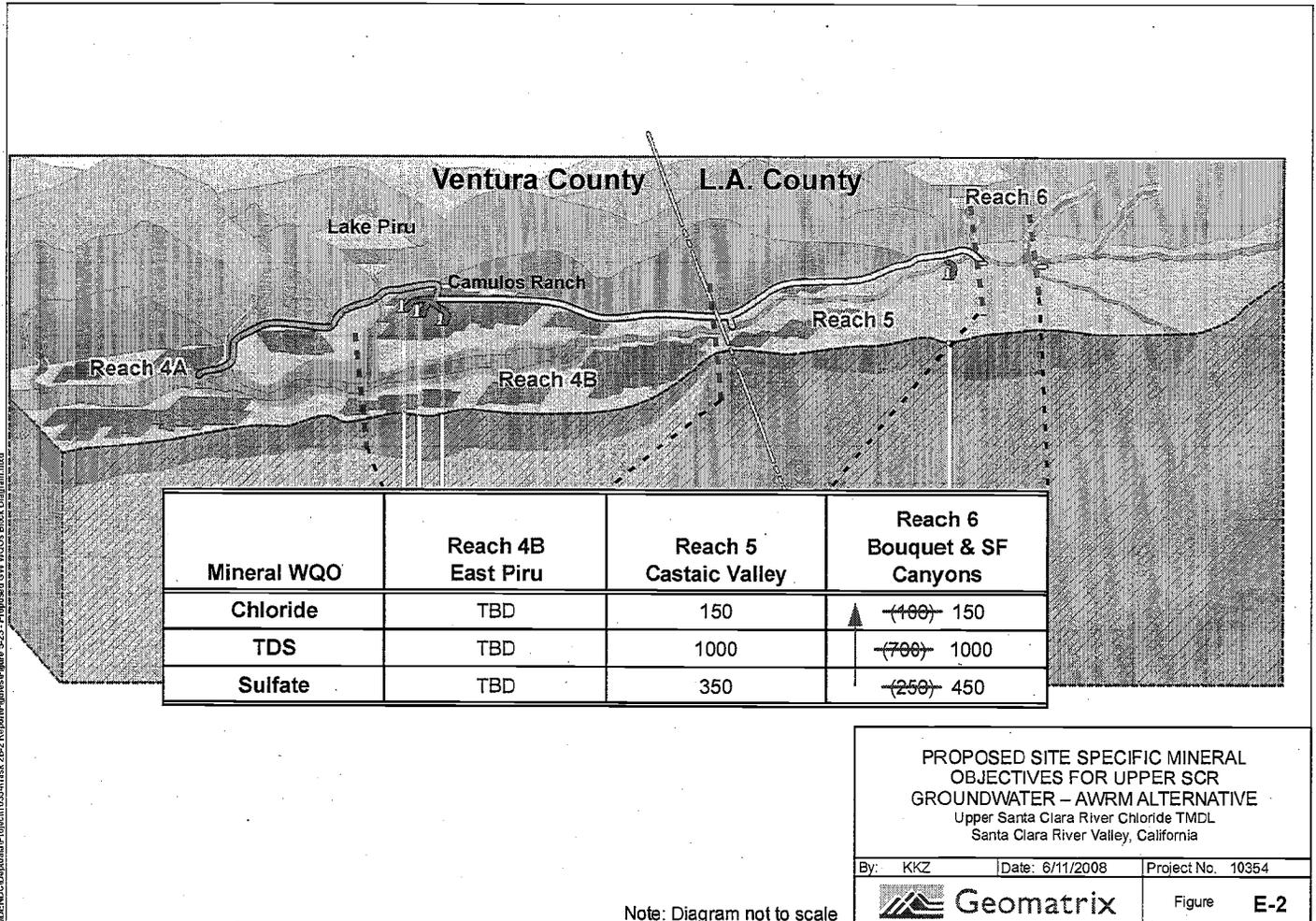
TABLE E-2

SUMMARY OF SITE SPECIFIC OBJECTIVE ATTAINMENT FREQUENCIES FOR THE AWRM ALTERNATIVE  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

Compliance Alternative	Reach 4B (at Blue Cut)		Reach 5		Reach 6	
	Surface Water WQO During Non-Drought 117 mg/L	Surface Water WQO During Drought 130 mg/L	Surface Water WQO 150 mg/L	Groundwater WQO 150 mg/L	Surface Water WQO 150 mg/L	Groundwater WQO 150 mg/L
AWRM Alternative	99.9	99.2	98.3-99.7	100.0	98.6 - 99.7	100.0

Note: Value represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration





W:\ENR\Delgado\Project\10354\Del\_202\Report\Figures\Figure 5-23 - Proposed GW WQOs Block Diagram.mxd

## 1.0 INTRODUCTION

This report identifies potential alternatives to achieve compliance with various water quality objectives (WQOs) within the Upper Santa Clara River (USCR) watershed and describes results of the assessment of those alternatives utilizing the numerical Groundwater/Surface Water Interaction Model (the GSWI model, or GSWIM). This work was performed as part of the Groundwater/Surface Water Interaction Model Study that is being jointly conducted by the Santa Clarita Valley Sanitation District (SCVSD, or the District) and the Los Angeles Regional Water Quality Control Board (Regional Board) as part of the USCR Chloride Total Maximum Daily Load (TMDL). This report also satisfies the requirements of Task 9 of the USCR Chloride TMDL Implementation Schedule requiring the SCVSD to develop a report on conceptual compliance measures to meet different chloride WQOs and final waste load allocations.

### 1.1 UPPER SANTA CLARA RIVER CHLORIDE TMDL BACKGROUND

The Regional Board adopted the USCR Chloride TMDL in 2002, establishing chloride waste-load allocations for the SCVSD's Valencia and Saugus water reclamation plants (WRPs) at 100 mg/L. Amendments to the TMDL in 2004 and 2006 established a phased TMDL approach, which allowed for the development of several scientific studies and potential site-specific objectives (SSOs) for chloride that the Regional Board may consider as part of any revisions to the existing 100 mg/L WQO. The TMDL implementation schedule specified, among other requirements, that special scientific studies be conducted to: a) evaluate the appropriate chloride threshold for the protection of sensitive agriculture; b) evaluate the appropriate chloride threshold for the protection of endangered species; and c) develop a groundwater/surface water interaction model to evaluate the impacts of chloride loading from all sources on water quality. The results of these studies would then become the technical basis by which potential SSOs for chloride could be developed for Regional Board consideration. The TMDL required development of these studies in a collaborative process through Technical Working Groups (TWGs) to ensure substantial agreement between the Regional Board staff, SCVSD staff, and other stakeholders, regarding the scientific and technical basis for establishing WQOs for chloride. Each of the major studies conducted as part of the TMDL and their current status are summarized as follows.

*Threatened and Endangered Species Chloride Threshold Study (T&Es Study)* – The T&Es Study was completed in November 2007 and determined that the 1988 United States

Environmental Protection Agency ambient water quality criteria for chloride for the protection of aquatic life (230 mg/L as chronic and 860 mg/L as acute) are protective of locally important T&Es (Advent-Environ, 2007). Therefore, the chloride threshold for the protection of locally important T&Es was found to be considerably higher than the threshold range for the protection of salt-sensitive agriculture.

*Agricultural Chloride Threshold Study (Ag Study)* - The Ag Study was a two-part study, with a Literature Review and Evaluation (LRE) completed in September 2005 (CH2M Hill, 2005), and an evaluation of the appropriate averaging period completed in January 2008 (Newfields, 2008). The Ag Study determined that the appropriate chloride threshold for salt-sensitive agriculture (avocados, strawberries, and nursery crops) grown in the USCR watershed is a guideline chloride concentration ranging between 100 and 117 mg/L, with an averaging period for chloride concentrations of approximately 3 months.

*Groundwater – Surface Water Interaction Model (GSWIM) Study* – The GSWIM Study developed a calibrated numerical model that was completed in March 2008 (CH2M Hill-HydroGeoLogic, Inc [HGL], 2008, Geomatrix 2008), to evaluate the impact of WRP effluent discharges to the river on downstream surface water and groundwater in the Los Angeles and Ventura County portion of the SCR watershed. This Report presents ongoing results from application of the GSWIM to evaluate various alternatives to comply with the existing WQOs and potential SSOs in consideration. One of the alternatives described in this Report is the Alternative Water Resources Management (AWRM) Program (Section 5.0), which represents a basin-wide set of options.

*Site Specific Objectives (SSO) and Anti Degradation Analysis (ADA) Study* – The SSO and ADA Study is currently being developed to provide the technical and regulatory basis for the Regional Board to consider potential SSOs that support the AWRM Program, as discussed in more detail below. As part of the SSO effort, a white paper on the agricultural beneficial uses in Reaches 5 and 6 of the USCR was developed in September 2007 (SCVSD, 2007), which assessed whether salt-sensitive agriculture was an existing or potential beneficial use. The white paper concluded that salt-sensitive agriculture was not an existing or potential beneficial use for surface water or underlying groundwater that could be impacted by surface water in Reaches 5 and 6. Since salt-sensitive agriculture was not an existing or potential beneficial use for the surface waters or underlying groundwater that could be impacted by surface water in

these reaches, SSOs higher than the Ag Study threshold range of 100-117 mg/L are potentially possible, and are being considered as part of the AWRM Program (Section 5.0).

## 1.2 GSWIM BACKGROUND

The GSWI numerical model was developed by CH2M Hill and HGL for a portion of the USCR watershed to evaluate fate and transport of chloride in surface water and groundwater basins underlying Reaches 4, 5, 6 and 7 (as designated by the Regional Board) of the SCR in accordance with the chloride TMDL collaborative process. The GSWI model was developed as a tool to improve the understanding of the interaction between surface water and groundwater and the linkage between surface-water quality and groundwater quality with respect to chloride. The GSWIM study area is shown on Figure 1-1. The development and calibration of GSWIM is documented in the Task 2B-1 Report (CH2M Hill-HGL, 2008). GSWIM has been used by the CH2M Hill-HGL team and by Geomatrix to assess the potential relationships between chloride loading from recycled water discharges at SCVSD's Valencia and Saugus WRPs and the downstream groundwater and surface water environments for various future scenarios under a variety of future hydrology, land use, and water use assumptions developed as part of the USCR Chloride TMDL Collaborative Process by the GSWIM Study TWG consisting of the SCVSD, the Regional Board and stakeholders from both Los Angeles and Ventura County.

These future scenarios focused on identifying the effects of individual water management and treatment options on chloride levels in the surface and subsurface flow systems, including:

- Various levels of use of recycled water from the WRPs in the East Subbasin.
- Removal of residential self-regenerating water softeners (SRWS), which contribute chloride to the WRP recycled water.
- Conversion of the current bleach-based disinfection facilities, which contribute chloride to the WRP recycled water, to Ultra-Violet Light Disinfection (UV) technology at the WRPs.
- Application of advanced treatment through use of Micro-Filtration (MF) and Reverse Osmosis (RO) treatment technologies.

The results of the GSWIM analysis for these future scenarios are documented in the Task 2B-1 Report (CH2M Hill-HGL, 2008) and the Supplement to the Task 2B-1 Report (Geomatrix,

2008). This Task 2B-2 Report describes additional compliance scenarios/alternatives that involve a broader range and mix of water management options that were developed to assess overall compliance with existing WQOs and proposed SSOs for the SCR watershed and includes the development of the AWRM option described in Section 5.0.

### **1.3 PREVIOUS GSWIM RESULTS**

The future scenario GSWIM simulations reported by CH2M Hill-HGL (2008) and Geomatrix (2008) represent potential hydrology, land use, and water use conditions during calendar years 2007 through 2030 developed collaboratively with the GSWIM Study TWG, based on historical hydrologic years 1975 through 1998. Land use build-out proceeded from 2005 conditions to estimated build-out conditions projected in 2027 which were based on the Santa Clarita Valley Area Plan, the City of Santa Clarita General Plan, the Newhall Ranch Specific Plan, the City of Fillmore Plan and the 2007 cropping data for Ventura County (CH2M Hill-HGL, 2008). Imported water rates and distribution were established for these simulations based on these future build-out plans as well as plans for increased water reuse (Kennedy/Jenks Consultants, 2002; Forma, 2003). Table 1-1 summarizes the scenario set evaluated as part of the GSWIM Study, which includes combinations of high, intermediate and low reuse of recycled water from the Valencia WRP with various levels of advanced treatment (MF/RO) or SRWS removal rates to control the chloride levels in the recycled water discharge. With respect to compliance with the existing 100 mg/L WQO and LRE guidelines of 100-120 mg/L for the SCR, results from the simulations suggested that:

- None of the scenarios simulate chloride concentrations less than the existing WQO of 100 mg/L at all times and locations in Reaches 4B, 5 and 6. Simulated daily chloride concentrations were equal to or less than the existing WQO during approximately 16 to 66 percent of the future simulation period at the top of Reach 4B at Blue Cut.
- Only Scenarios 2 a and 3a (medium and low future recycled water reuse with advanced treatment using MF/RO at the WRPs to achieve 100 mg/L in the recycled water discharge) produced surface-water chloride concentrations less than the upper bound of the avocado threshold of 120 mg/L at all times at the top of Reach 4B of the SCR at Blue Cut. The remaining scenarios produced surface-water chloride concentrations that were less than 120 mg/L during approximately 28 to 99 percent of the future simulation period.

- All of the scenarios predicted chloride concentrations in groundwater that consistently met the existing WQO of 200 mg/L in groundwater east of Piru Creek. None of the simulations predicted chloride concentrations less than the lower (100 mg/L) or upper (120 mg/L) avocado thresholds at all times during the period, with attainment ranging from 0 percent of the future simulation period for the lower threshold up to 99 percent for the upper threshold.
- All simulations predicted chloride concentrations in groundwater that consistently met the existing 100 mg/L WQO in groundwater west of the Piru Creek confluence.

Other significant observations from these future scenario simulations include:

- Simulated chloride concentrations at Blue Cut were generally related to concentrations of recycled water discharges to the SCR from the Saugus and Valencia WRPs, as modeled by the various MF-RO and SWRS removal scenarios.
- Additional sources of chloride loading, above the loading from the WRP discharges, exist between the Valencia WRP and Blue Cut, with concentrations at Blue Cut being higher than the concentration of the discharge of Valencia WRP recycled water during periods of drought. This condition is also noted for the calibration simulation but is more pronounced in the some of the future scenario simulations.
- The scenarios simulating greater reuse of recycled water (and subsequent lower WRP discharges to the SCR) show increased chloride concentration in the groundwater in the Piru Subbasin and in surface-water at Blue Cut during drought periods, as compared to scenarios simulating limited reuse of recycled water. This is due to less WRP discharge to the SCR (which has a diluting effect during drought periods to other sources of chlorides between the WRPs and Blue Cut) as well as more outdoor use of high chloride water for irrigation, which is subject to evaporation and subsequent return of more concentrated water to the SCR as runoff and base flow.

#### **1.4 ALTERNATIVES FOR COMPLIANCE OPTIONS**

This report assesses a range of options for achieving compliance with various chloride WQOs in both the East Subbasin and the Piru Basin, including the AWRM option, which involved other local stakeholders and agencies, who jointly developed a water management option

during drought and non-drought conditions. Four general alternatives, or strategies, have been identified and assessed in terms of the likelihood of achieving compliance with WQOs and proposed SSOs, including:

- **Advanced Treatment and Brine Disposal** – this alternative consists of constructing and operating MF/RO treatment facilities to remove chloride from the recycled water produced at the Valencia and Saugus WRPs. Sufficient advanced treatment capacity would be required to reduce all chloride concentrations in WRP recycled water to below the existing WQO of 100 mg/L for the SCR downstream of the discharges (Reaches 5 and 6). MF/RO treatment would result in a significant amount of waste brine that would require disposal, most likely through a dedicated brine conveyance pipeline from the WRPs to a new Pacific Ocean outfall in Ventura County.
- **Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall** – this alternative consists of constructing and operating MF/RO treatment facilities for a limited amount of WRP recycled water. The facilities would be sized to produce sufficient recycled water to meet the existing WQO of 100 mg/L, for discharge to the SCR to maintain river habitat.<sup>1</sup> The balance of the WRP recycled water would be conveyed to the Pacific Ocean in Ventura County via a dedicated pipeline and ocean outfall. The objective of this alternative is to export the chlorides in the WRP recycled water exceeding the existing WQOs directly to the ocean rather than discharging them locally to the SCR.
- **Alternate WRP Discharge Location** – this alternative consists of relocating the Valencia WRP recycled water discharge location upstream to the upper extent of Reach 7 of the SCR near the United States Geological Survey (USGS) gauging station at Lang (e.g. the Lang Gauge). The objective of this alternative is to move the discharge farther away from downstream salt-sensitive agricultural beneficial uses in Ventura County, and utilize the potential assimilative capacity in upgradient surface water and groundwater, to minimize impacts in Ventura County from the chloride in the WRP recycled water.
- **Alternative Water Resource Management** – this alternative consists of working with the local water supply, agricultural, and development stakeholders in Los Angeles and

Ventura Counties on a regional watershed solution to help achieve compliance with the USCR Chloride TMDL. The objective of this alternative is to identify the best set of options for compliance that results in the maximum net benefit for all water users along the river, while protecting the salt sensitive agricultural beneficial uses of the SCR in Ventura County.

The descriptions and assessments of compliance alternatives and the AWRM alternative provided in this Report are intended to fulfill a portion of the TMDL Task 9 requirements for the USCR Chloride TMDL which requires that the SCVSD:

*Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final waste load allocations. County Sanitation Districts of Los Angeles County (CSDLAC) shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride water quality objectives and final waste load allocations.*

Information on the costs associated with the compliance alternatives identified in this report is discussed in a separate report submitted by the SCVSD (2008).

A variety of future scenarios were developed and simulated with GSWIM to assess the potential for the above alternatives to achieve compliance with the WQOs, as summarized on Table 1-2. The results of these scenarios are discussed in Sections 2 through 5 of this report.

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<sup>1</sup> The minimum amount of recycled water discharge to the SCR to maintain river habitat has not been determined. For purposes of this study, a minimum discharge from each WRP is assumed based on information in the SCVSD's 2015 Santa Clarita Valley Joint Sewerage System Facilities Plan and Environmental Impact Report.

## 2.0 ADVANCED TREATMENT AND BRINE DISPOSAL

The Advanced Treatment and Brine Disposal alternative assumes that SCVSD would install and operate MF/RO treatment facilities at the Valencia and Saugus WRPs. Under this alternative, all flows to the WRPs would be subject to MF/RO treatment and/or blending to achieve a relatively constant recycled water discharge with a chloride concentration of 100 mg/L or lower. Operation of MF/RO treatment facilities would result in a significant stream of waste brine, which would require disposal. Given the amount of brine flow produced from MF-RO operation required to comply with the existing 100 mg/L WQO for chloride, a dedicated 43-mile brine conveyance pipeline from the WRPs to a new ocean outfall in Ventura County is required for this compliance alternative.

Model simulations for this alternative were developed assuming that WRP recycled water discharge would have a constant concentration of 100 mg/L. These simulations were performed as part of Task 2B-1 assessments, and results have been reported in detail in CH2M Hill-HGL, 2008, and Geomatrix, 2008.

Figure 2-1 presents model predicted chloride concentrations in the SCR at Blue Cut for the three simulations performed assuming a chloride concentration of 100 mg/L for all WRP discharges (labeled 1a, 2a, and 3a in Task 2B-1, assuming varying levels of water reuse over time). Also included on the graph are results from Task 2B-1 Scenario 1g\_UV, which represents predicted conditions with no treatment but with other changes that are considered likely to occur, including use of UV disinfection technology, full development of recycled water reuse, and a high level of SRWS removals in the next few years. Results of Scenario 1g\_UV are provided for comparison and as a means to assess potential improvement in achieving WQOs from application of advanced treatment.

Figure 2-2 shows simulated frequencies of WQO attainment from the "a" series scenarios and Scenario 1g\_UV for the SCR at Blue Cut and in groundwater within the Piru Basin. In the SCR at Blue Cut, attainment frequencies of the existing 100 mg/L chloride WQO for the Advanced Treatment and Brine Disposal alternatives range from approximately 65.8% (3a) to 66.4% (1a and 2a), versus 41.2% for Scenario 1g\_UV. However, the predicted improvement in attainment from advanced treatment is generally drought-dependent. As shown on Figure 2-1, model predictions indicate that the existing chloride WQO of 100 mg/L are consistently achieved during early periods in the simulation (i.e. 2007 through 2019, simulating hydrology based on 1975 through 1987). However, predicted concentrations in the SCR at Blue Cut are

consistently above the 100 mg/L WQO for an extended period generally beginning in 2019 and extending through approximately 2027 (hydrology based on 1987 through 1995, which includes drought conditions in the later 1980s and early 1990s). Maximum predicted chloride concentrations occur at the peak of the simulated drought in 2022 and 2023, and range from approximately 115 mg/L (3a) to 121 mg/L (1a).

Predicted chloride concentrations in the SCR at Blue Cut that are higher than those in WRP recycled water discharge are generally the result of other sources of salt loading to the river during drought periods. These include accumulation of chlorides at the surface due to evapoconcentration of outdoor irrigation (i.e. moisture discharged due to evapotranspiration results in increased concentrations of the chloride remaining in the near-surface system) with runoff, infiltration, and subsequent base flow of these elevated concentrated chlorides into the SCR and other ephemeral tributaries near Blue Cut.

CH2M Hill-HGL performed supplemental simulations to assess the general influence of WRP discharges on chloride mass loading in the SCR and downstream groundwater (CH2M Hill-HGL, 2008). Results from these simulations indicated that 10 to 15% of flows within the SCR at Blue Cut are derived from sources other than WRP discharges (i.e. groundwater inflows and/or surface water and tributary runoff). Geomatrix also performed a variety of simulations with GSWIM to determine how well the model was simulating all physical and chemical mechanisms contributing salt load to the SCR near Blue Cut. One significant simulation involved allowing salts to evaporate numerically with evaporating water. The results of this simulation indicated that the outdoor applied water concentrations did not increase due to evapoconcentration, instead removing vast amounts of chlorides that would otherwise remain in the system. These results were indicative of the large amount of chloride mass that is retained at the surface when appropriately simulating evapoconcentration effects.

For chloride concentrations in groundwater east of Piru Creek in the Piru Basin, both Scenario 1g\_UV and the Advanced Treatment and Brine Disposal alternatives predicted that the current WQO of 200 mg/L would be achieved 100% of the simulated time period. The advanced treatment options were predicted to improve general attainment of the stricter objectives for salt-sensitive agriculture, achieving groundwater concentrations less than 100 mg/L approximately 55% of the simulated period and achieving 120 mg/L approximately 99% of the simulated period. This represents improved conditions over those predicted in Scenario 1g\_UV (100 mg/L achieved 44% and 120 mg/L achieved 76% of the simulated period). For

groundwater chloride concentrations west of Piru Creek, both Scenario 1g\_UV and the Advanced Treatment and Brine Disposal alternatives predicted that the current WQO of 100 mg/L would be achieved 100% of the simulated time period.

While implementation of Advanced Treatment and Brine Disposal alternative to achieve 100 mg/L in the recycled water discharge to the river resulted in generally improved attainment of the existing 100 mg/L chloride WQO in the receiving water, the simulations did not result in full attainment of the 100 mg/L WQO for the SCR at Blue Cut at all times and in all locations of the receiving water, due to the impacts from other sources of chloride to the river. In addition, the application of MF/RO facilities at both the Valencia and Saugus WRPs to achieve 100 mg/L in its recycled water discharges to the river would entail expensive upgrades in terms of both capital facilities and significantly increased long-term operating and maintenance costs, and energy usage. Furthermore, a brine conveyance pipeline, extending approximately 43 miles from the WRPs to the ocean and ocean outfall would have to be built for the disposal of the highly concentrated wastewater brines generated from the RO facilities. Such a pipeline would be significantly more expensive than other contemplated alternatives and would require significant environmental review, planning, design and construction through an extended area, including development across both public and private right-of-ways through numerous jurisdictions.

### 3.0 MINIMAL ADVANCED TREATMENT AND SECONDARY PIPELINE AND OUTFALL

An option that would reduce and/or eliminate the amount of advanced treatment capacity needed to comply with the existing 100 mg/L WQO would be to discharge all or most of the WRP recycled water directly to the ocean through the construction of a secondary effluent conveyance pipeline and ocean outfall in Ventura County. This option would achieve the greatest export of chloride load from the WRPs out of the SCR watershed since most, if not all of the recycled water would be discharged into an ocean disposal pipeline. The diversion of recycled water into an ocean disposal pipeline would also serve to dilute and dispose of any highly concentrated wastewater brine waste from the RO processes necessary to maintain minimum flows for habitat in the river that meet the existing 100 mg/L WQO. Two future alternatives were developed to assess this general option:

- **Zero Discharge Alternative:** Conveyance of all recycled water discharges from the Valencia and Saugus WRPs to the Pacific Ocean off the Ventura County coast via a new secondary effluent conveyance pipeline and ocean outfall, resulting in a simulation of zero discharge from the WRPs to the SCR within the GSWIM domain. This option would reduce the chloride load from recycled water discharges to the river to zero.
- **Minimal Discharge Alternative:** Limit discharges to 4.6 million gallons per day (MGD) from the Valencia WRP and 5.0 MGD from the Saugus WRP,<sup>2</sup> and convey the balance of WRP recycled water discharges to the Pacific Ocean off the Ventura County coast via a new secondary effluent conveyance pipeline and ocean outfall. It is assumed that the minimal discharges from the WRPs to the SCR require compliance with the existing WQO of 100 mg/L and therefore, MF/RO treatment on a portion of the recycled water is necessary to assure that the WRP discharges comply with the 100 mg/L WQO. These discharges are assumed to have chloride concentrations at a constant value of 100 mg/L.

Both model simulations were based on assumptions used in model Scenario 1g\_UV, with only modifications to the WRP discharges as described above. Figure 3-1 presents a graph illustrating the predicted discharges from the Valencia WRP under Scenario 1g\_UV versus the reduction to 4.6 MGD. Discharges from the Saugus WRP were predicted in Scenario 1g\_UV

<sup>2</sup> Estimates for minimum discharge required from each WRP are based on information in the SCVSD's 2015 Santa Clarita Valley Joint Sewerage System Facilities Plan and Environmental Impact Report.

to average approximately 5.7 MGD with minor seasonal fluctuations based on the overall plant capacity. These discharges were modified to a constant 5.0 MGD for the minimal discharge option.

Figure 3-2 presents predicted chloride concentrations in the SCR at Blue Cut from the Zero Discharge alternative, Minimal Discharge alternative, and Scenario 1g\_UV simulations, while attainment frequencies for WQOs predicted by each simulation are shown on Figure 3-3. In the SCR at Blue Cut, the chloride WQO of 100 mg/L was predicted to be achieved approximately 63.8% of the simulated period for the Zero Discharge alternative and 65.5% for the Minimal Discharge alternative. These predicted attainment frequencies are comparable to those predicted for the Advanced Treatment and Brine Disposal alternative discussed in Section 2.0, with non-attainment of the 100 mg/L WQO in the receiving water at Blue Cut occurring during the predicted drought situation. Further, overall flow in the SCR at Blue Cut is predicted to decline significantly under the Zero and Minimal Discharge alternatives, as illustrated in Figure 3-4.

The drought related increases in predicted chloride concentrations in the SCR at Blue Cut are generally greater in the Zero and Minimal Discharge alternatives. Maximum predicted concentrations occur at the peak of the simulated drought in 2022 and 2023, with a maximum predicted chloride concentration of approximately 148 mg/L for the Minimal Discharge alternative and approximately 206 mg/L for the Zero Discharge alternative. As before, decreasing WRP discharge and chloride loading results in the increased influence of other chloride loading sources and mechanisms on predicted chloride concentrations in Reach 4B during drought periods.

For chloride concentrations in groundwater east of Piru Creek in the Piru Basin, both Scenario 1g\_UV and the Zero and Minimal Discharge alternatives predicted that the current WQO of 200 mg/L would be achieved 100% of the simulated time period. The Zero and Minimal Discharge alternatives were predicted to improve general attainment of the stricter chloride objectives for salt-sensitive agriculture, achieving groundwater concentrations less than 100 mg/L approximately 62 and 68% of the simulated period, respectively versus 43% for Scenario 1g\_UV. The alternatives were predicted to achieve 120 mg/L approximately 98% (Zero Discharge) and 99% (Minimal Discharge) of the simulated period. This represents improved conditions over those predicted in Scenario 1g\_UV (100 mg/L achieved 44% and 120 mg/L achieved 76% of the simulated period). For chloride concentrations in groundwater west of

Piru Creek, both Scenario 1g\_UV and the Zero and Minimal Discharge alternatives predicted that the current WQO of 100 mg/L would be achieved 100% of the simulated time period.

As with the Advanced Treatment and Brine Disposal alternative discussed in Section 2.0, while reducing the total WRP recycled water discharge to the river is predicted to improve attainment of 100 mg/L WQO in the receiving water as compared with Scenario 1g\_UV, the 100 mg/L WQO is not met at all times and all locations in the receiving waters, even if WRP discharges to the river ceased to exist (Zero Discharge) or were reduced only to those levels necessary to maintain habitat (9.6 MGD). Predicted chloride concentrations were also typically worst during drought periods. These results indicate that other sources and/or mechanisms of chloride loading are responsible for non-attainment of the existing WQO for the Zero and Minimal Discharge alternatives contemplated in this section.

#### 4.0 ALTERNATE WRP DISCHARGE LOCATION

A third alternative to the scenarios discussed in Sections 2.0 and 3.0, would be to move the Valencia WRP discharge location upstream from its current location in Reach 5 of the SCR, to the beginning of Reach 7 of the SCR, near the USGS gauging station at Lang. This alternative would attempt to make use of potential additional assimilative capacity for chloride in areas that are currently far removed from salt-sensitive agricultural beneficial uses of SCR and groundwater supply. A simulation based on Scenario 1g\_UV was developed that moved the discharge location from the current Valencia WRP outfall to an upstream location at the beginning of Reach 7. The simulated discharge location is shown on Figure 4-1. Discharge from the Saugus WRP was not changed to provide flows to support habitat in Reach 6 of the SCR.

Figure 4-2 presents predicted chloride concentrations at Blue Cut from Alternate WRP Discharge Location alternative and Scenario 1g\_UV simulations, while attainment frequencies for WQOs predicted by each simulation are shown on Figure 4-3. In the SCR at Blue Cut, the chloride WQO of 100 mg/L was predicted to be achieved approximately 48.9% of the simulated period, compared to 43% for Scenario 1g\_UV. Maximum predicted chloride concentrations in the SCR at Blue Cut are comparable for both simulations, with a maximum of 176 mg/L predicted in the Alternate WRP Discharge Location alternative versus 160 mg/L for Scenario 1g\_UV. In addition, overall surface flows at Blue Cut are predicted to decline as shown on Figure 4-4, as a result of moving the Valencia WRP discharge location to Reach 7 of the SCR.

As expected, groundwater concentrations within the East Subbasin are predicted to increase significantly as a result of increased salt loading from the Valencia WRP discharge in Reach 7. Figures 4-5 and 4-6 show predicted chloride concentrations in groundwater at the Newhall County Water District's (NCWD) Pinetree well and Valencia Water Company's well Q2, which represent the upper and lower reaches of the alluvial aquifer underlying Reach 7 of the SCR. As shown on the graphs, maximum predicted concentrations are almost double for the Alternate WRP Discharge Location alternative over Scenario 1g\_UV.

For chloride concentrations in groundwater east of Piru Creek in the Piru Basin, both Scenario 1g\_UV and the Alternate WRP Discharge Location alternative predicted that the current WQO of 200 mg/L would be achieved 100% of the simulated time period. The Alternate WRP Discharge Location alternative was predicted to slightly improve general attainment of the

stricter objectives for salt-sensitive agriculture, achieving groundwater concentrations less than 100 mg/L approximately 46% of the simulated period and 120 mg/L approximately 80% of the period. This represents a small improvement over those predicted in Scenario 1g\_UV (100 mg/L achieved 44% and 120 mg/L achieved 76% of the simulated period). For chloride concentrations in groundwater west of Piru Creek, both Scenario 1g\_UV and the Alternate WRP Discharge Location alternative predicted that the current WQO of 100 mg/L would be achieved 100% of the simulated time period.

Moving the discharge location of the current Valencia WRP outfall to the SCR, to the beginning of Reach 7 near the USGS Lang gauge did not result in significant improvement in attainment of chloride WQOs in receiving waters over Scenario 1g\_UV. This alternative involves the construction and operation of a conveyance pipeline and pumping facilities to relocate the Valencia WRP recycled water discharge approximately 16 miles upstream from the Valencia WRP to the USGS Lang gauge.

## 5.0 ALTERNATIVE WATER RESOURCE MANAGEMENT

Recognizing that the alternatives discussed in Sections 2.0 (Advanced Treatment and Brine Disposal), 3.0 (Minimal and/or Zero Discharge) and 4.0 (Alternate WRP Discharge Location) are not likely to achieve attainment of the existing 100 mg/L WQO at all times and all locations in the receiving water, a fourth alternative was developed that involves an alternative water resources management (AWRM) approach in conjunction with the development of SSOs, whereby the AWRM alternative was developed to achieve compliance with SSOs at all times and at all locations in the receiving water, with mitigation measures put in place to protect salt-sensitive agricultural beneficial uses and groundwater, when necessary. Therefore, the SCVSD and other stakeholders have jointly developed this regional watershed solution for chloride as an alternative to compliance with the existing 100 mg/L-WQO.

The following sections provide a description of the development and key aspects of the AWRM Program. Geomatrix worked with the TMDL stakeholders to develop individual simulations of various water management elements of the AWRM scenario and presented and discussed these results with the TMDL stakeholders on a weekly basis during the spring of 2008. The results of the GSWIM simulation of the final AWRM scenario are provided in Section 5.2.

### 5.1 ALTERNATIVE WATER RESOURCE MANAGEMENT DEVELOPMENT

Since November 2007, SCVSD, Ventura County Agricultural Water Quality Coalition (VCAWQC), United Water Conservation District (UWCD), and the Upper Basin Water Purveyors<sup>3</sup> have been working together to develop an AWRM Program for the USCR Chloride TMDL. As noted, the purpose of the AWRM Program is to develop a regional watershed solution for chloride as an alternative to compliance with the existing 100 mg/L WQO, recognizing that compliance with the existing 100 mg/L WQO at all times and all locations in the receiving water was not possible with the existing alternatives considered and would likely be a challenging and costly project, requiring many years to implement. The AWRM Program considers the use of SSOs and water resource management facilities that would allow for the full protection of all beneficial uses, while simultaneously providing a more feasible compliance solution, maintaining a chloride balance in the USCR Watershed, and providing salt export and water supply benefits to Ventura County stakeholders. Through this process, the SCVSD, VCAWQC, UWCD, and the Upper Basin Water Purveyors have come to a

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<sup>3</sup> Castaic Lake Water Agency, Valencia Water Company, Newhall County Water District, Los Angeles County Water Works District No. 36, and the Santa Clarita Water Division of the Castaic Lake Water Agency.

conceptual agreement on the key elements of the AWRM Program. Discussion of these specific elements of the AWRM Program is presented in the following sections.

Several key elements were developed as part of the AWRM Program, which when combined result in a regional watershed solution for the USCR Chloride TMDL that benefits all stakeholders within the watershed. The key elements were developed during the stakeholder process and form the basis for the AWRM Program. The elements represent feasible management options and decisions, and include:

- implementing measures to reduce chloride in the recycled water at the District's WRP discharges;
- constructing advanced treatment for a portion of the recycled water from the District's Valencia WRP;
- procuring supplemental water (i.e. local groundwater or surface water) for release to the SCR to enhance its assimilative capacity, improve water quality conditions and attain WQOs, when needed;
- constructing water supply facilities in Ventura County;
- providing alternative water supply when necessary, to protect salt-sensitive agricultural beneficial uses of the SCR;
- supporting the expansion of recycled water uses within the Santa Clarita Valley; and
- revising the surface water and groundwater WQOs to support all of these elements.

A conceptual schematic of the application of these elements is provided in Figure 5-1. The GSWIM was used to simulate these elements to examine the resultant effects on surface water and groundwater flow and chloride concentrations. The results of the GSWIM simulation are provided in Section 5.2. Details of each of these elements are as follows:

*Element No. 1: Reduction of Chloride Levels in WRP Recycled Water*

As part of the AWRM Program as well as any solution to the TMDL, the SCVSD will reduce the chloride levels in the recycled water discharged from the Valencia and Saugus WRPs. Reduction in recycled water chloride levels would be achieved through enhanced source control, specifically the removal of SRWSs, which are a significant source of chloride to the District's sanitary sewer collection system, and conversion of the current beach-based disinfection facilities (which contribute an additional 10 mg/L of chloride in recycled water at each WRP) to UV disinfection technology. Through removal of SRWS and conversion to UV disinfection technologies, the incremental chloride contribution from wastewater sources above the contribution from water supply can be reduced to a level of approximately 50 mg/L. This reduction in chloride will allow for the Valencia and Saugus WRPs to comply with revised WQOs under varying water supply chloride conditions<sup>4</sup>, and minimize the amount of advanced treatment required. As discussed below, revisions to the existing WQOs would be necessary to support this AWRM Program element.

*Element No. 2 Advanced Treatment at the District's Valencia WRP*

While removal of chloride loading through enhanced source control would help the Saugus and Valencia WRPs comply with revised WQOs a majority of the time, additional chloride reduction would still be necessary for compliance with downstream revised WQOs in Reach 4B, through the construction and operation of a 3 MGD advanced treatment facility using MF/RO treatment technologies at the Valencia WRP. These facilities would serve three purposes: (1) continuous removal of approximately 3,200 pounds per day<sup>5</sup> of chloride from the WRP recycled water; (2) reducing chloride levels in the SCR in Reach 4B, through conveyance and discharge of the high quality Valencia RO permeate water near the Los Angeles-Ventura County line, when necessary to achieve compliance with revised WQOs for this reach; and (3) providing a salt export and water supply benefit to Ventura County through delivery of the high quality Valencia RO permeate water to the Ventura County water supply facilities. These facilities and the salt export and water supply benefits associated with these facilities are discussed in greater detail below.

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<sup>4</sup> Imported water supply chloride concentrations have often exceeded 100 mg/L during drought conditions, due to the influence of poor quality imported water supplies delivered from the State Water Project stored at the Castaic Lake Reservoir.

In addition to the advanced treatment facilities, construction of brine disposal facilities to dispose of brine waste from the RO treatment process via deep well injection would be required. Unlike the other RO options that assume a higher volume of water treated using RO and thus a more significant brine waste stream, the use of deep well injection for the AWRM option represents a more plausible and sustainable brine disposal option, based on a smaller advanced treatment facility. The brine disposal for a 3MGD MF/RO facility (AWRM Program) is estimated at 0.5 MGD.

As mentioned above, when necessary, the high quality Valencia RO permeate water would be discharged directly to the SCR near the Los Angeles - Ventura County line to reduce chloride levels in the river and comply with revised WQOs in Reach 4B. Valencia RO permeate water would be delivered to the river when chloride levels in the State Water Project (SWP) water stored in the Castaic Lake Reservoir are greater than or equal to 80 mg/L. In addition to discharging this high quality Valencia RO permeate water to the river, the GSWIM study also found that the use of additional supplemental water released to the SCR, discussed in more detail below, is needed in certain critical conditions of extreme drought to assure compliance with the revised WQOs in Reach 4B. A schematic of this operational management of the Valencia RO deliveries to the SCR is presented in Figure 5-2.

For conditions when the chloride levels in the SWP water stored in the Castaic Lake Reservoir are below 80 mg/L, the high quality Valencia RO permeate water does not need to be delivered to the SCR to comply with revised WQOs for Reach 4B. In fact, results from the GSWIM simulation (Section 5.2) suggest that this condition occurs approximately 76% of the time, which then would allow for the high quality Valencia RO permeate water to be delivered to the water supply facilities to be developed in Ventura County, in order to blend high saline groundwater<sup>6</sup> underlying Reach 4B and produce a blended water supply that can be discharged into the wetted portions of Reach 4A of the SCR to comply with the existing 100 mg/L WQO for this reach. The discharge of this blended water supply in the wetted reaches of the SCR, where the "Dry Gap" ends, allows for greater flow in the river, which ultimately can then be diverted at the Freeman Diversion to increase water supplies for Ventura County. This

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<sup>5</sup> The chloride load removed by RO is based on the long-term average Valencia WRP final effluent chloride concentration of 117 mg/L, over the projected model period 2007-2030. The chloride load removed by RO is variable and dependent on the amount of chloride in the water supply and recycled water

<sup>6</sup> The groundwater in Reach 4B of the SCR currently has chloride concentrations as high as approximately 150 mg/L.

operational management of the Valencia RO deliveries to the Ventura County water supply facilities is presented conceptually on Figure 5-1.

*Element No. 3: Procuring Local Groundwater for Supplemental Water Releases to the Santa Clara River*

Recognizing that conducting environmental studies, permitting, designing and constructing an MF/RO facility at the Valencia WRP will take a significant period of time, the AWRM Program includes a commitment (contingent upon the necessary environmental assessments required under the California Environmental Quality Act and compliance with Regional Board permit limits), to provide supplemental water pumped from the Saugus Aquifer or some other local water resource to the SCR as an interim measure prior to completion of the AWRM Program facilities. Additionally, as discussed previously, results from the GSWIM simulation suggest that release of supplemental water to the SCR would be required during extreme drought conditions to comply with revised WQOs for Reach 4B. These supplemental waters would be delivered through contractual arrangements between the SCVSD and the Upper Basin Water Purveyors.

*Element No. 4: Ventura County Salt Export and Water Supply Benefits*

In order to export accumulated salt in groundwater in East Piru and provide water supply benefits for Ventura County, a key element of the AWRM Program is the construction of the Ventura County water supply facilities, as shown conceptually in Figure 5-1. These facilities would allow for salt export and water supply benefits by blending high quality Valencia RO permeate water with the more saline groundwater in East Piru, to develop a blended water supply that is less than 95 mg/L in chloride. The Ventura County water supply facilities would be comprised of the following:

- 10 groundwater extraction wells in the East Piru groundwater basin;
- a 12-mile RO permeate pipeline from the Valencia WRP to the East Piru extraction wells; and
- a 6-mile conveyance pipeline for the blended East Piru groundwater and Valencia WRP RO water (East Piru Pipeline) for discharge to Reach 4A of the SCR, downstream of the "Dry Gap."

These facilities would be utilized to deliver high quality RO permeate water for a water supply and salt export benefit, when RO permeate water is not needed for compliance with revised WQOs.

Through the blending of high quality Valencia RO permeate water with more saline groundwater underlying Reach 4B, a new blended water supply can be developed and managed that will not only export salt accumulated in groundwater in the East Piru basin, but comply with downstream surface water WQOs, and ultimately increase water supplies in Ventura County through increased flows at the Freeman Diversion (Bachman, 2008). In addition, the extraction of more saline groundwater underlying Reach 4B, will allow for greater recharge of high quality storm flows in the SCR, which are typically low in chloride, lowering chloride levels in the groundwater. GSWIM results showing predicted reductions in chloride levels in groundwater under Reach 4B are presented in Section 5.2.

*Element No. 5: Protection of Salt-Sensitive Agriculture in Reach 4B*

The AWRM Program recognizes that chloride levels in Reach 4B of the SCR may exceed the protective range for salt sensitive agriculture (100 - 117 mg/L chloride concentration), as determined by the Ag. Study (CH2M HILL, 2005). In order to protect this salt sensitive agricultural beneficial use along Reach 4B of the SCR, the AWRM Program proposes to provide surface water diverters along this reach of the SCR with a suitable alternative water supply, when chloride concentrations in surface water exceed 117 mg/L (making surface water quality unsuitable for the direct irrigation of salt-sensitive crops). Alternative water supplies of suitable water quality will be provided to temporarily protect salt-sensitive agricultural uses in Reach 4B. The use of alternative water supplies allows for the full protection of beneficial uses, during temporary and intermittent periods when water quality due to extreme drought conditions does not support those beneficial uses.

*Element No. 6: Supporting the Expansion of Recycled Water Uses in the Santa Clarita Valley*

The AWRM Program includes provisions to support recycled water uses in the Upper Basin Water Purveyor service areas. Increasing recycled water uses in the Santa Clarita Valley will not only improve water supply reliability in the area, but also reduce the chloride loading directly discharged to the SCR from the WRP discharges.

*Element No. 7: Revisions to Surface Water and Groundwater WQOs to support the AWRM Program*

As indicated above, the feasibility of the AWRM Program is dependent upon revising the existing WQOs for surface water and groundwater to various levels that support the different elements of the AWRM Program. Proposed revisions to surface water and groundwater chloride WQOs are discussed in Section 5.3.

## **5.2 GWSIM SIMULATION OF THE AWRM ELEMENTS**

Geomatrix performed a number of simulations using the GSWIM in an iterative process during development of the final AWRM alternative to test and assess the feasibility and results of many of the individual elements discussed in the previous section. Simulations included evaluation of the impact of supplemental flows on chloride concentrations in the SCR, quantification of salt export from pumping groundwater in the Piru Basin, optimization of the number and location of wells used for potential water supply and salt export pumping, optimization of the locations on the SCR for both assimilative capacity enhancement and salt export discharges, assessment of volumes and impacts of groundwater pumping for supplemental supplies, and assessment of volumes of supplemental water pumping required to achieve various chloride threshold concentrations in the SCR. Results from these model simulations were regularly presented and distributed to the stakeholders as part of the working process toward a final AWRM scenario.

### **5.2.1 GSWIM Input and Development for the AWRM Alternative**

The final AWRM alternative was simulated using GSWIM based on the following considerations:

- Scenario 1g\_UV was used as a base case for the final AWRM simulation, which includes an assumption of recycled water reuse in the East Subbasin in accordance with Castaic Lake Water Agency's recycled water master plan, removal of self-regenerating water softeners and the implementation of UV disinfection at the WRPs.
- While a variety of concentration thresholds were evaluated by the model, the final AWRM water routing and supplemental water pumping requirements were developed based on achieving chloride concentrations less than 117 mg/L in Reach 4B of the SCR during periods when SWP concentrations are less than 80 mg/L (generally during non-

drought conditions) and achieving chloride concentrations less than 130 mg/L in Reach 4B of the SCR, during periods when SWP concentrations are greater than 80 mg/L (generally during drought conditions). Figure 5-3 presents the simulated non-drought and drought periods, as defined by simulated SWP concentrations. As shown on the figure, non-drought periods represent approximately 76% of the simulation, with drought periods representing the remaining 24%.

- 3.5 MGD was subtracted from predicted Valencia WRP discharges to account for 3.0 MGD of RO permeate water for available use (at an assumed chloride concentration of 10 mg/L) with approximately 0.5 MGD lost to brine waste in the MF/RO process. For the GSWIM simulations, the 3 MGD high quality RO permeate water was then utilized in the following manner, in order of priority of use: (1) discharged directly to the SCR to achieve compliance with the Reach 4B SSO, when Reach 4B receiving water chloride concentrations were predicted to exceed the upper end of the LRE guidelines (117 mg/L); (2) mixed with groundwater pumping in Reach 4B to provide an alternative water supply, when Reach 4B surface water exceeded 117 mg/L, to protect salt-sensitive agricultural uses; and (3) mixed with groundwater pumping in Reach 4B to provide water supply and salt export benefits to Ventura County, when Valencia RO permeate water is not needed to comply with Reach 4B WQOs and/or is not needed to provide an alternative water supply to Reach 4B surface water diverters.
- A total of 10 new groundwater extraction wells were simulated within the San Pedro Formation (model layers 4 and 5) in the eastern portion of the Piru Basin, as shown on Figure 5-4. The pumping rates for the East Piru extraction well network were developed based on an estimate of groundwater concentrations mixed with the available high quality RO permeate water at 10 mg/L chloride to achieve a blended water chloride concentration of 95 mg/L chloride or less, which would comply with Reach 4A chloride WQO of 100 mg/L, plus a factor of safety. Figure 5-5 presents the estimated pumping rates over time for the extraction wells. The blend of extracted groundwater and RO permeate water is routed in the East Piru Pipeline and discharged to the SCR near the Fillmore Fish Hatchery, as shown on Figure 5-6. This particular location is where the "Dry Gap" historically ends, and where surface flows in the SCR are perennial, which ensures that flow and salt export out of the basin occurs.

- During conditions of drought (i.e. when SWP supplies have concentrations greater than 80 mg/L chloride), additional supplemental water (above the 3.0 MGD RO permeate water from the Valencia WRP) is required to achieve compliance with the Reach 4B SSO. It was assumed that this supplemental water could be derived from pumping the lower chloride Saugus aquifer in the Eastern Basin (that has a simulated chloride concentration of approximately 60 mg/L), and releasing this pumped groundwater to the SCR to further lower chloride concentrations in the receiving waters in Reach 4B to achieve the SSO. The amount of Saugus aquifer water that would be released as supplemental water would be replaced as supply with an equivalent amount of imported water procured from State Water Project through the use of Castaic Lake Water Agency facilities, keeping the total groundwater pumping the same. Figure 5-7 presents estimated supplemental water pumping requirements derived from both MF/RO treated water and from pumping of the Saugus aquifer, along with assumed SWP concentrations for reference. Supplemental water from the Saugus aquifer was simulated as being pumped equally from a total of three wells (two future wells to be owned and operated by the Castaic Lake Water Agency and the Valencia Water Company (VWC) well 206), as shown on Figure 5-8. During periods when the Saugus aquifer was being pumped as a source of the supplemental water, the total groundwater available for supply was reduced by that amount and it was assumed to be derived from all remaining VWC wells per the Urban Water Management Plan, in a similar fashion to Scenario 1g\_UV.
- Supplemental water discharges were simulated to be added to the SCR immediately upgradient of Blue Cut, as shown on Figure 5-9.
- Portions of the 3 MGD RO permeate water from the Valencia WRP were blended with the extracted groundwater underlying Reach 4B to provide an alternative water supply to Reach 4B surface water diverters when chloride concentrations in the river exceed 117 mg/L.

### 5.2.2 GSWIM Results for the AWRM Alternative

With the development of the final AWRM alternative, attainment frequencies for the SSOs proposed in Section 5.3 of this report were evaluated. Simulated surface water and groundwater chloride concentrations, flows and groundwater levels associated with the AWRM

alternative are evaluated and discussed in Section 5.2.2.1, while benefits related to salt export capability of the AWRM alternative are discussed in Section 5.2.2.2.

#### **5.2.2.1 Surface Water and Groundwater - AWRM Alternative**

Figure 5-10 presents chloride concentrations for surface water predicted at Blue Cut for the AWRM alternative. Also included on the figure are results from Scenario 1g\_UV and the Zero Discharge alternative for comparison. As shown on the figure, the AWRM alternative is predicted to generally achieve chloride concentrations of less than the 117 mg/L threshold at Blue Cut during non-drought periods and the 130 mg/L threshold during drought periods.

Figure 5-11 presents predicted cumulative surface flows at Blue Cut. As shown in the figure, the AWRM scenario results in approximately 60,000 acre-ft less surface flows at Blue Cut over the simulated period than Scenario 1g\_UV, primarily due to the reduction of Valencia WRP discharges to the river that are being diverted for MF-RO treatment and utilized for water supply, salt export and/or as an alternative water supply, as well as the loss of flow as brine waste..

Figure 5-12 presents predicted attainment frequencies for the AWRM alternative for various chloride thresholds (100 mg/L, 117 mg/L and 130 mg/L) for surface water at Blue Cut. As shown on the figure, the AWRM alternative is predicted to achieve attainment of the Reach 4B chloride SSO of 117 mg/L in non-drought conditions (SWP chloride < 80 mg/L) 99.9% of the simulation time period, versus 90.7% for Scenario 1g\_UV. During drought conditions (SWP chloride > 80 mg/L), the AWRM alternative is predicted to achieve attainment of the Reach 4B chloride SSO of 130 mg/L 99.2% of the simulation period, versus 45.0% for Scenario 1g\_UV. Thus the AWRM alternative is predicted to achieve the proposed Reach 4B surface water SSOs at virtually all times during the simulation period.

Figure 5-13 presents predicted attainment frequencies for the AWRM alternative for surface and groundwater along SCR Reaches 5 (between the Valencia WRP and Blue Cut) and 6 (between the Saugus and Valencia WRPs). The SSO for chloride in both surface and groundwater in these reaches is 150 mg/L. Attainment of the 150 mg/L chloride SSO is predicted to range from 98 to 100% in surface water along Reaches 5 and 6, while groundwater concentrations (based on an average from production wells along the reaches) are always predicted to be less than 150 mg/L.

Figure 5-14 presents predicted attainment frequencies for the AWRM alternative for groundwater beneath the Piru Basin (Reaches 4A and B). Average groundwater chloride concentrations from production wells in the eastern portion of the Piru Basin under Reach 4B are predicted to be less than 130 mg/L 99.9% of the simulation period, versus 90.2% for Scenario 1g\_UV. This represents a general predicted reduction in chloride concentrations in groundwater in the Piru Basin over the Scenario 1g\_UV. Figure 5-15 presents simulated groundwater concentrations for a well located within Reach 4B in the eastern portion of the Piru Basin (designated V-0013). As shown on the figure, concentration reductions of approximately 20 mg/L are evident during general drought periods (model years 2008 through 2011 and 2021 through 2023, representing hydrology from 1976 through 1979 and 1989 through 1991, respectively). Simulated groundwater chloride concentrations for wells located in the central and western portions of Piru Basin (designated V-105 and V-176, respectively) are shown on Figures 5-16 and 5-17. As shown on the figures, chloride concentrations are predicted to improve through implementation of the AWRM alternative, as compared to the Scenario 1g\_UV.

The impact of the AWRM alternative on groundwater elevations was also assessed for both the 10 well water supply and salt export system proposed for the Piru Basin, as well as from pumping water from the Saugus aquifer for supplemental water flows. Figure 5-18 presents the predicted groundwater elevations in the Piru Basin near the simulated extraction well systems (in a well designated V-0036). A comparison of the AWRM scenario and Scenario 1g\_UV indicates that additional groundwater depression during dry periods is predicted. However, groundwater levels are predicted to respond quickly to storm flow periods that result in “re-filling” of the basin. In addition, the predicted water levels in the well in response to the AWRM alternative are generally consistent with historically observed water levels (i.e. the pumping of groundwater for salt export is not predicted to produce lower water levels than historically observed) (Bachman, 2008).

Figure 5-19 presents a map of groundwater level differences in the Saugus aquifer surrounding the wells simulated for use as dilution pumping. The groundwater level differences plotted on the map represent predicted differences between the AWRM alternative and the Scenario 1g\_UV at the end of the period of maximum pumping (at the end of September of model year 2023, corresponding to the hydrology of 1991) in model layer 8 (note the wells are simulated to be screened in model layers 4 to 8). As shown on the figure, maximum groundwater level differences of up to 30 feet are predicted near the simulated wells. In general, groundwater

levels in the Saugus formation were predicted to recover to “pre-AWRM pumping” levels in approximately 5 months after pumping has ceased, as shown in Figure 5-20 (representing conditions at the end of February, model year 2024). As noted previously, any Saugus aquifer groundwater utilized as supplemental water to the SCR is replaced in the simulation with imported SWP water and served in-lieu of Saugus aquifer water that would otherwise be served to Santa Clarita Valley residents.

#### ***5.2.2.2 Salt Export Capabilities of the AWRM Alternative***

The GSWIM results for Scenario 1g\_UV at Blue Cut were also utilized to evaluate the amount of chloride loading in excess of the existing surface water 100 mg/L WQO and proposed 117 mg/L SSO for Reach 4B, as well as the amount of salt export achieved through the use of RO, and the East Piru extraction wells. In addition, Dr. Steve Bachman (2008) evaluated that amount of chloride loading from coastal salt water intrusion that is prevented as a result of the AWRM alternative, in comparison with the Minimal Discharge alternative, discussed in Section 3.0. Dr. Bachman (2008) further evaluated the increase in surface flows that can be diverted at the Freeman Diversion, which can be directly used for in-lieu deliveries of water supply as opposed to pumping groundwater in overdraft areas of the Oxnard Plain. Based on Dr. Bachman’s analysis, greater than 10,000 AFY of water supply at the Freeman Diversion could be achieved with the AWRM alternative, which would also substantially reduce the amount of chloride loading from salt-water intrusion in the Oxnard Plain.

The salt export from East Piru Basin and resultant reduction in coastal saltwater intrusion provided by the increased water supply benefits, vastly outweigh the incremental loading above the WQO that occurs during extreme drought conditions, when SWP chloride levels are elevated. A comparison of the yearly excess chloride loading above the existing 100 mg/L WQO and proposed 117 mg/L SSO in Reach 4B, with the predicted yearly chloride export through the extraction wells and prevention of saline intrusion are shown in Figure 5-21. As shown on the figure, salt export from East Piru Basin is approximately 6 times greater than the incremental loading above 100 mg/L, and almost 70 times the incremental loading above 117 mg/L. The resulting reduction in coastal salt water instruction is approximately 17 times greater than the loading above 100 mg/L and 200 times the loading above 117 mg/L, representing a significant reduction in salt load in the SCR watershed. In addition, significant chloride load is also removed by RO of wastewater at the Valencia plant for the AWRM alternative.

### **5.3 PROPOSED REVISIONS TO THE CHLORIDE WATER QUALITY OBJECTIVES**

The feasibility of the AWRM Program is dependent upon revising the existing WQOs for surface water and groundwater to various SSOs that support the different elements of the AWRM alternative. A summary of the recommended SSOs for surface water and groundwater, in support of the AWRM alternative, is presented in Table 5-1 and shown graphically on Figures 5-22 and 5-23. The regulatory and technical justification for these SSOs is discussed extensively in the TMDL Task 7 and 8 Report (Larry Walker and Associates, 2008).

Through revision of these surface water and groundwater WQOs, the amount of advanced treatment required to achieve compliance with these SSOs is significantly reduced, which allows for the disposal of brine wastes generated from the RO processes through deep well injection as opposed to the construction of a 43-mile brine line through Ventura County with an associated ocean outfall. Preliminary feasibility studies on deep well injection for brine disposal indicate that the brine waste from a 3 MGD RO production facility could potentially allow for as much as 20 years of brine disposal capacity (CH2M Hill, 2008). The use of brine concentration and zero liquid discharge technologies could further improve RO recoveries, and minimize brine generation and increase brine disposal capacities of deep well injection. In addition, a revision of these WQOs would better facilitate the permitting of recycled water uses in the Santa Clarita Valley, which will improve water supply reliability in the area, and reduce the direct chloride loading from recycled water that can now be beneficially reused, as opposed to being discharged to the SCR.

In Ventura County, the proposed SSOs support an AWRM alternative, which will substantially increase water supplies and help to prevent coastal salt water intrusion in the Oxnard Plain, due to overdraft conditions. As noted in Bachman (2008), the AWRM alternative will increase the amount of surface flows in the SCR that can be diverted at the Freeman Diversion, and be delivered to overdraft areas in the Oxnard Plain in-lieu of groundwater pumping in those areas, resulting in a potential reduction of chloride loading from salt water intrusion. Furthermore, the AWRM alternative indicates an overall improvement in water quality for groundwater and surface water throughout Piru Basin. Ultimately, the cumulative benefits of the AWRM alternative will improve water quality in surface water and groundwater, improve water supplies to Ventura County, protect all beneficial uses, and reduce the amount of advanced treatment and associated brine disposal needed for compliance.

## 6.0 SUMMARY AND CONCLUSIONS

This report presents the potential compliance options to the chloride TMDL issues in the SCR and the results of the assessment of those alternatives, utilizing the GSWIM. The compliance alternatives evaluated as part of this effort include:

- 1) Advanced Treatment and Brine Disposal;
- 2) Minimal Advanced Treatment / Zero Discharge and Secondary Effluent Pipeline and Outfall;
- 3) Alternate WRP Discharge Location; and
- 4) Alternative Water Resource Management

As required in Task 9 of the Chloride TMDL process, the report evaluated these potential chloride control measures in terms of complying with existing and revised WQOs. The Advanced Treatment and Brine Disposal alternative, the Minimal Advanced Treatment / Zero Discharge and Secondary Effluent Pipeline and Outfall alternative, and the Alternate WRP Discharge Location alternative were evaluated for compliance with the existing WQOs. The results of this evaluation are summarized in Table 6-1.

Because compliance with the existing 100 mg/L WQO was not possible at all times and all locations in the SCR receiving waters, revisions to these WQOs were considered that would still be protective of all beneficial uses in Reaches 4B, 5 and 6. An AWRM alternative was jointly developed by various TMDL stakeholders, which will achieve compliance with proposed SSOs and provide for a diverse mix of water quality and water supply benefits. The key elements of the AWRM alternative include:

- implementing measures to reduce chloride in the recycled water from the District's WRPs;
- constructing advanced treatment for a portion of the recycled water from the District's Valencia WRP;
- procuring local groundwater for release to the SCR as supplemental water during drought periods;

- constructing water supply facilities in Ventura County to facilitate export of existing salts in groundwater;
- providing alternative water supply to protect salt-sensitive agricultural beneficial uses of the SCR;
- supporting the expansion of recycled water uses within the Santa Clarita Valley; and
- revising surface water and groundwater WQOs to support all of these elements.

The AWRM alternative provides for a regional watershed solution for chloride as an alternative to compliance with the existing 100 mg/L WQO, considers the use of SSOs and water resource management facilities that would allow for the full protection of all beneficial uses, while simultaneously providing a more feasible compliance solution, maintains a chloride balance in the USCR watershed, and provides salt export and water supply benefits to Los Angeles and Ventura County stakeholders. The results of the evaluation for the AWRM compliance with proposed SSOs are summarized in Table 6-2.

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- Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD), 2007, Projected Monthly Chloride Loading above Water Supply Chloride Concentration for the Saugus and Valencia WRPs, Draft Memorandum, May 14.
- Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD), 2008, in press.

# **TABLES**

TABLE 1-1

**GSWIM INITIAL SCENARIOS MATRIX**  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

GSWIM Scenarios			
Compliance Option	Reuse Scenario 1 High Water Reuse	Reuse Scenario 2 Intermediate Water Reuse	Reuse Scenario 3 Low Water Reuse
MF/RO at 100 mg/L (Saugus and Valencia WRPs)	1a	<u>2a</u>	3a
MF/RO at 120 mg/L (Saugus and Valencia WRPs)	1b	<u>2b</u>	3b
MF/RO at 150 mg/L (Saugus and Valencia WRPs)	<u>1c</u>	<u>2c</u>	<u>3c</u>
MF/RO at 160 mg/L (Saugus and Valencia WRPs)	1d	2d	3d
Chloride Loading Above Water Softeners (0% SRWS removal)	<u>1e</u>	<u>2e</u>	<u>3e</u>
Chloride Loading Above Water Softeners (50% SRWS removal)	1f	2f	3f
Chloride Loading Above Water Softeners (100% SRWS removal)	1g	<u>2g</u>	3g

Notes:  
 Scenarios performed by Geomatrix Consultants, Inc. are shown in *bold italics and underlined*. Scenarios that were not performed are shown in *italics*.  
 The remaining scenarios were performed by CH2M HILL. Scenarios 2e and 2g were conducted using chloride loadings computed by assuming additional wastewater treatment using an ultraviolet (UV) treatment process. SRWS refers to Self Regenerating Water Softeners.

TABLE 1-2

**GSWIM SIMULATIONS OF ALTERNATIVE COMPLIANCE OPTIONS**  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

GSWIM Alternative Compliance Scenarios			
Compliance Alternatives	Elements	Potential Benefits	Infrastructure Requirements
Advanced Treatment	Treat all Valencia and Saugus WRP discharges to 100 mg/L	Chloride mass removal, reduced concentrations in SCR at Blue Cut	Installation and operation of MF/RO treatment at both WRPs and development of 43 mile brine discharge piping to ocean
Zero Discharge	Divert all Valencia and Saugus WRP discharges to ocean	Chloride mass removal	Development of 43 mile discharge piping to ocean to accommodate all WRP discharge, plus new ocean outfall
Minimal Discharge	Treat 4.6 MGD of Valencia WRP discharge and 5.0 MGD of Saugus discharge using MF/RO, all other discharges to ocean	Chloride mass removal, maintain minimal SCR flows for habitat	Installation and operation of MF/RO treatment at both WRPs and development of 43 mile brine waste and WRP discharge piping to ocean, plus new ocean outfall
Alternate WRP Discharge Location	Move Valencia WRP discharge location to top of SCR Reach 7	Better use of basin assimilative capacity	Development of 16 miles of pipeline for alternative discharge
Alternative Water Resource Management	Treat 3 MGD of Valencia WRP discharges using MF/RO, develop salt export pumping in Piru Basin, use dilution flows to moderate chloride concentrations in SCR	Basin-wide approach, chloride mass removal, reduced concentrations in SCR at Blue Cut, water supply benefits in Ventura County	Installation and operation of MF/RO treatment at Valencia WRP, 12-mile permeate pipeline for RO flows, outfall to SCR near Blue Cut, brine discharge via deep-well injection, installation of 100 well water supply system and piping in Piru Basin, replacement water for dilution flows during drought

TABLE 5-1

**PROPOSED REVISIONS TO MINERAL WATER QUALITY OBJECTIVES TO SUPPORT THE AWRM**  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

Proposed Revisions to WQOs for Surface Waters			
Mineral WQO	Reach 4B	Reach 5	Reach 6
Chloride	117 mg/L (SWP chloride less than 80mg/L) 130 mg/L (SWP chloride less than 80mg/L) <i>Previous WQO = 100 mg/L</i>	150 mg/L (12-month average) <i>Previous WQO = 100 mg/L</i>	150 mg/L (12-month average) <i>Previous WQO = 100 mg/L</i>
Total Dissolved Solids	1,300 mg/L (no change from previous)	1,000 mg/L (no change from previous)	1,000 mg/L (no change from previous)
Sulfate	600 mg/L (no change from previous)	400 mg/L (no change from previous)	450 mg/L <i>Previous WQO = 300 mg/L</i>
Proposed Revisions to WQOs for Groundwater			
Mineral WQO	East Piru	Castaic Valley	Santa Clara - Bouquet and San Franciscito Canyons
Chloride	TBD <i>Previous WQO = 200 mg/L</i>	150 mg/L (no change from previous)	150 mg/L <i>Previous WQO = 100 mg/L</i>
Total Dissolved Solids	TBD <i>Previous WQO = 2,500 mg/L</i>	1,000 mg/L (no change from previous)	1,000 mg/L <i>Previous WQO = 700 mg/L</i>
Sulfate	TBD <i>Previous WQO - 1,200 mg/L</i>	350 mg/L (no change from previous)	450 mg/L <i>Previous WQO - 250 mg/L</i>

TABLE 6-1  
 SUMMARY OF COMPLIANCE ALTERNATIVE ATTAINMENT FREQUENCIES  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

Compliance Alternative	Surface Water at Blue Cut		East Piru Basin Groundwater			West Piru Basin Groundwater		
	Surface Water WQO	LRE Threshold	Surface Water WQO	LRE Threshold	Groundwater WQO	Surface Water WQO	LRE Threshold	Groundwater WQO
	100 mg/L	120 mg/L	100 mg/L	120 mg/L	200 mg/L	100 mg/L	120 mg/L	100 mg/L
Scenario 1g_UV	41.2	77.8	43.5	76.3	100.0	100.0	100.0	100.0
Advanced Treatment - 1a	66.8	99.0	55.0	99.6	100.0	100.0	100.0	100.0
Advanced Treatment - 2a	66.4	100.0	54.2	99.6	100.0	100.0	100.0	100.0
Advanced Treatment - 3a	66.1	100.0	55.3	99.8	100.0	100.0	100.0	100.0
Minimal Discharge	65.5	87.8	62.1	98.8	100.0	100.0	100.0	100.0
Zero Discharge	63.8	80.7	68.3	97.5	100.0	100.0	100.0	100.0
Alternate WRP Location	48.9	76.0	46.1	80.5	100.0	100.0	100.0	100.0

Note: Value represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

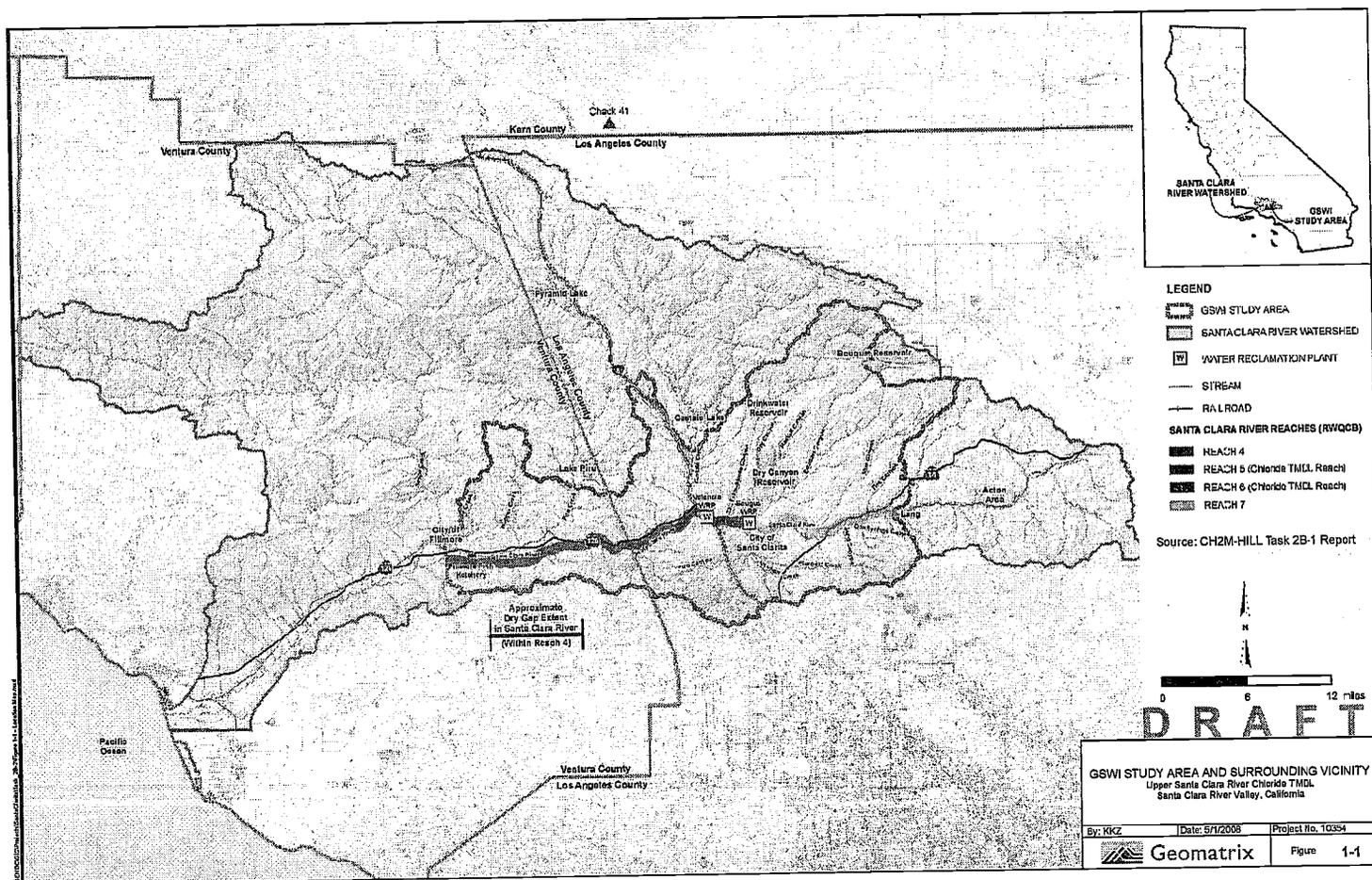
**TABLE 6-2**  
**SUMMARY OF SITE SPECIFIC OBJECTIVE ATTAINMENT FREQUENCIES FOR THE AWRM ALTERNATIVE**  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

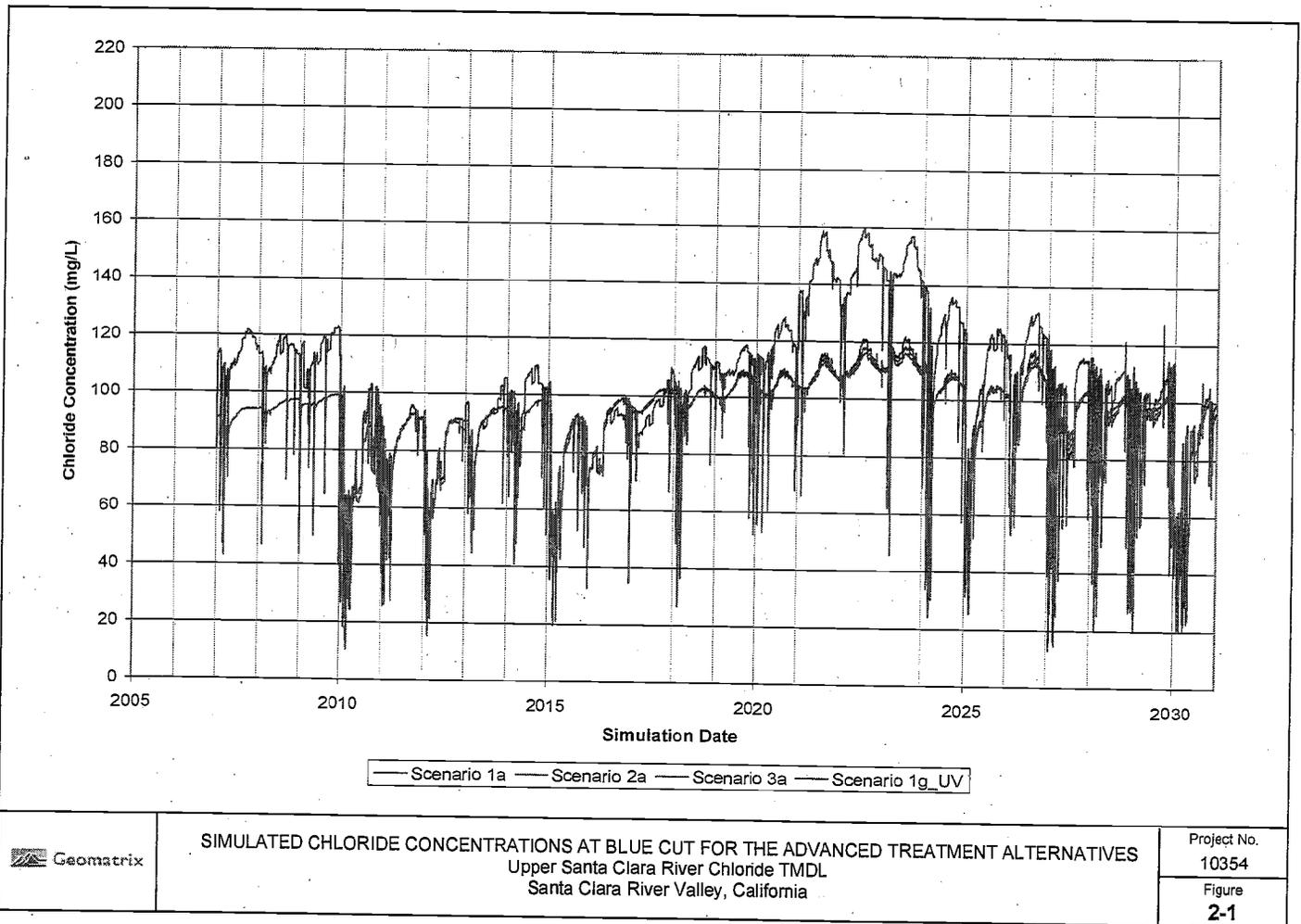
Compliance Alternative	Reach 4B (at Blue Cut)		Reach 5		Reach 6	
	Surface Water WQO During Non-Drought 117 mg/L	Surface Water WQO During Drought 130 mg/L	Surface Water WQO 150 mg/L	Groundwater WQO 150 mg/L	Surface Water WQO 150 mg/L	Groundwater WQO 150 mg/L
AWRM Alternative	99.9	99.2	98.3-99.7	100.0	98.6 - 99.7	100.0

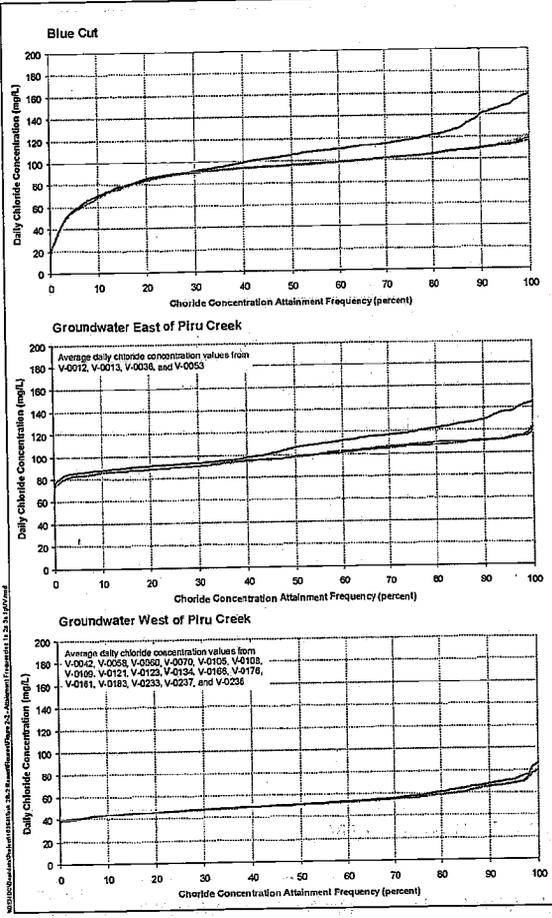
Note: Value represents percentage of days during simulation period that chloride is predicted to be equal to or less than the WQO concentration

## **FIGURES**

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Daily Chloride Threshold Attainment Frequencies (percent)

**Blue Cut**

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Scenario 1a	66.8	66.8	99.0
Scenario 2a	66.4	66.4	100.0
Scenario 3a	66.1	66.1	100.0
Scenario 1gUV	41.2	41.2	77.8

**Groundwater East of Piru Creek**

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Scenario 1a	55.0	55.0	99.6
Scenario 2a	54.2	54.2	99.6
Scenario 3a	55.3	55.3	99.8
Scenario 1gUV	43.5	43.5	76.3

**Groundwater West of Piru Creek**

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Scenario 1a	100.0	100.0	100.0
Scenario 2a	100.0	100.0	100.0
Scenario 3a	100.0	100.0	100.0
Scenario 1gUV	100.0	100.0	100.0

**Explanation**

- ..... High Reuse; 100 mg/L Chloride in Saugus and Valerita WRP Discharge (Scenario 1a)
- Intermediate Reuse; 100 mg/L Chloride in Saugus and Valerita WRP Discharge (Scenario 2a)
- Low Reuse; 100 mg/L Chloride in Saugus and Valerita WRP Discharge (Scenario 3a)
- · — · — High Reuse; 100 Percent Removal of Salt Regenerating Water Softeners (Scenario 1gUV)

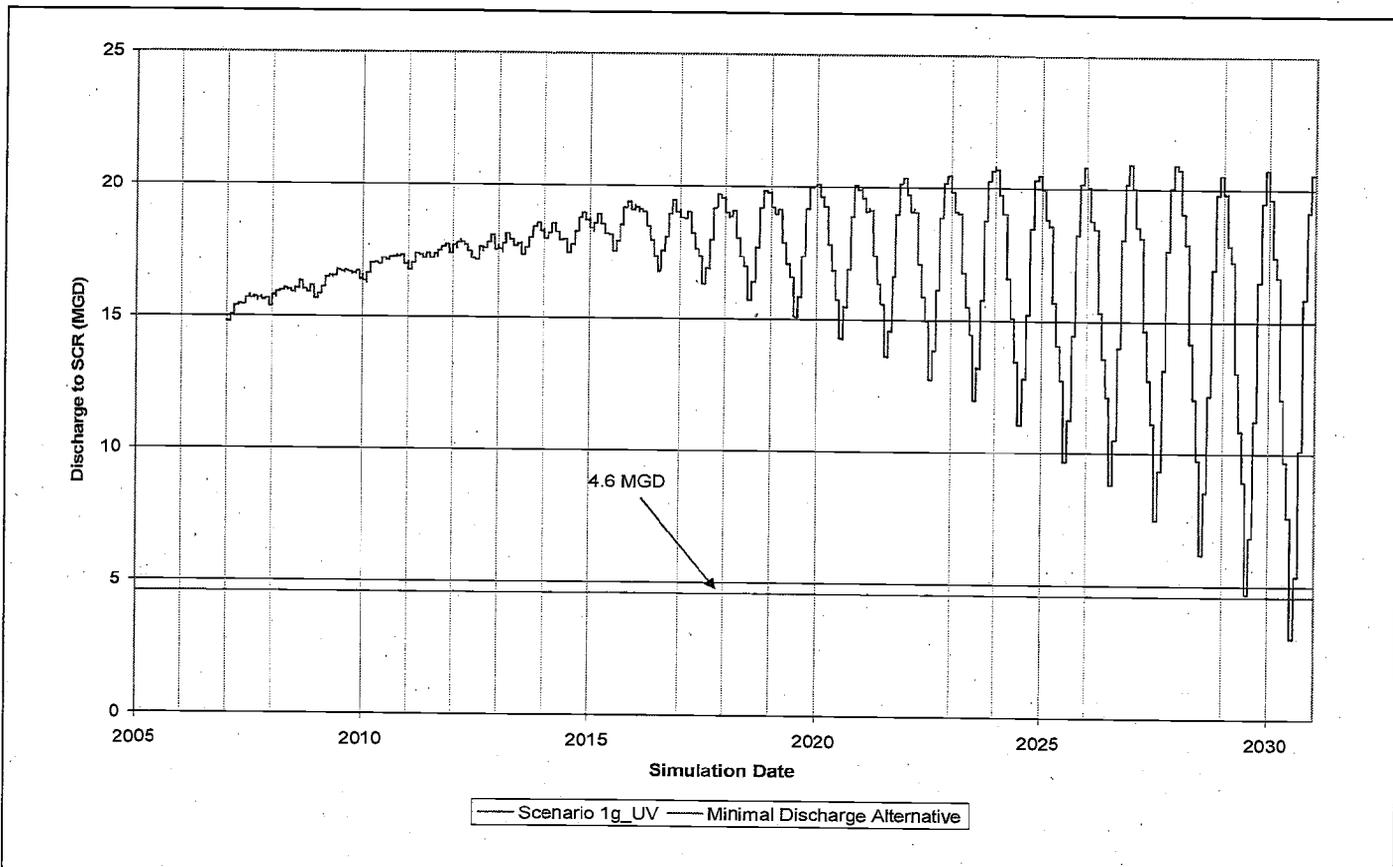
**Notes:**  
 1. Attainment frequency represents the percent of time during the future simulation period that chloride concentrations were at or below the indicated daily chloride concentration.

**DRAFT**

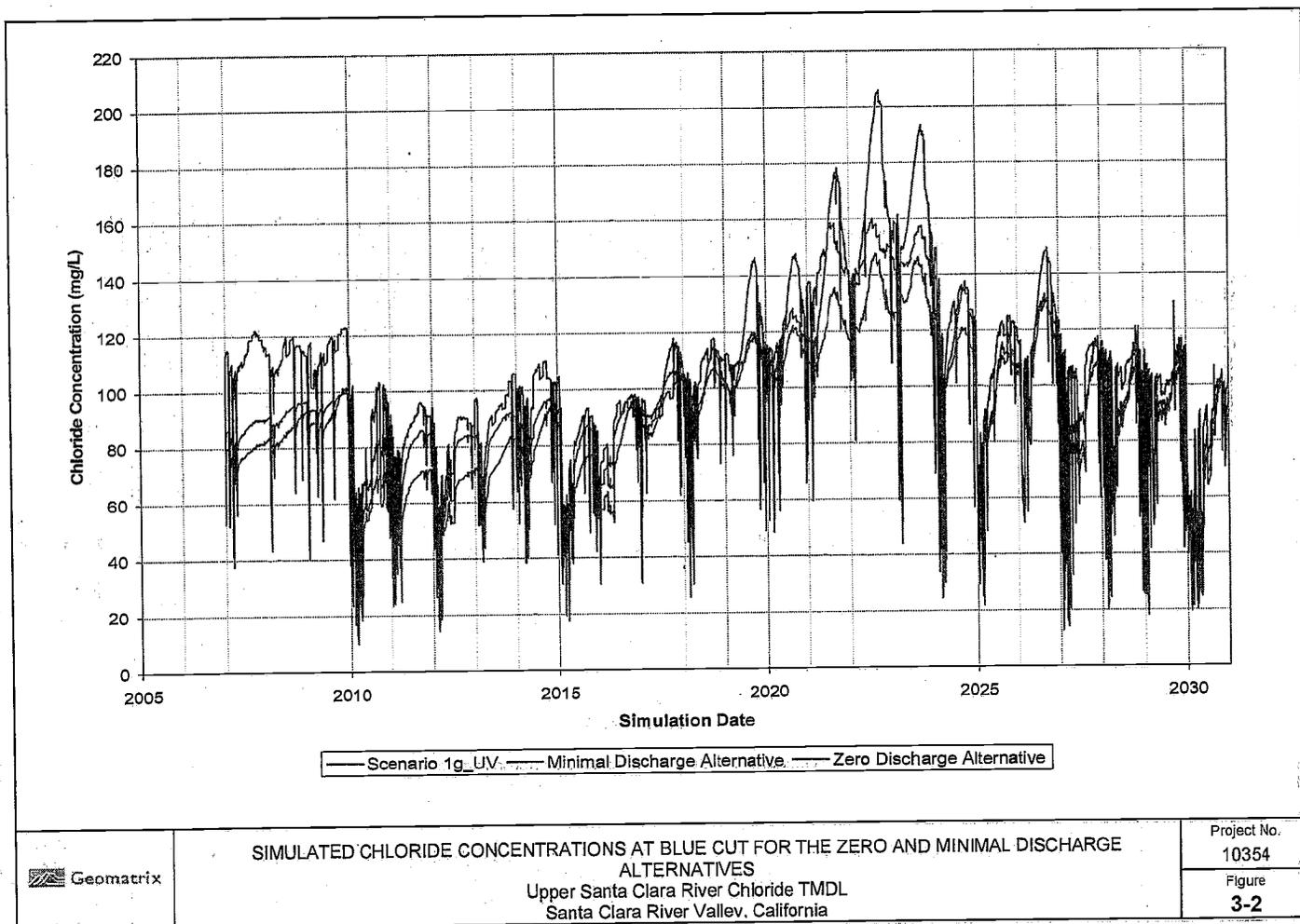
SIMULATED DAILY CHLORIDE ATTAINMENT FREQUENCIES AT BLUE CUT AND PIRU BASIN GROUNDWATER - ADVANCED TREATMENT ALTERNATIVES  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

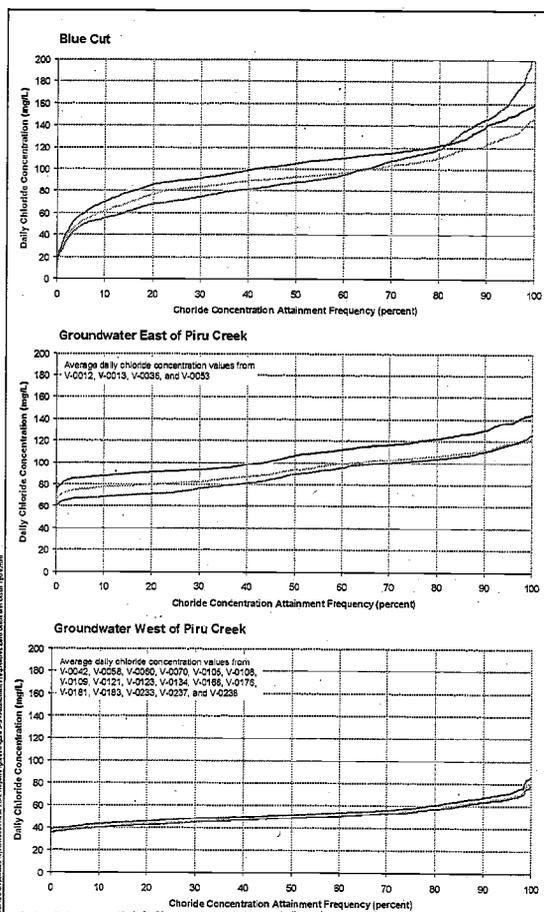
By: KRZ Date: 3/12/2008 Project No. 10354

**Geomatrix** Figure 2-2



 Geomatrix	SIMULATED DISCHARGES FROM THE VALENCIA WRP FOR THE MINIMAL DISCHARGE ALTERNATIVE Upper Santa Clara River Chloride TMDL Santa Clara River Valley, California	Project No. 10354
		Figure 3-1





Daily Chloride Threshold Attainment Frequencies (percent)

Blue Cut

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Minimal Discharge Alternative	65.5	65.5	87.8
Zero Discharge Alternative	63.8	63.8	80.7
Scenario 1gUV	41.2	41.2	77.8

Groundwater East of Piru Creek

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Minimal Discharge Alternative	62.1	62.1	98.8
Zero Discharge Alternative	68.3	68.3	97.5
Scenario 1gUV	43.5	43.5	76.3

Groundwater West of Piru Creek

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Minimal Discharge Alternative	100.0	100.0	100.0
Zero Discharge Alternative	100.0	100.0	100.0
Scenario 1gUV	100.0	100.0	100.0

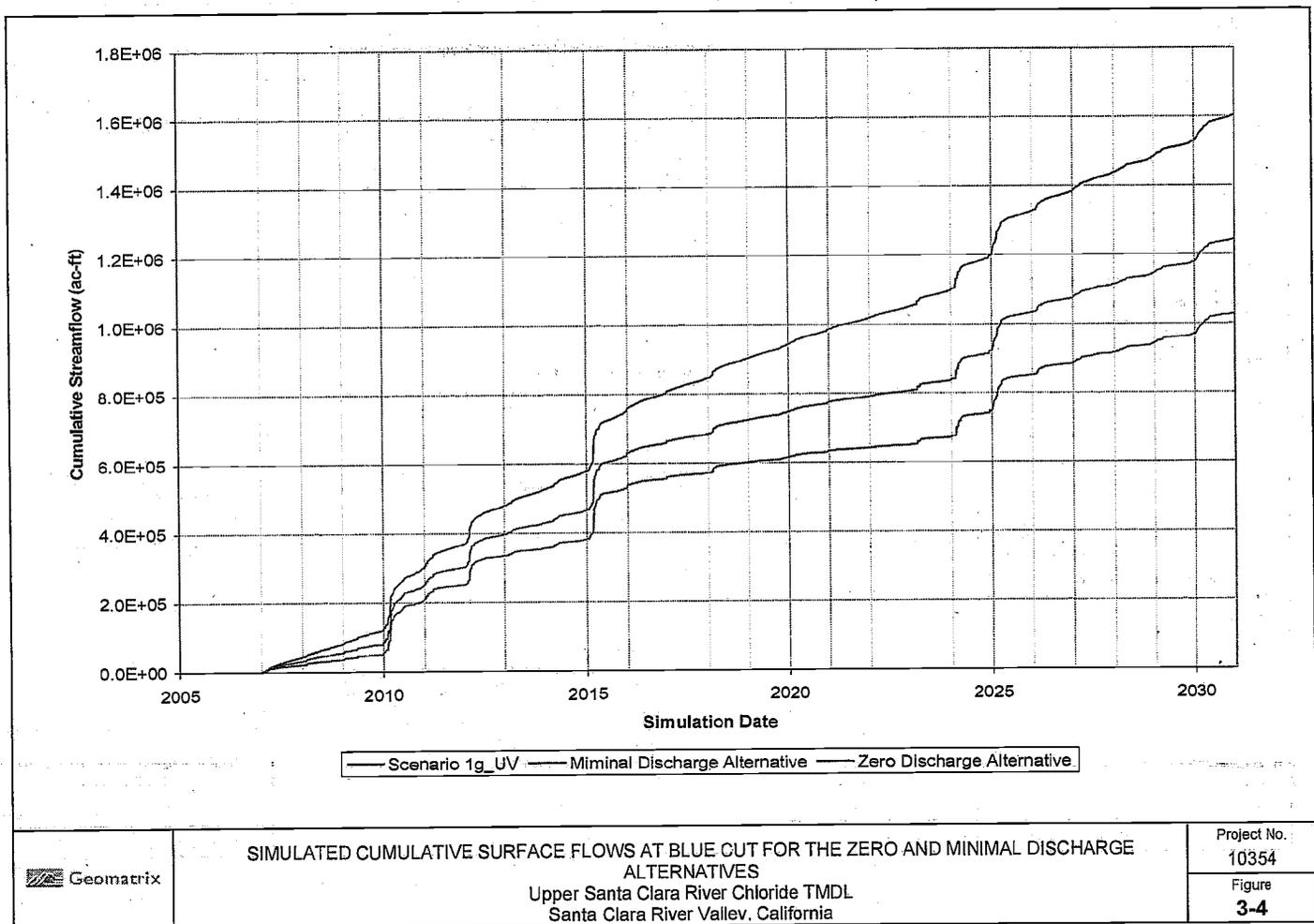
**Explanation**  
 High Reuse: 100 Percent Removal of Self Regenerating Water Softeners with Minimal WRP Discharge Alternative  
 High Reuse: 100 Percent Removal of Self Regenerating Water Softeners with Zero WRP Discharge Alternative  
 High Reuse: 100 Percent Removal of Self Regenerating Water Softeners (Scenario 1gUV)

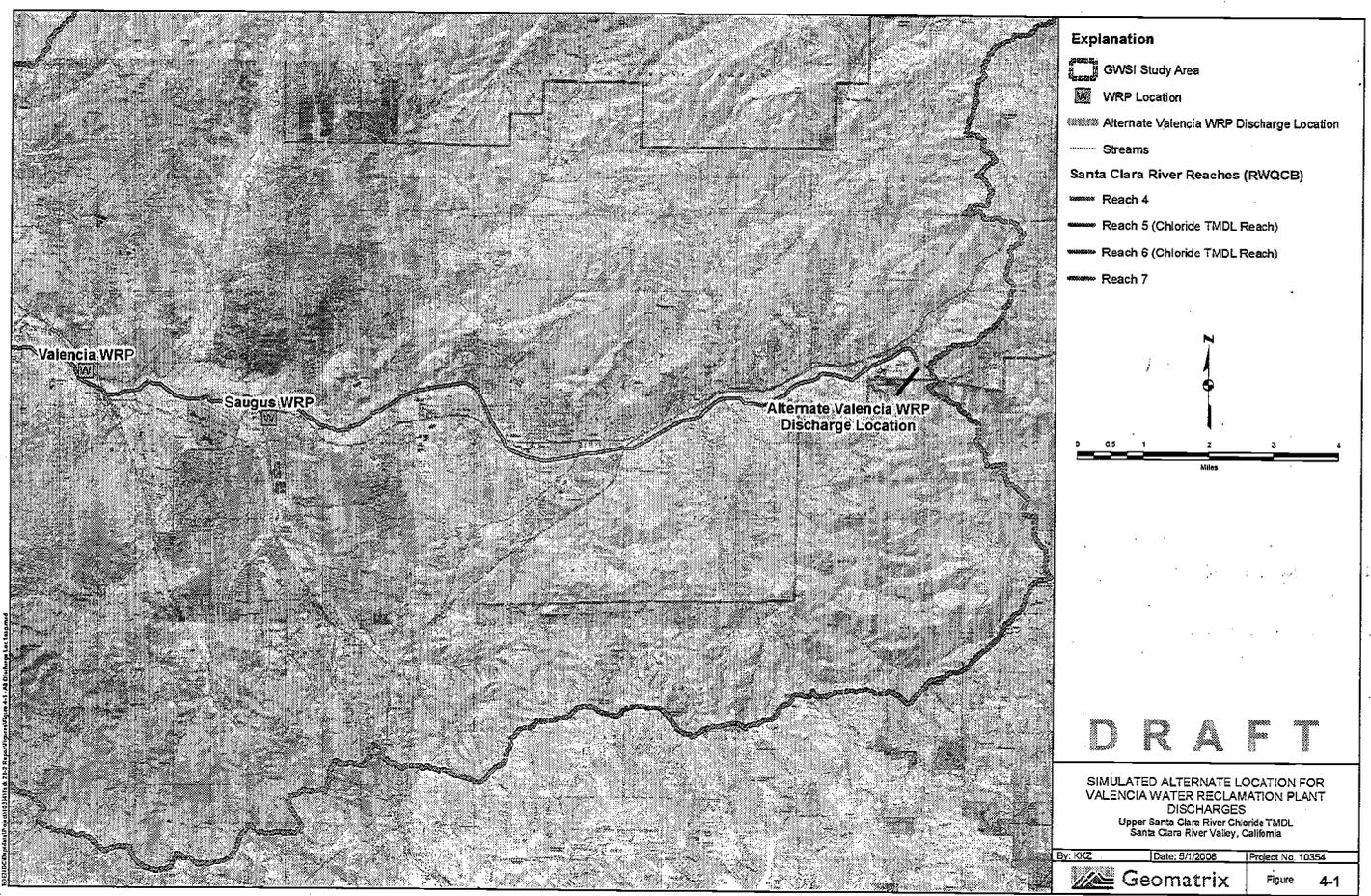
**Notes:**  
 1. Attainment frequency represents the percent of time during the future simulation period that chloride concentrations were at or below the indicated daily chloride concentration.

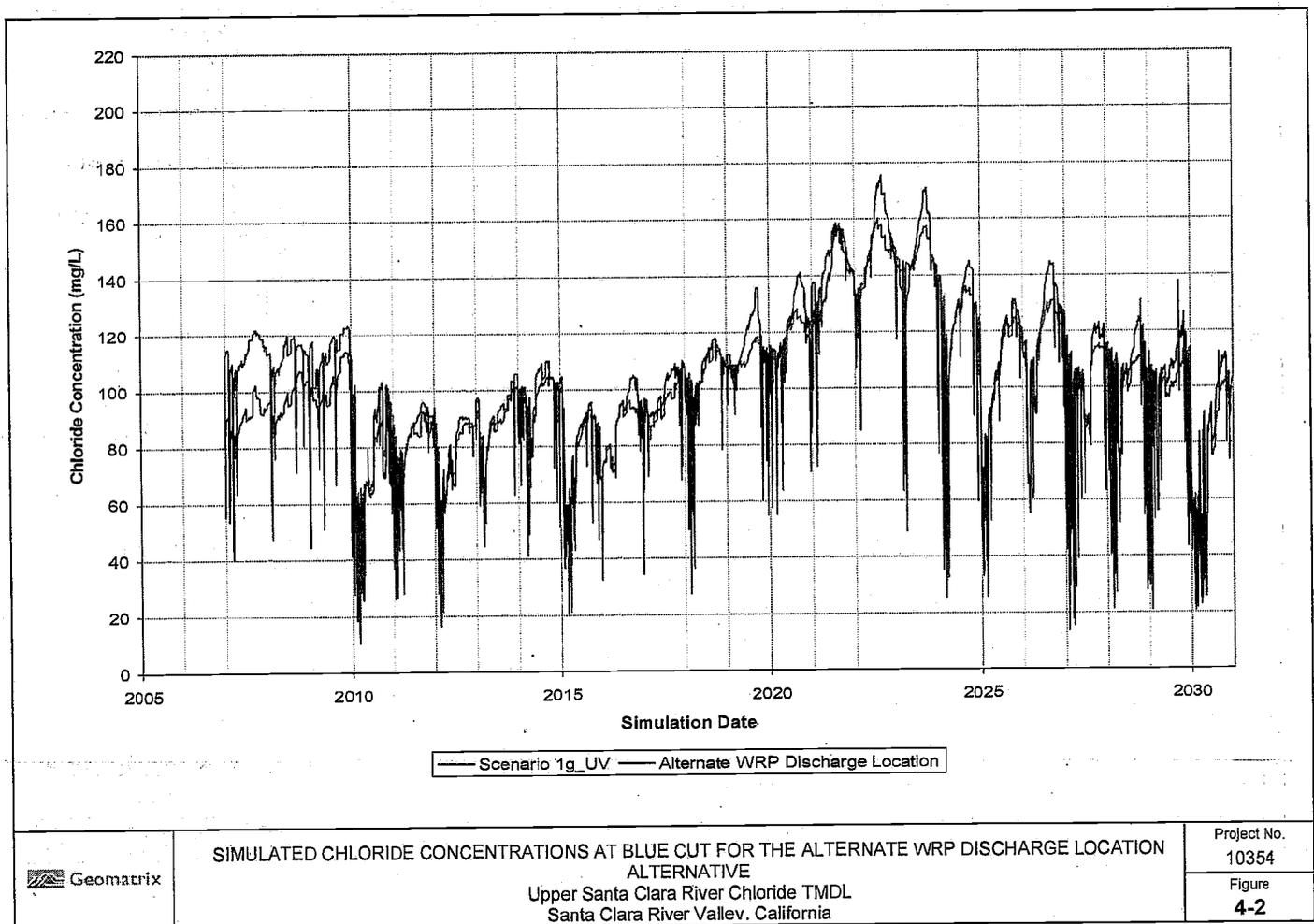
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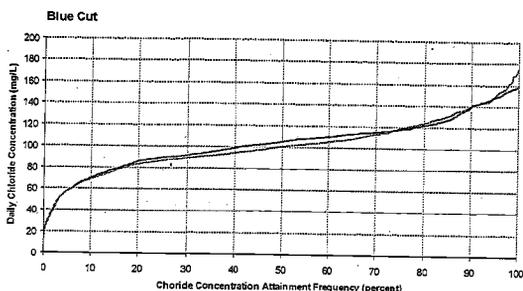
SIMULATED DAILY CHLORIDE ATTAINMENT FREQUENCIES AT BLUE CUT AND PIRU BASIN GROUNDWATER - ZERO AND MINIMAL DISCHARGE ALTERNATIVE  
 Upper Santa Clara River Groundwater TMDL  
 Santa Clara River Valley, California

By: KKZ Date: 5/1/2008 Project No. 10354  
 Geomatrix Figure -3-3







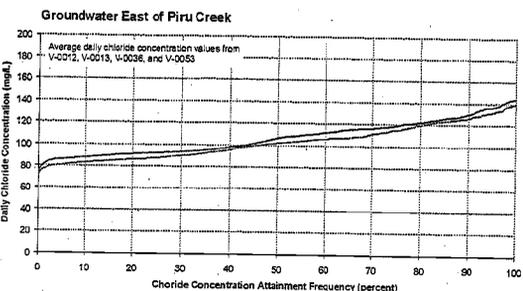


Daily Chloride Threshold Attainment Frequencies (percent)

**Blue Cut**

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Alternate Discharge Location	48.9	48.9	76.0
Scenario 1gUV	41.2	41.2	77.8

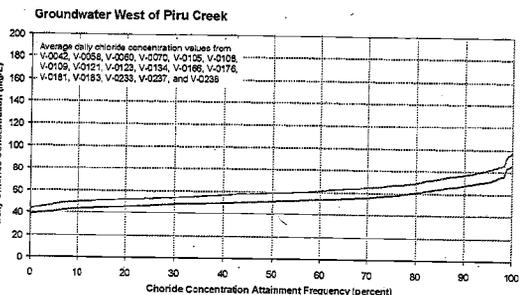
**Explanation**  
 High Reuse: 100 Percent Removal of Self-Regenerating Water Softeners with Alternate WRP Discharge Location Alternative  
 High Reuse: 100 Percent Removal of Self-Regenerating Water Softeners (Scenario 1gUV)



**Groundwater East of Piru Creek**

Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Alternate Discharge Location	46.1	46.1	80.5
Scenario 1gUV	43.5	43.5	76.3

**Notes:**  
 1. Attainment frequency represents the percent of time during the future simulation period that chloride concentrations were at or below the indicated daily chloride concentration.



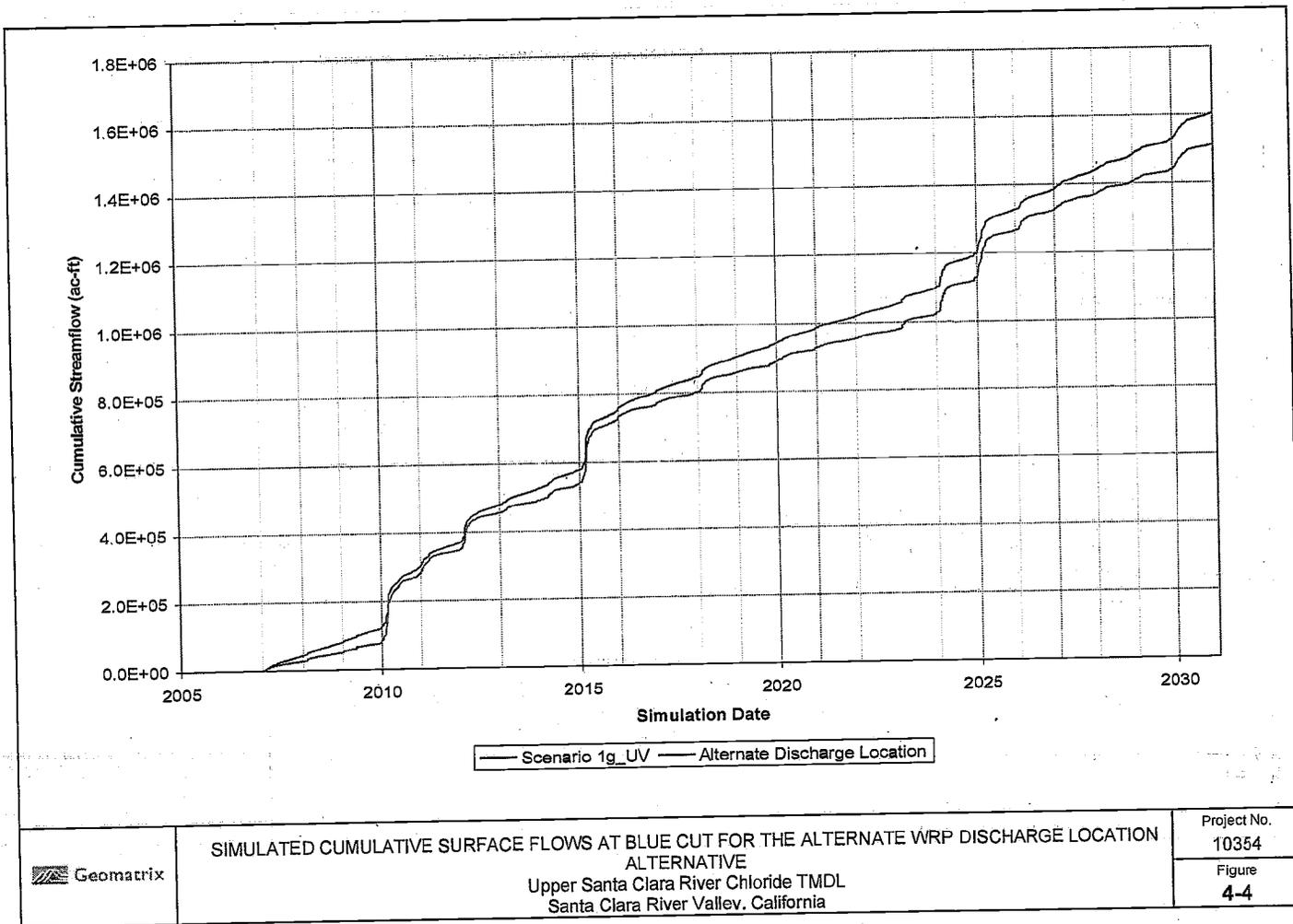
**Groundwater West of Piru Creek**

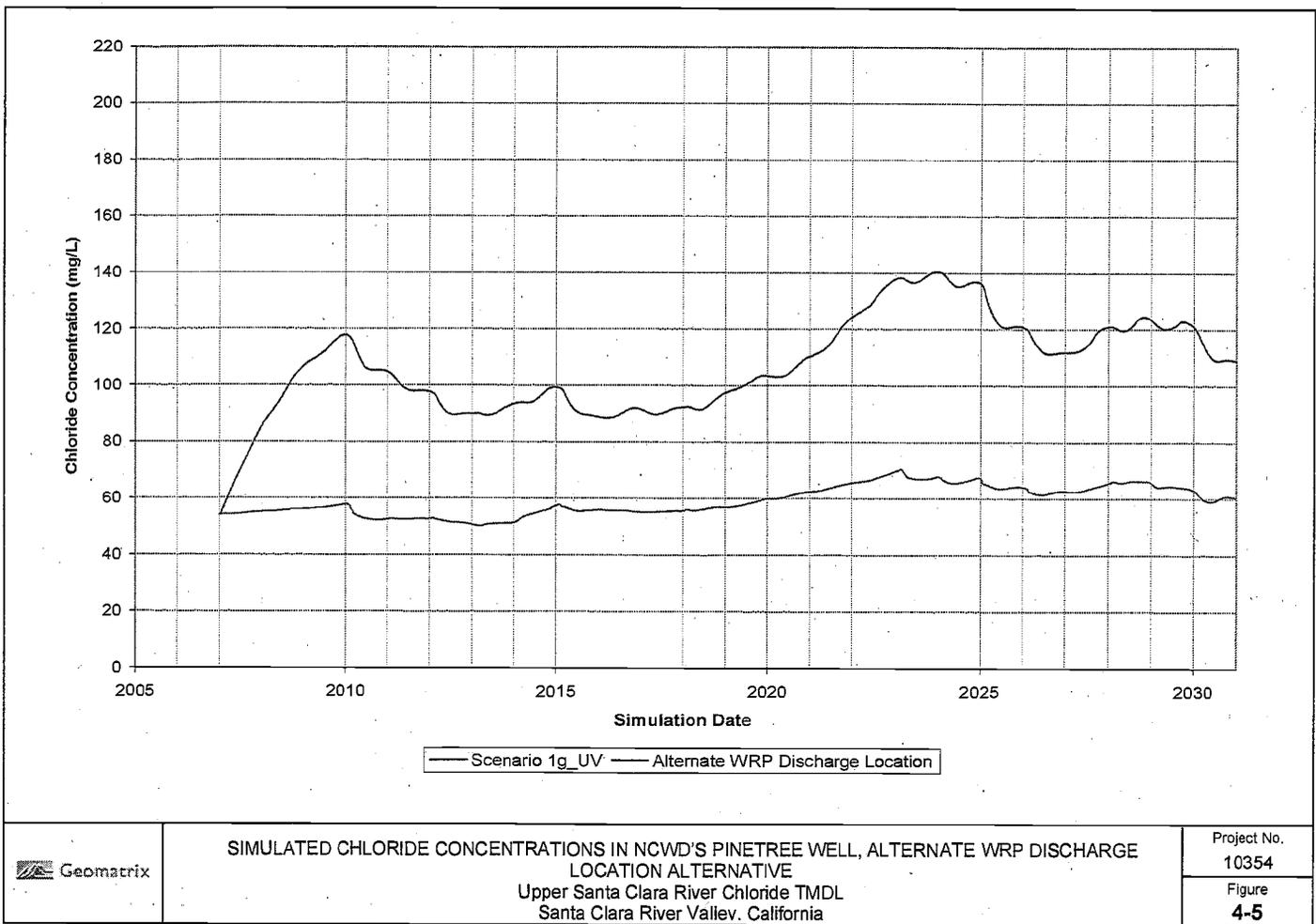
Simulation	Surface Water WQO	Avocado Threshold	
	100 mg/L	100 mg/L	120 mg/L
Alternate Discharge Location	100.0	100.0	100.0
Scenario 1gUV	100.0	100.0	100.0

**DRAFT**

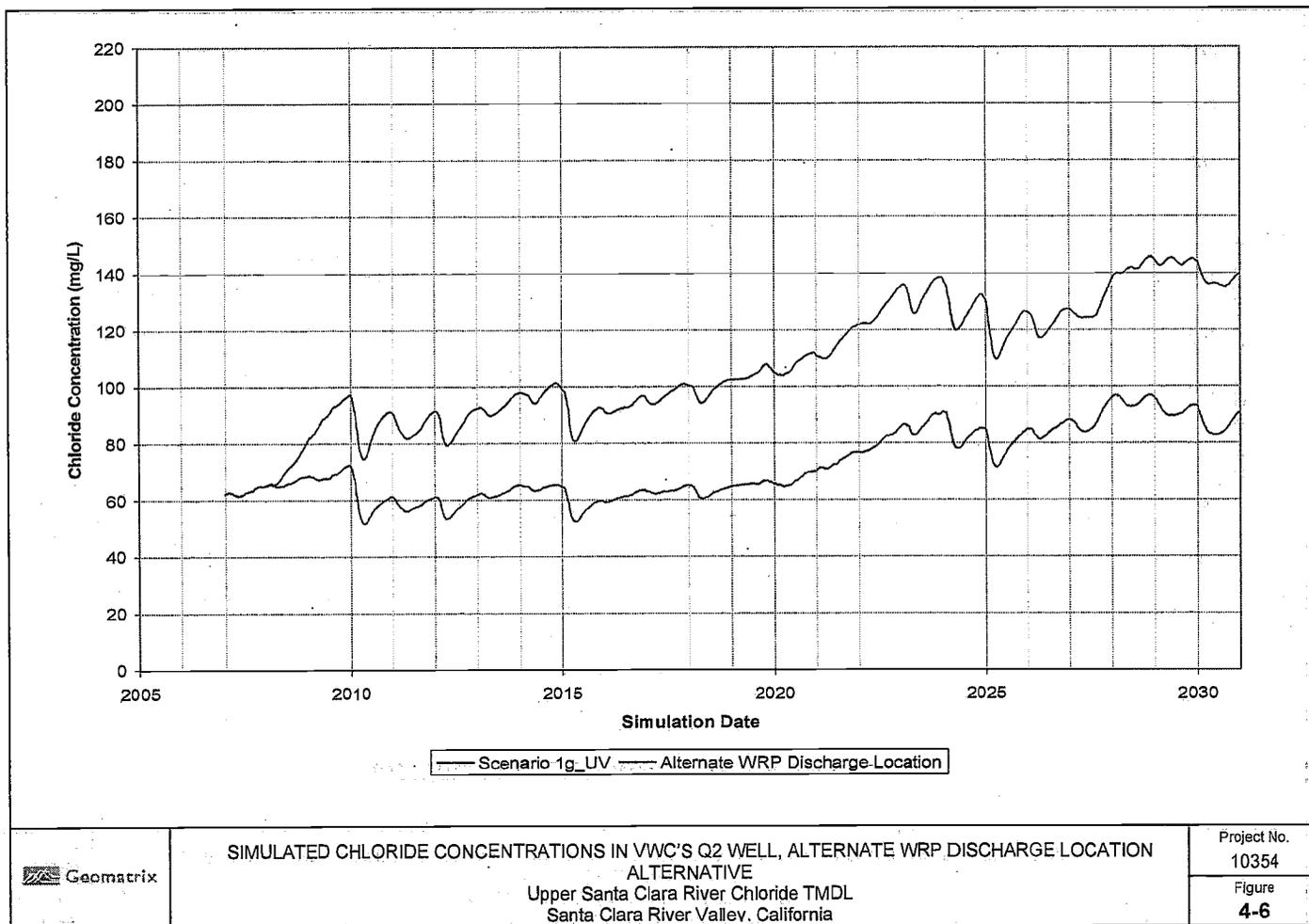
SIMULATED DAILY CHLORIDE ATTAINMENT FREQUENCIES AT BLUE CUT AND PIRU BASIN GROUNDWATER - ALTERNATE DISCHARGE LOCATION ALTERNATIVE  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

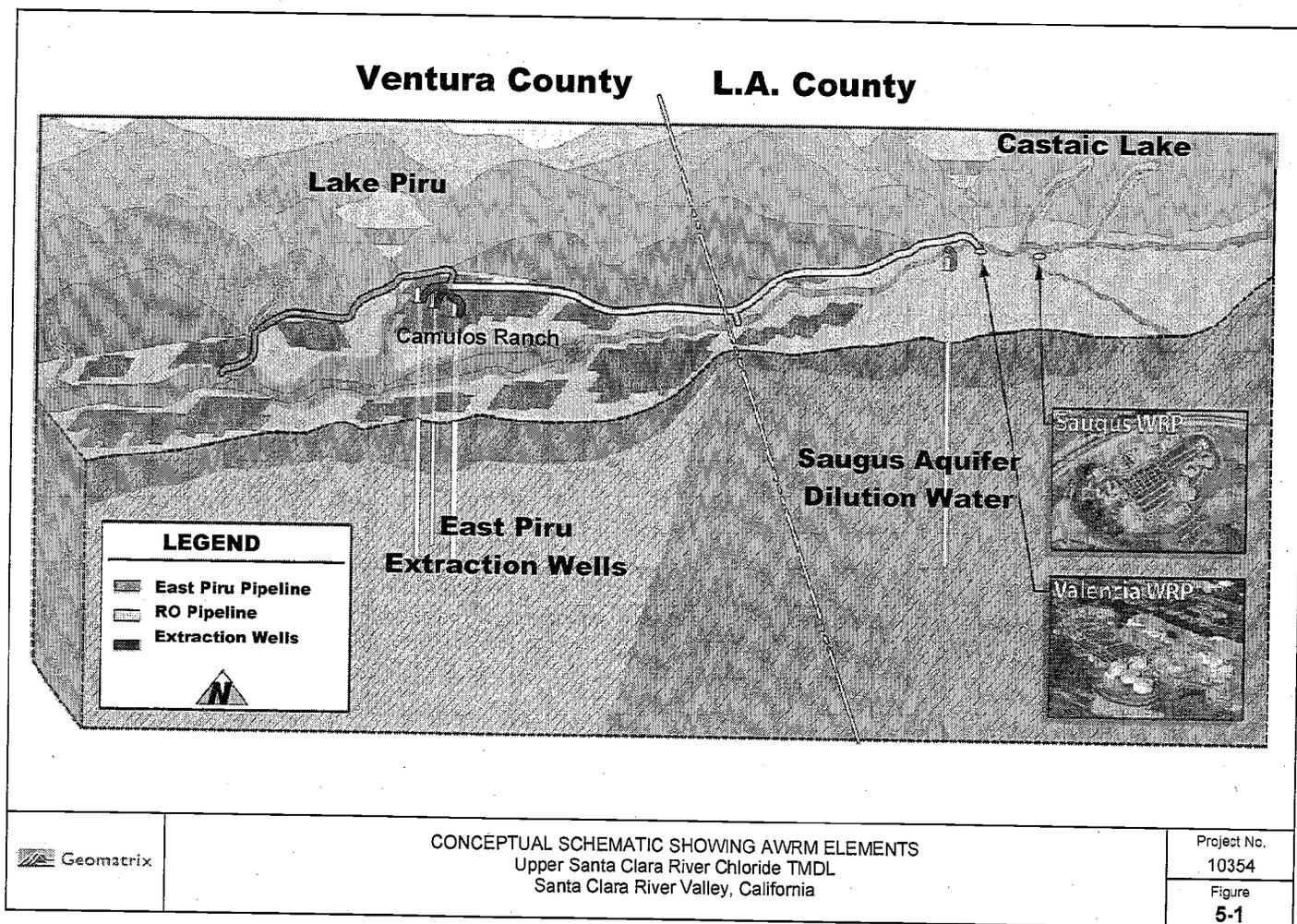
By: NKZ Date: 5/12/2008 Project No. 10354  
 Geomatrix Figure 4-3



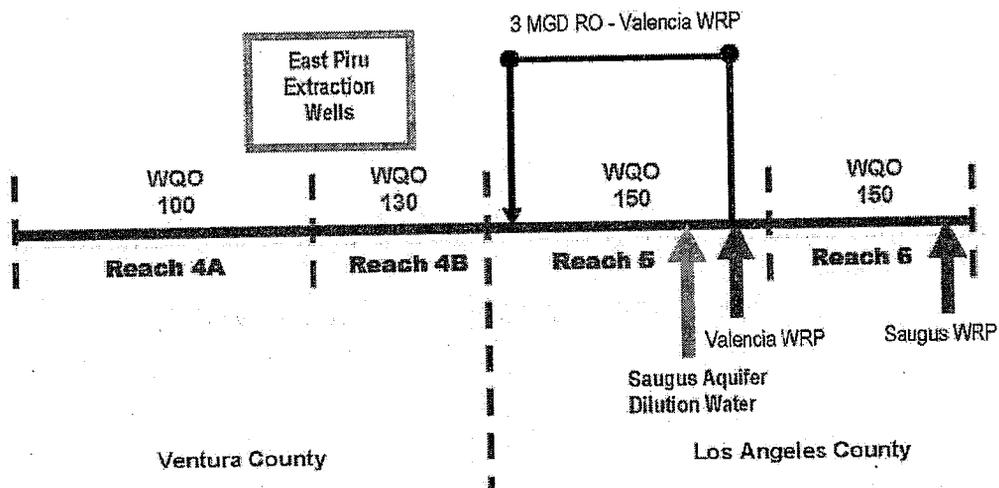


Geomatrix	SIMULATED CHLORIDE CONCENTRATIONS IN NCWD'S PINETREE WELL, ALTERNATE WRP DISCHARGE LOCATION ALTERNATIVE Upper Santa Clara River Chloride TMDL Santa Clara River Valley, California	Project No. 10354
		Figure 4-5



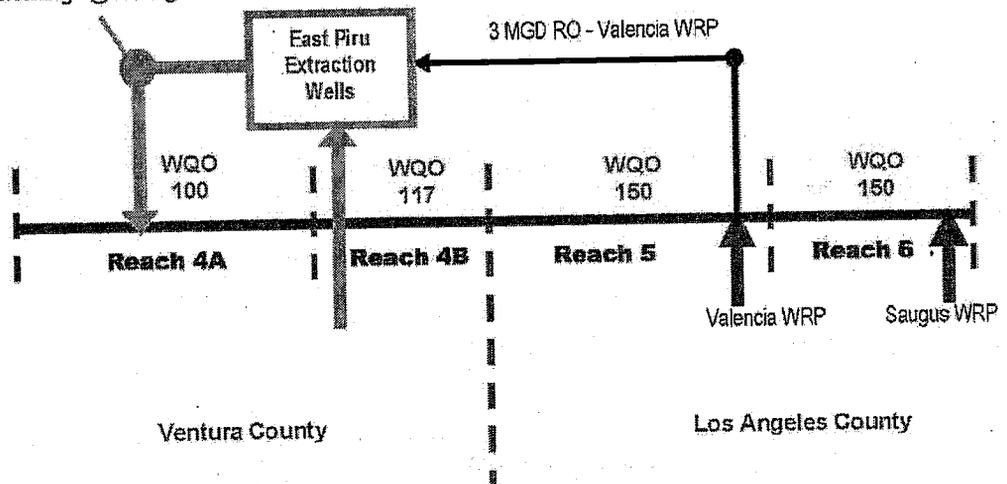


*AWRM Operation when SWP Cl  $\geq$  80 mg/L*

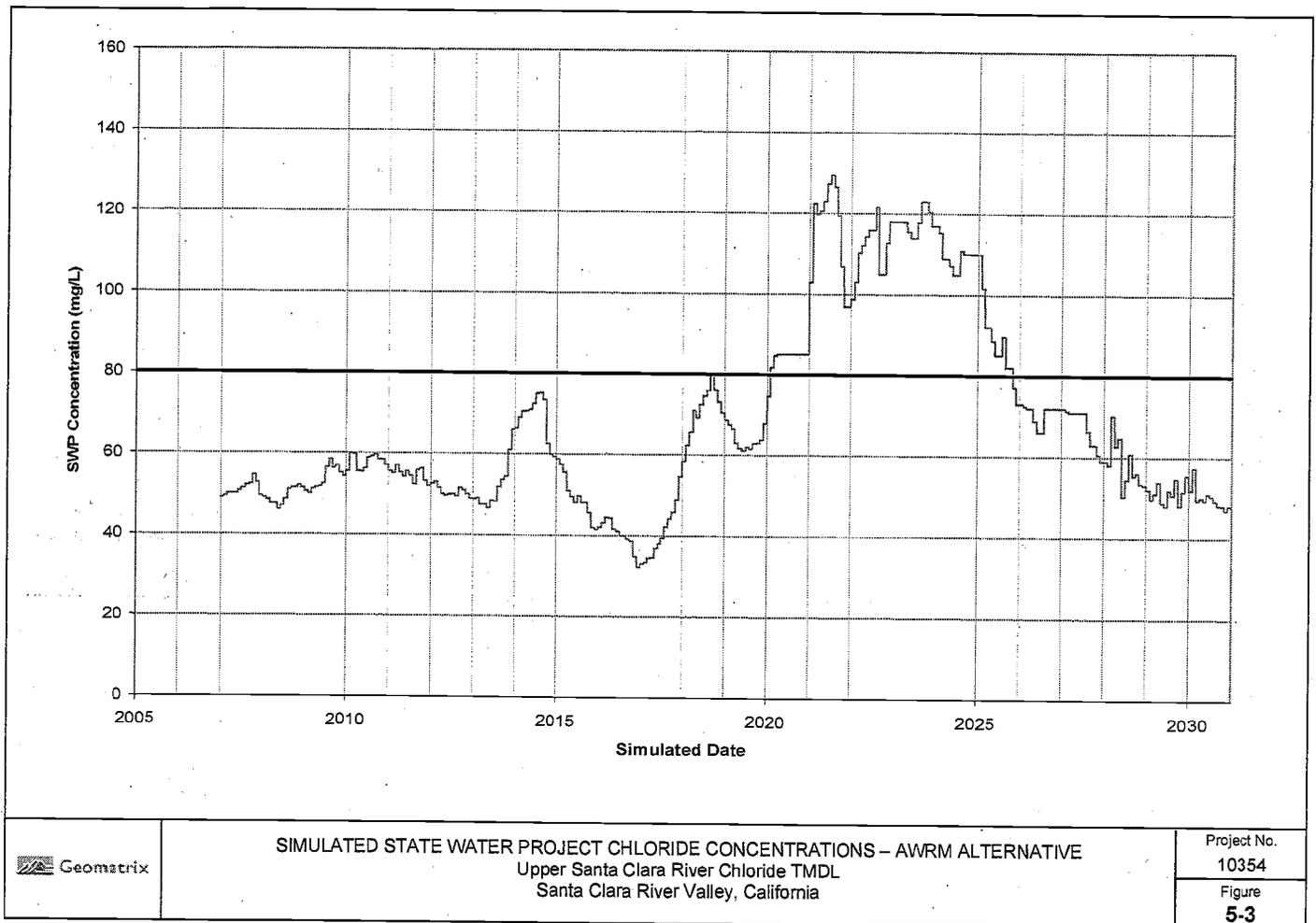


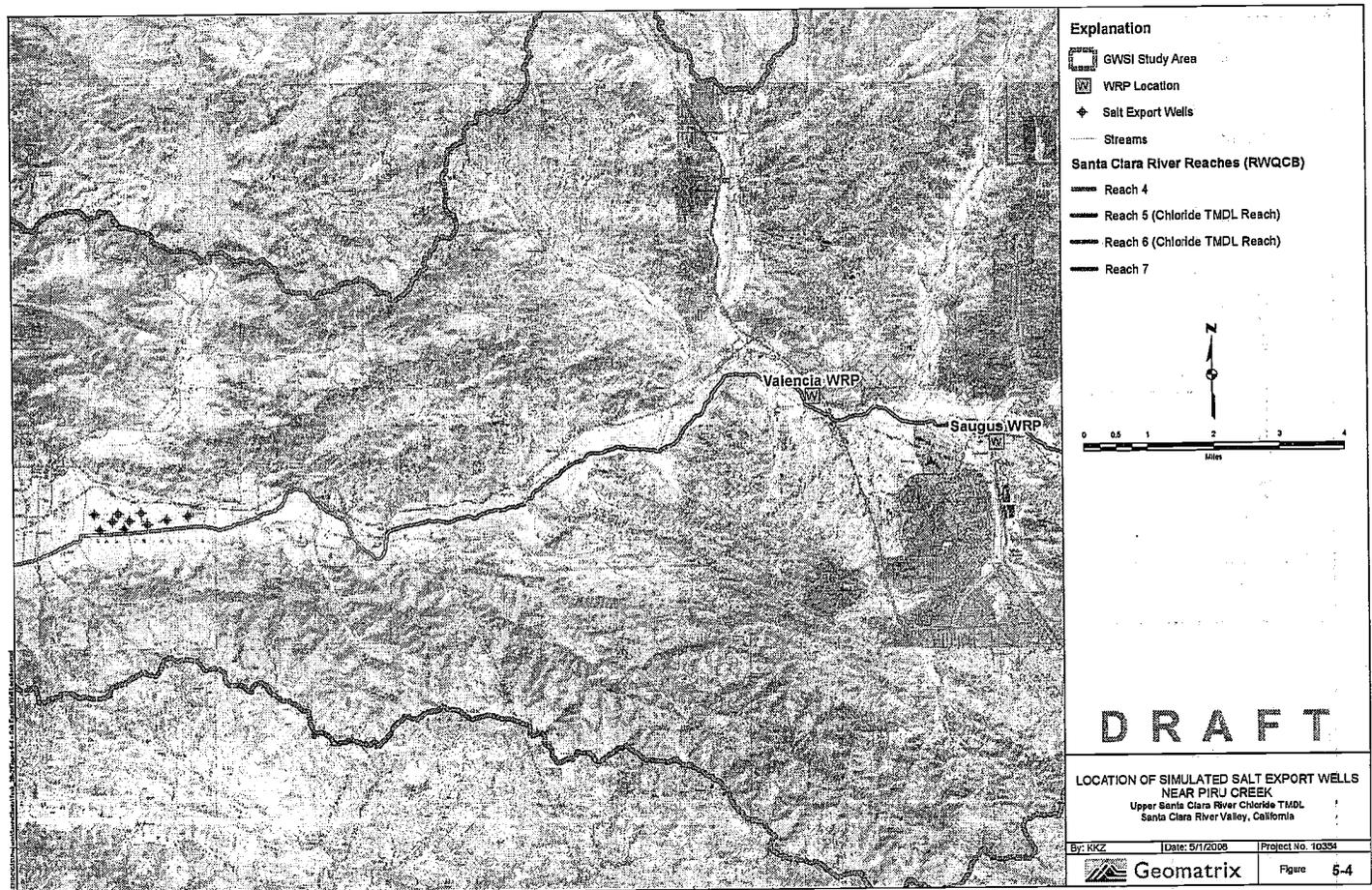
*AWRM Operation when SWP Cl < 80 mg/L*

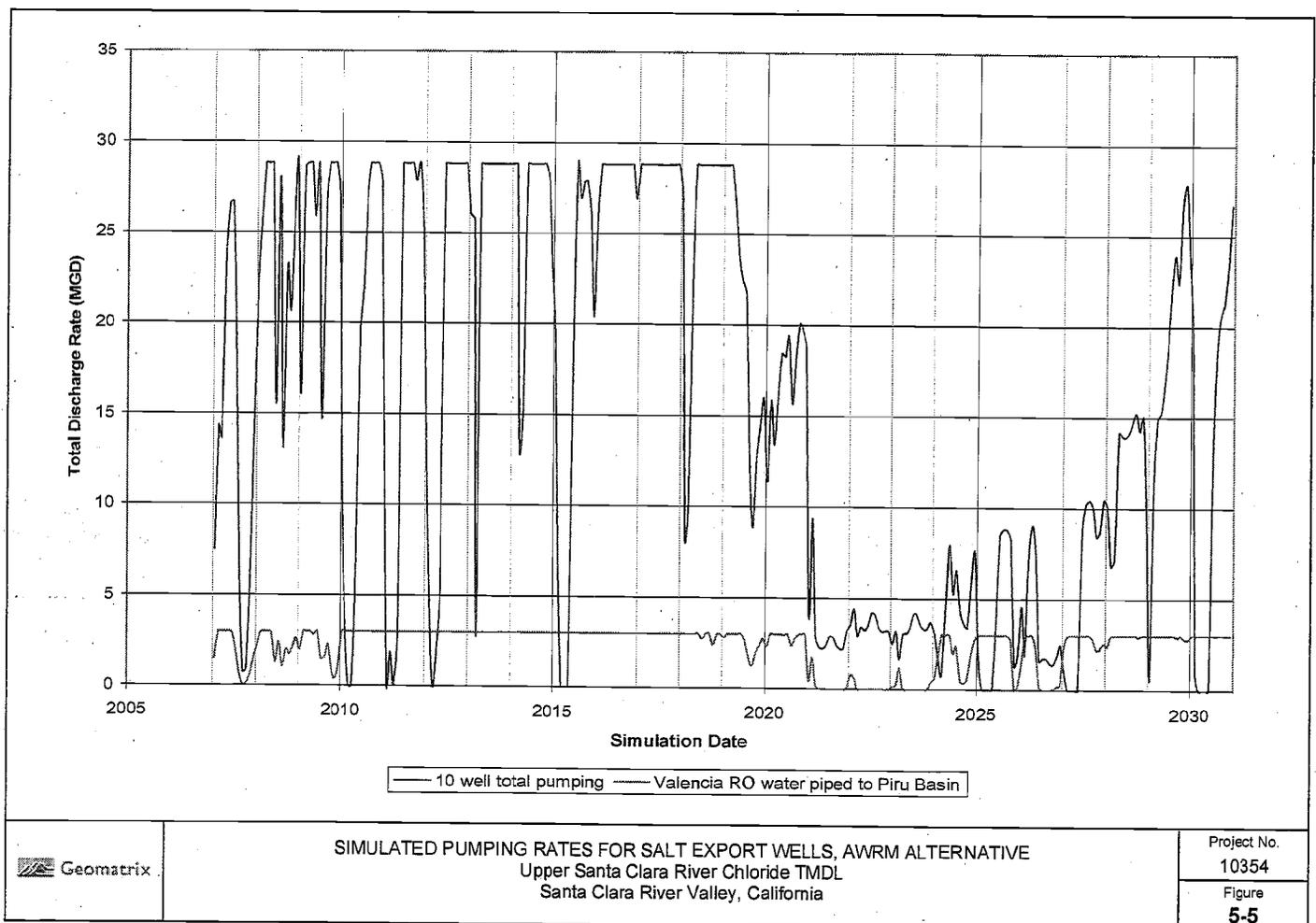
Blended RO + Groundwater  
 Discharge @ <95 mg/L

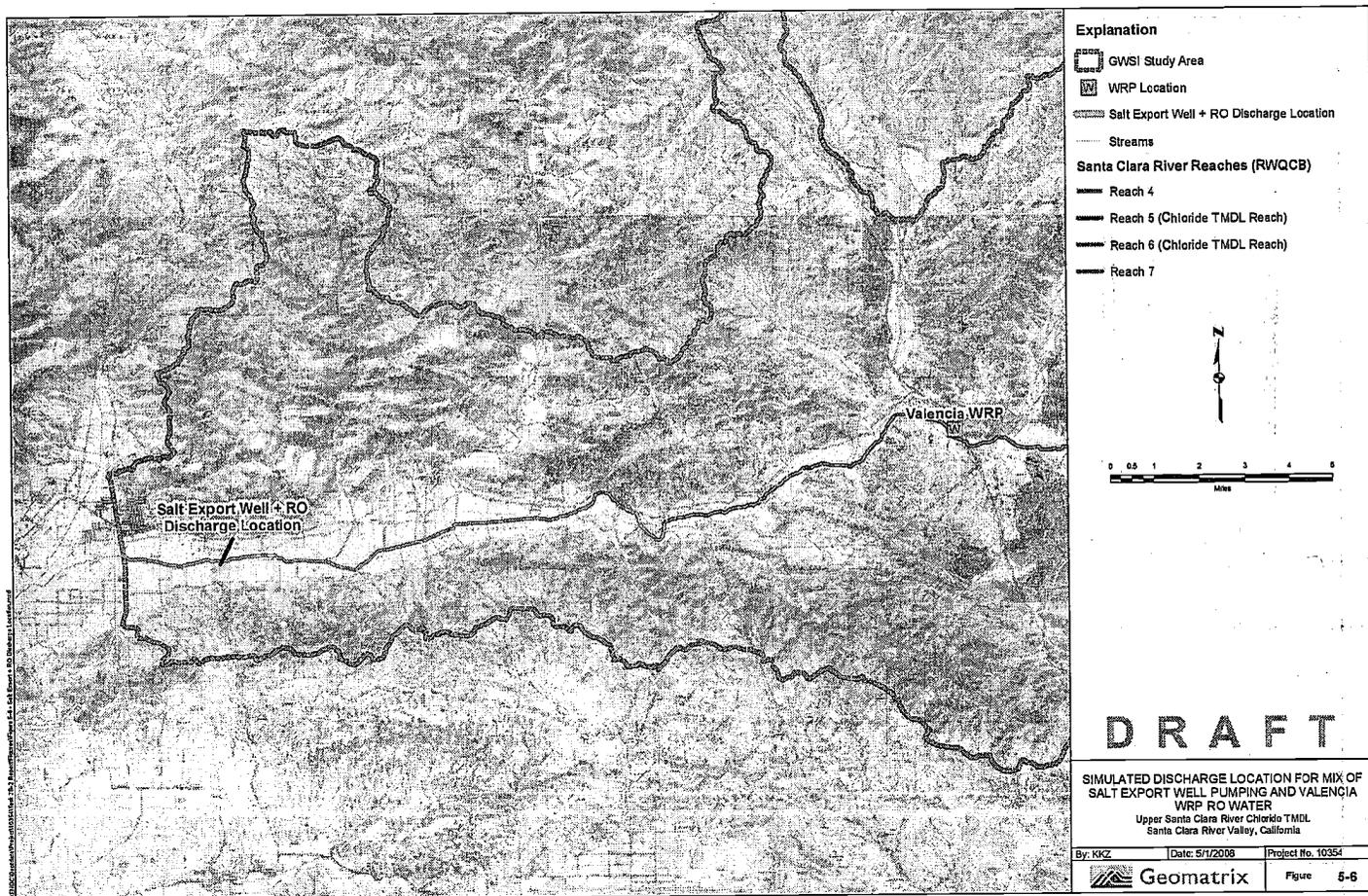


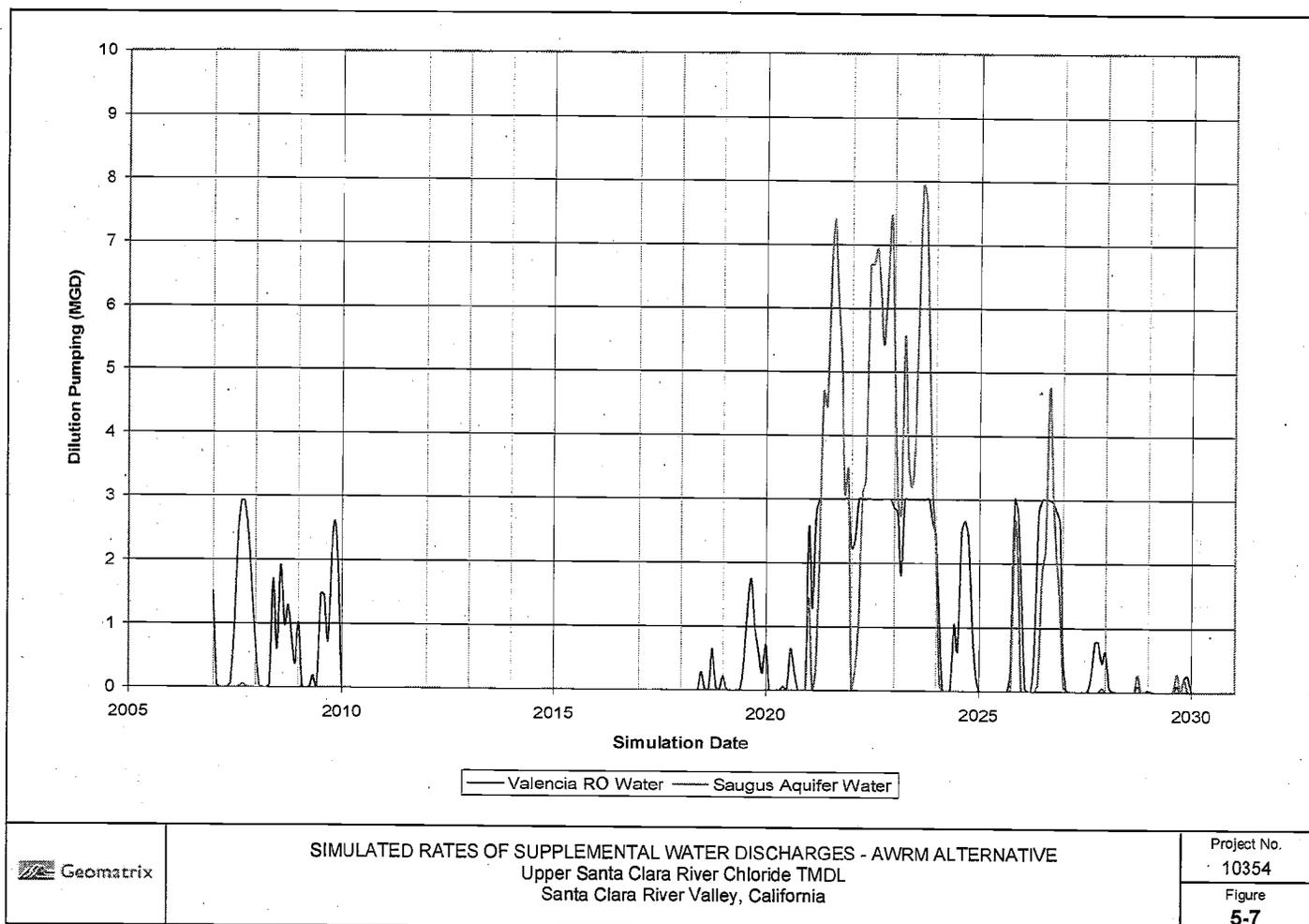
	CONCEPTUAL OPERATIONS OF THE AWRM ALTERNATIVE Upper Santa Clara River Chloride TMDL Santa Clara River Valley, California	Project No. 10354
		Figure <b>5-2</b>

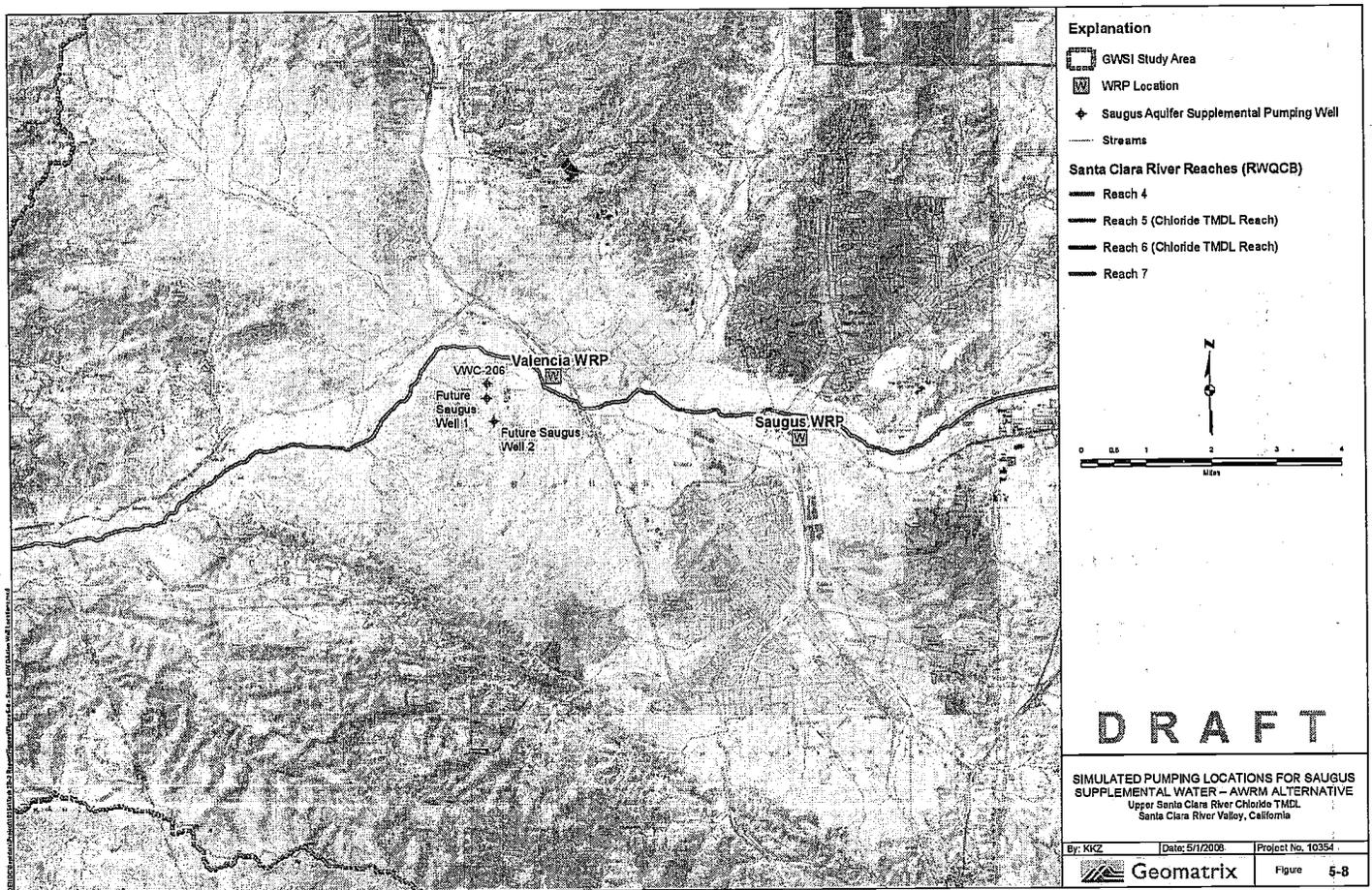


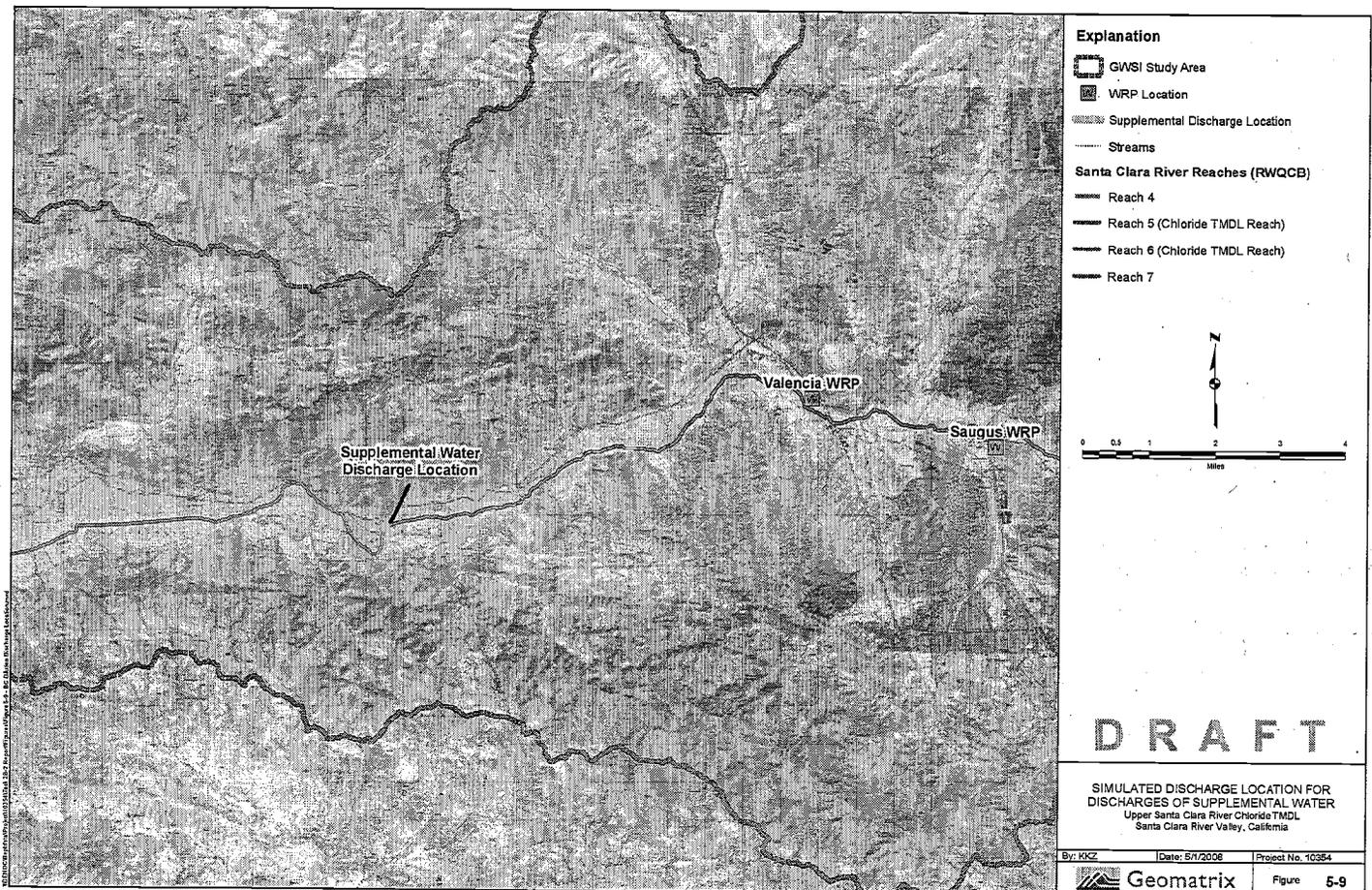


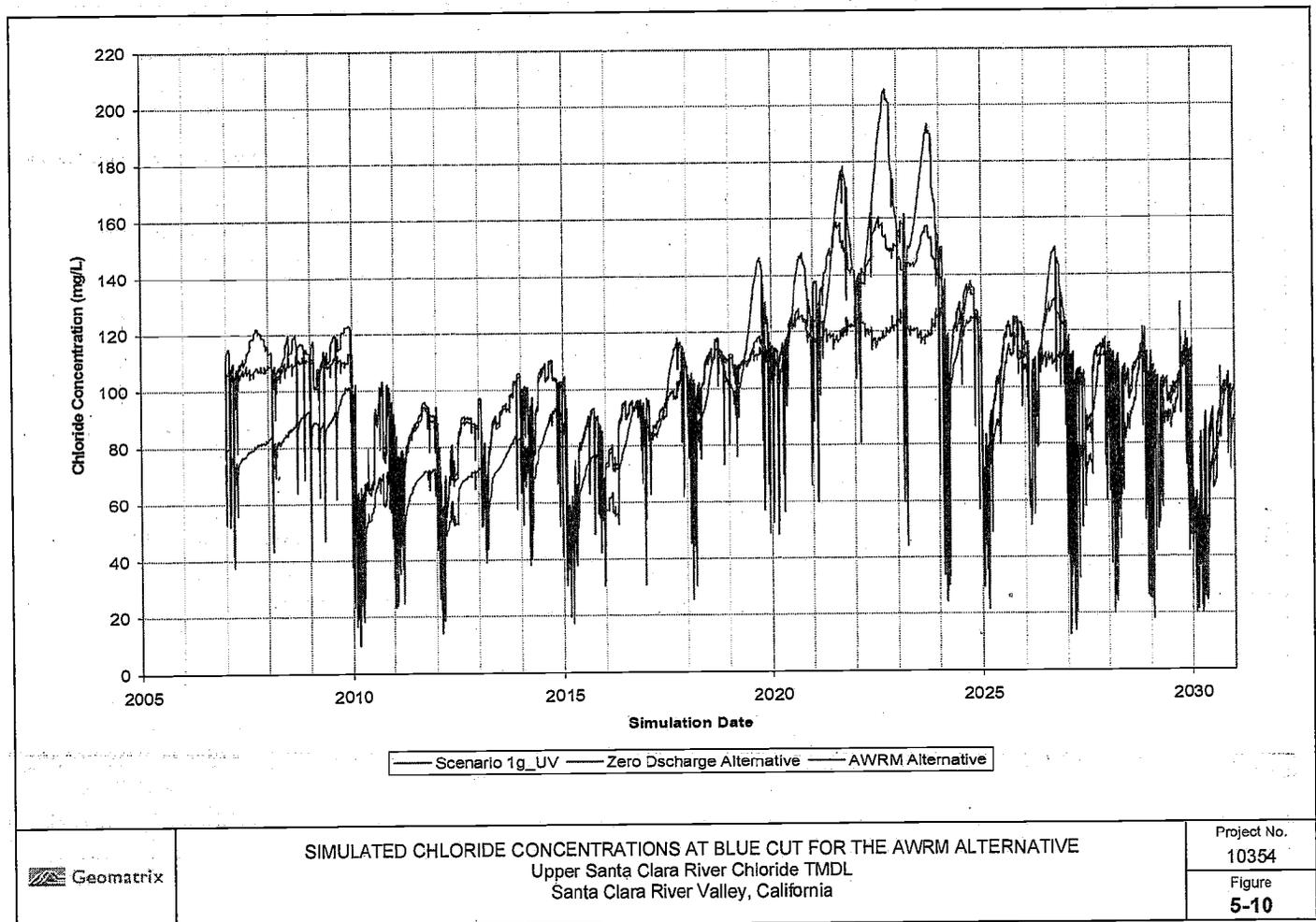


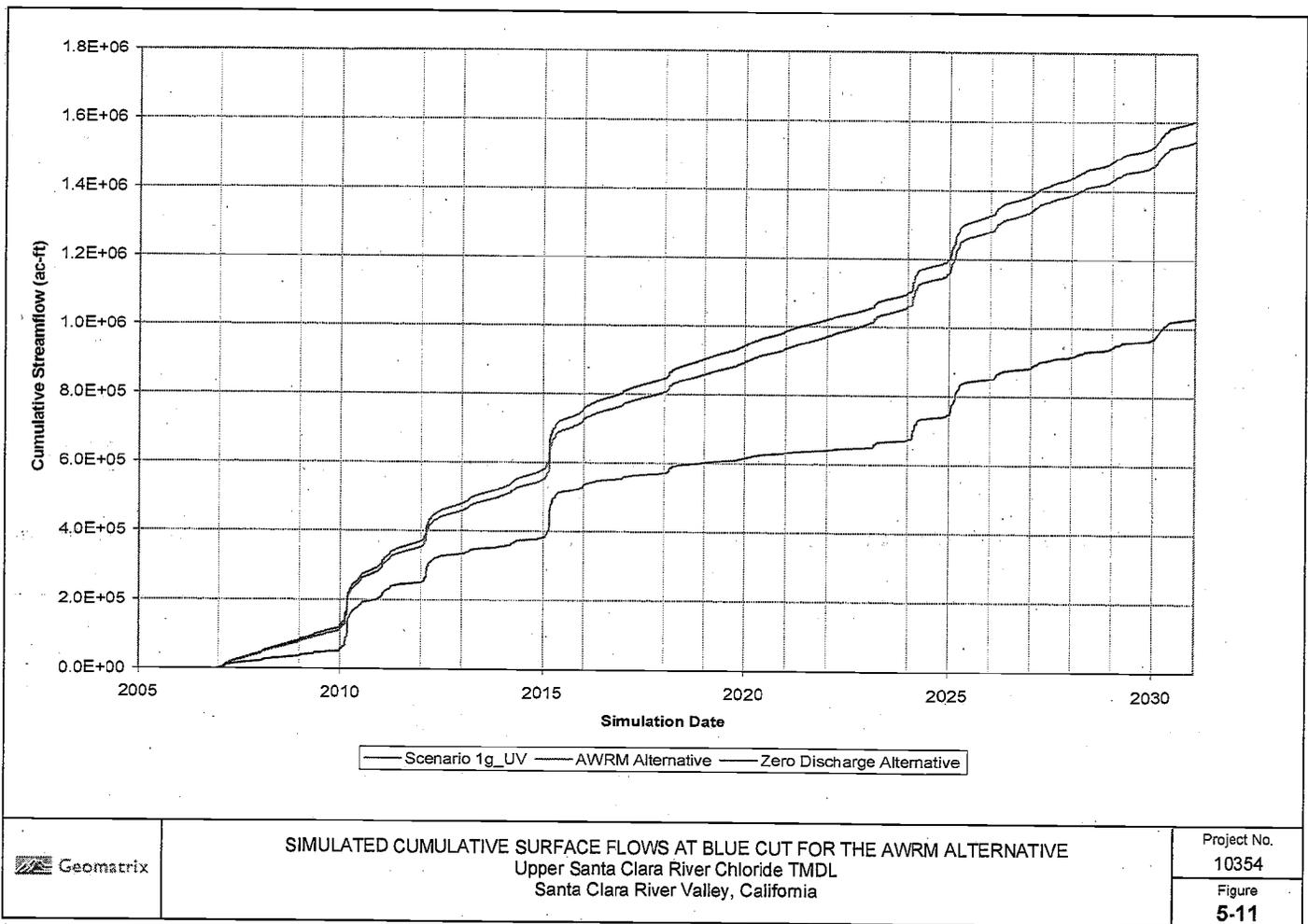


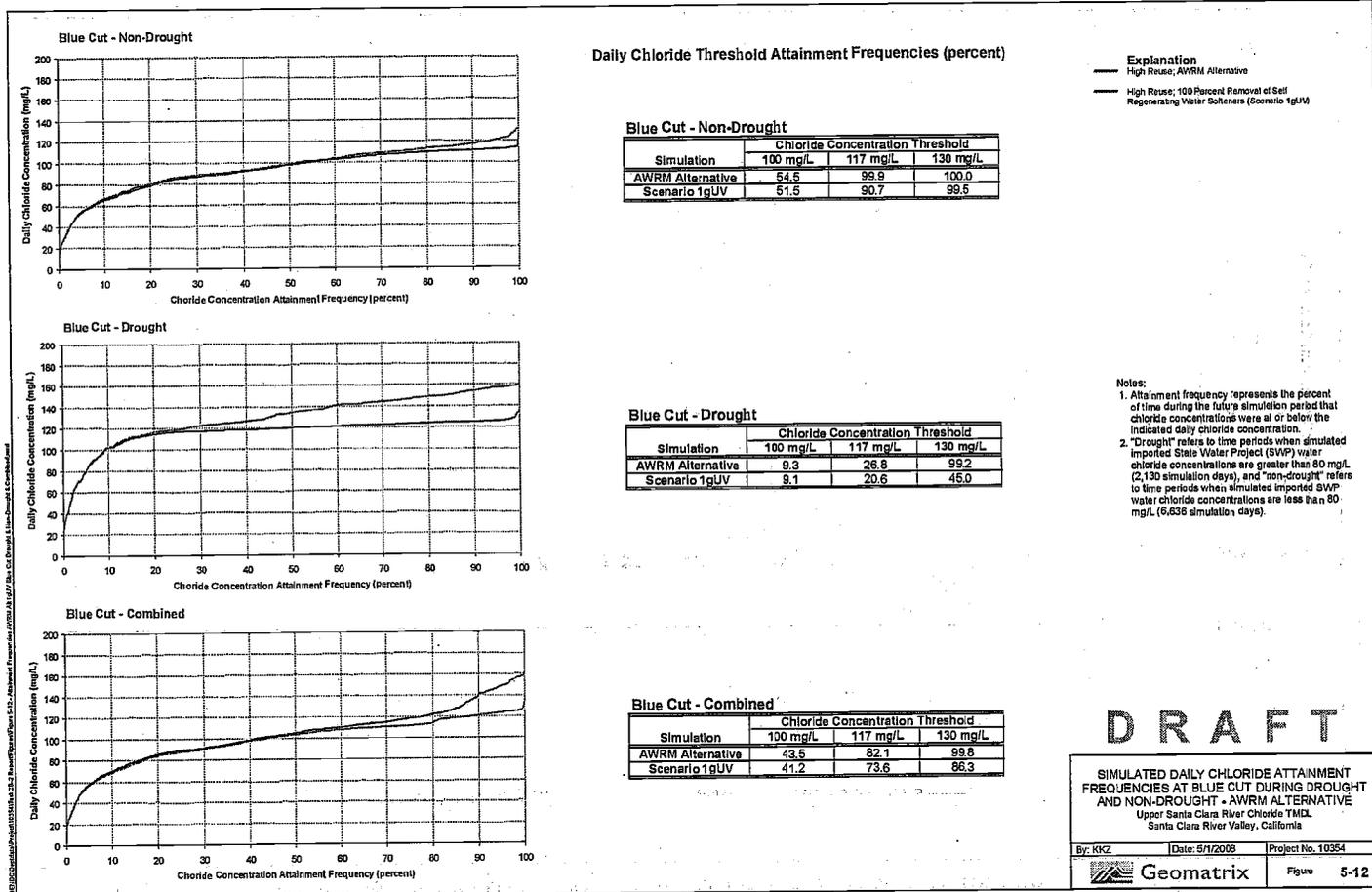


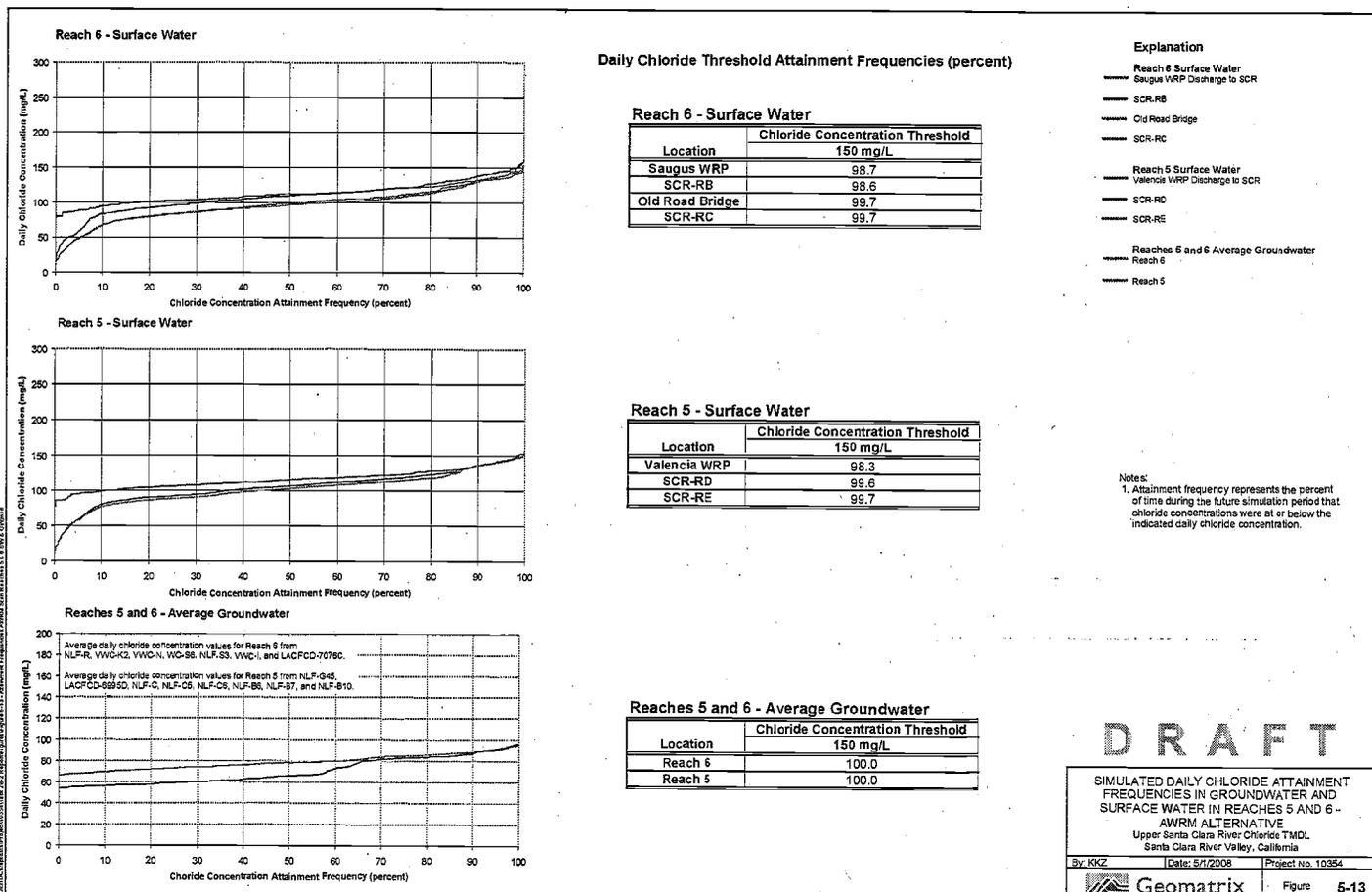








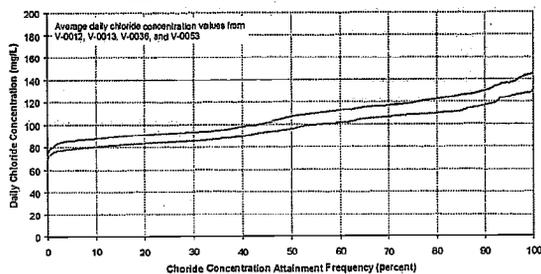




Daily Chloride Threshold Attainment Frequencies (percent)

**Explanation**  
 — High Reuse, AWRM Alternative  
 — High Reuse; 100 Percent Removal of Self-Regenerating Water Solids (Scenario 1gUV)

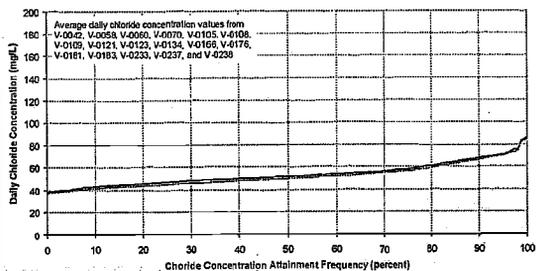
Groundwater East of Piru Creek



Groundwater East of Piru Creek

Simulation	Chloride Concentration Threshold		
	100 mg/L	117 mg/L	130 mg/L
AWRM Alternative	56.3	90.4	99.9
Scenario 1gUV	43.5	71.3	90.2

Groundwater West of Piru Creek



Groundwater West of Piru Creek

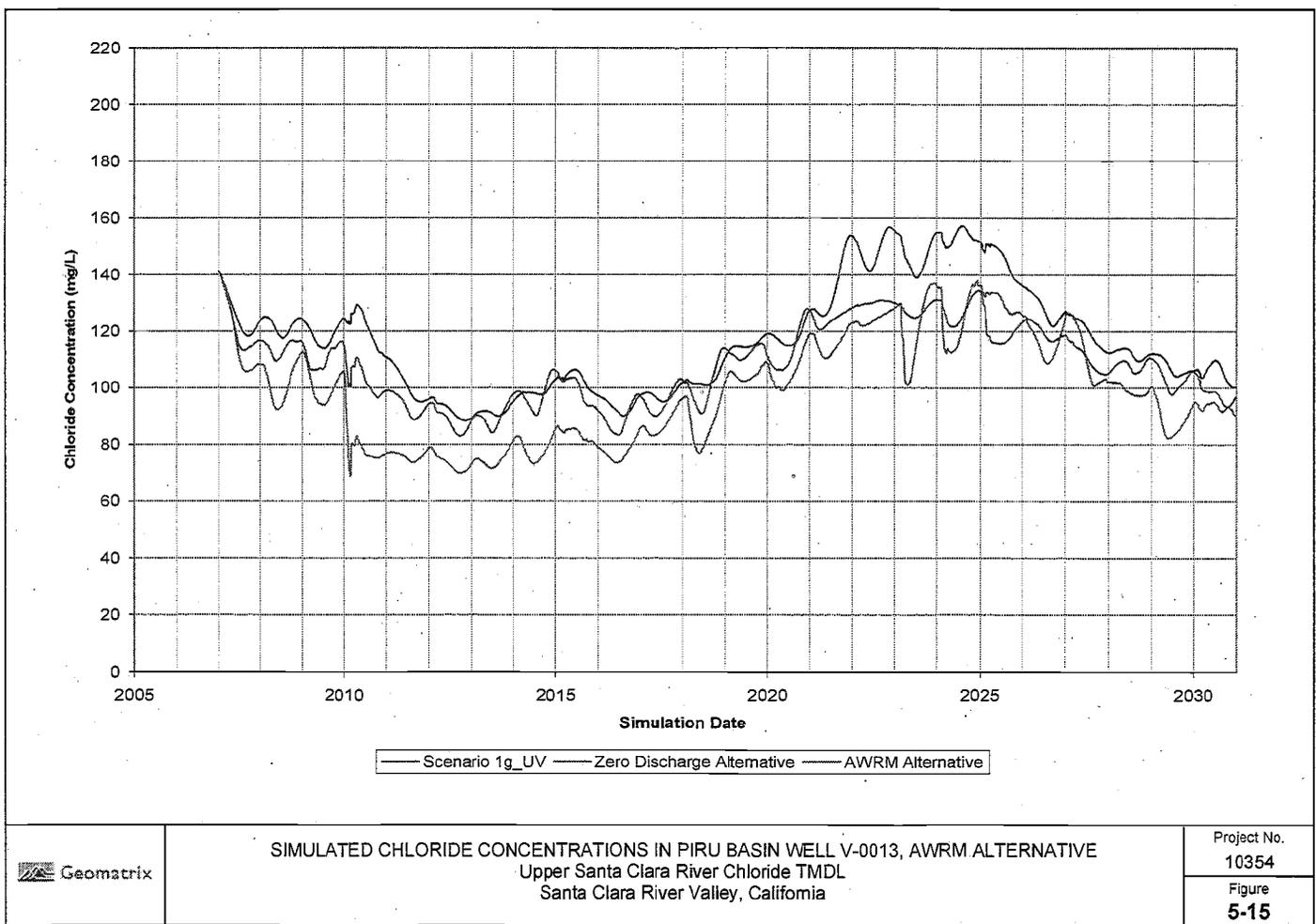
Simulation	Chloride Concentration Threshold		
	100 mg/L	117 mg/L	130 mg/L
AWRM Alternative	100.0	100.0	100.0
Scenario 1gUV	100.0	100.0	100.0

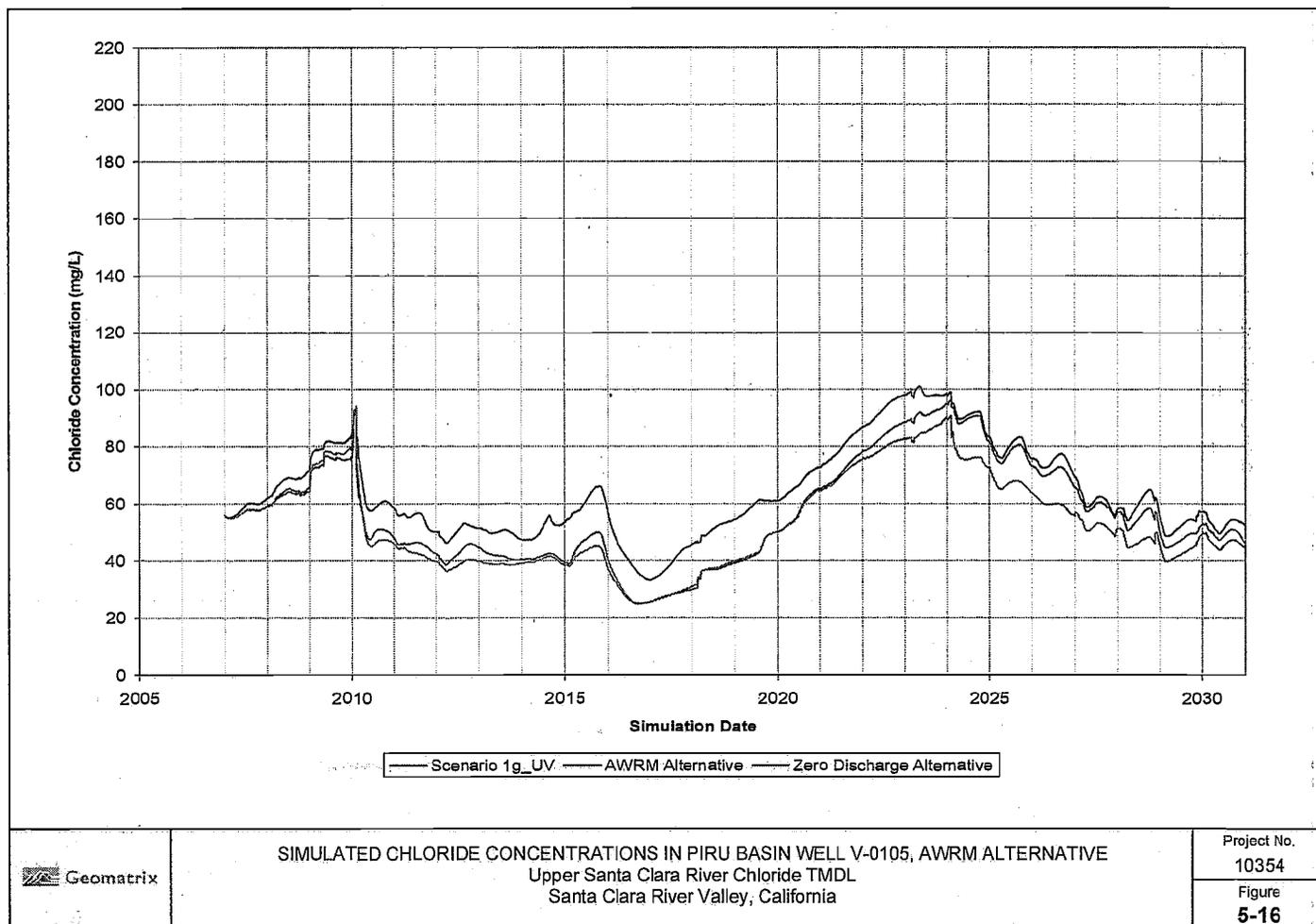
**Notes:**  
 1. Attainment frequency represents the percent of time during the future simulation period that chloride concentrations were at or below the indicated daily chloride concentration.

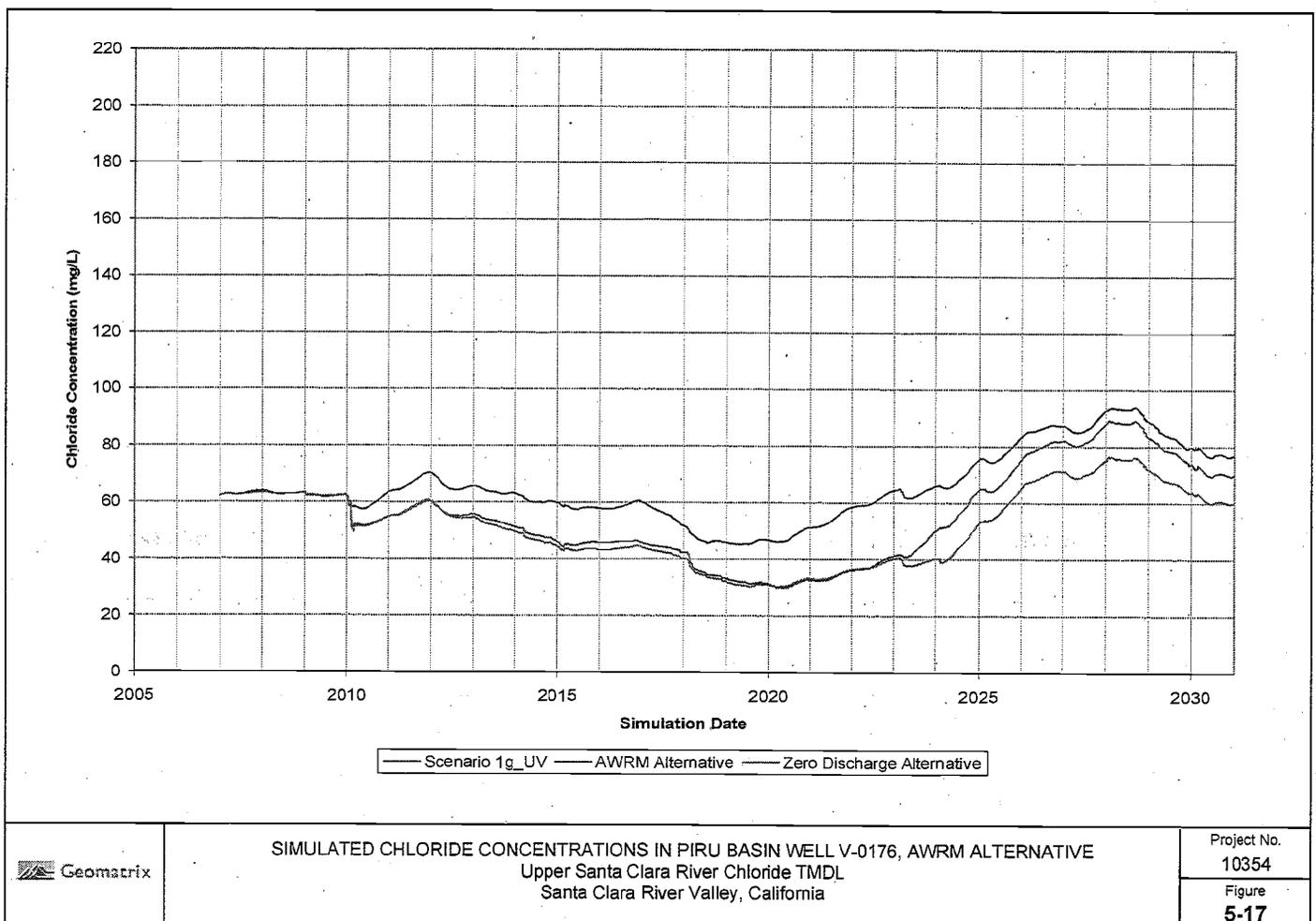
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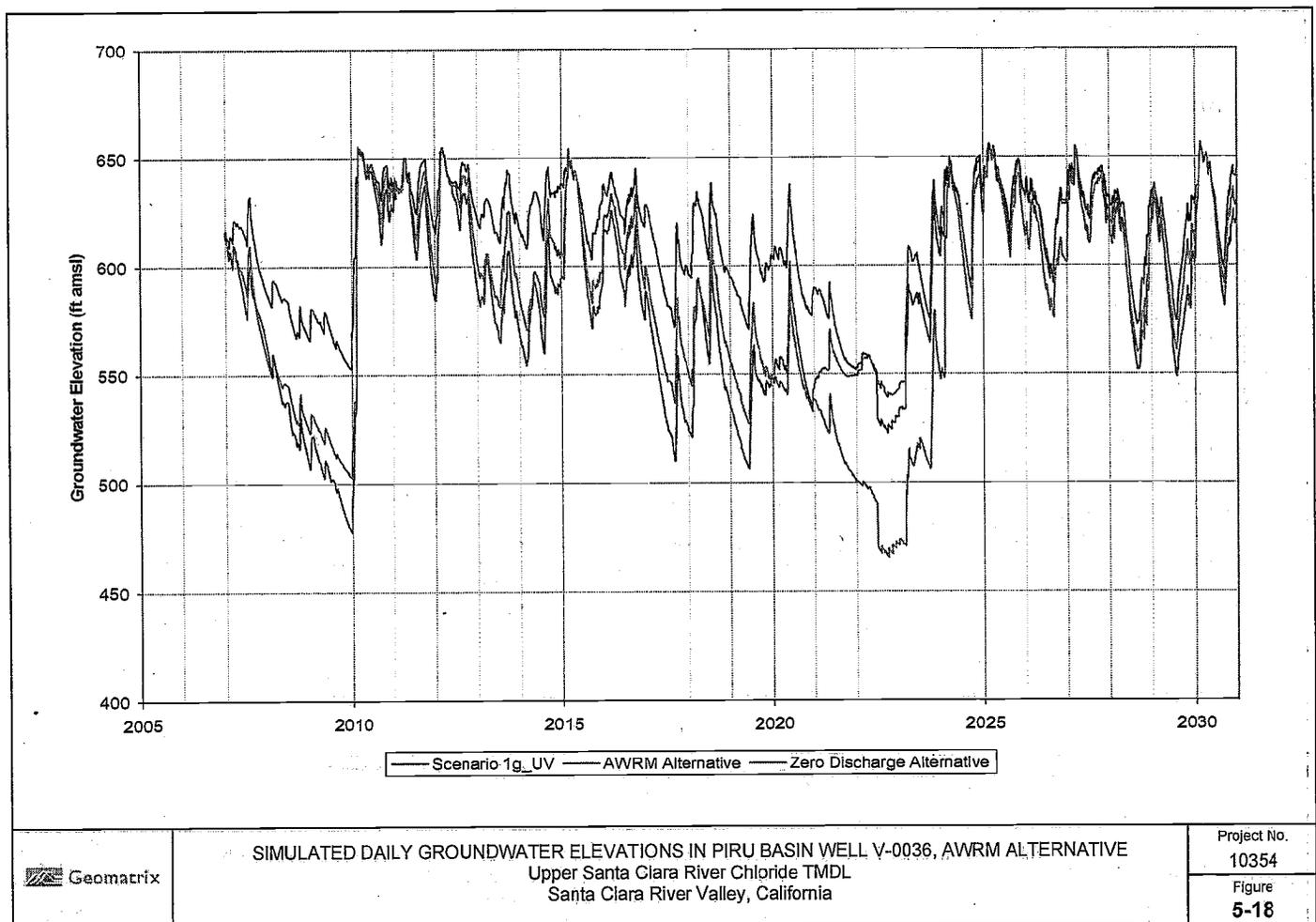
SIMULATED DAILY CHLORIDE ATTAINMENT FREQUENCIES IN PIRU BASIN GROUNDWATER - AWRM ALTERNATIVE  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

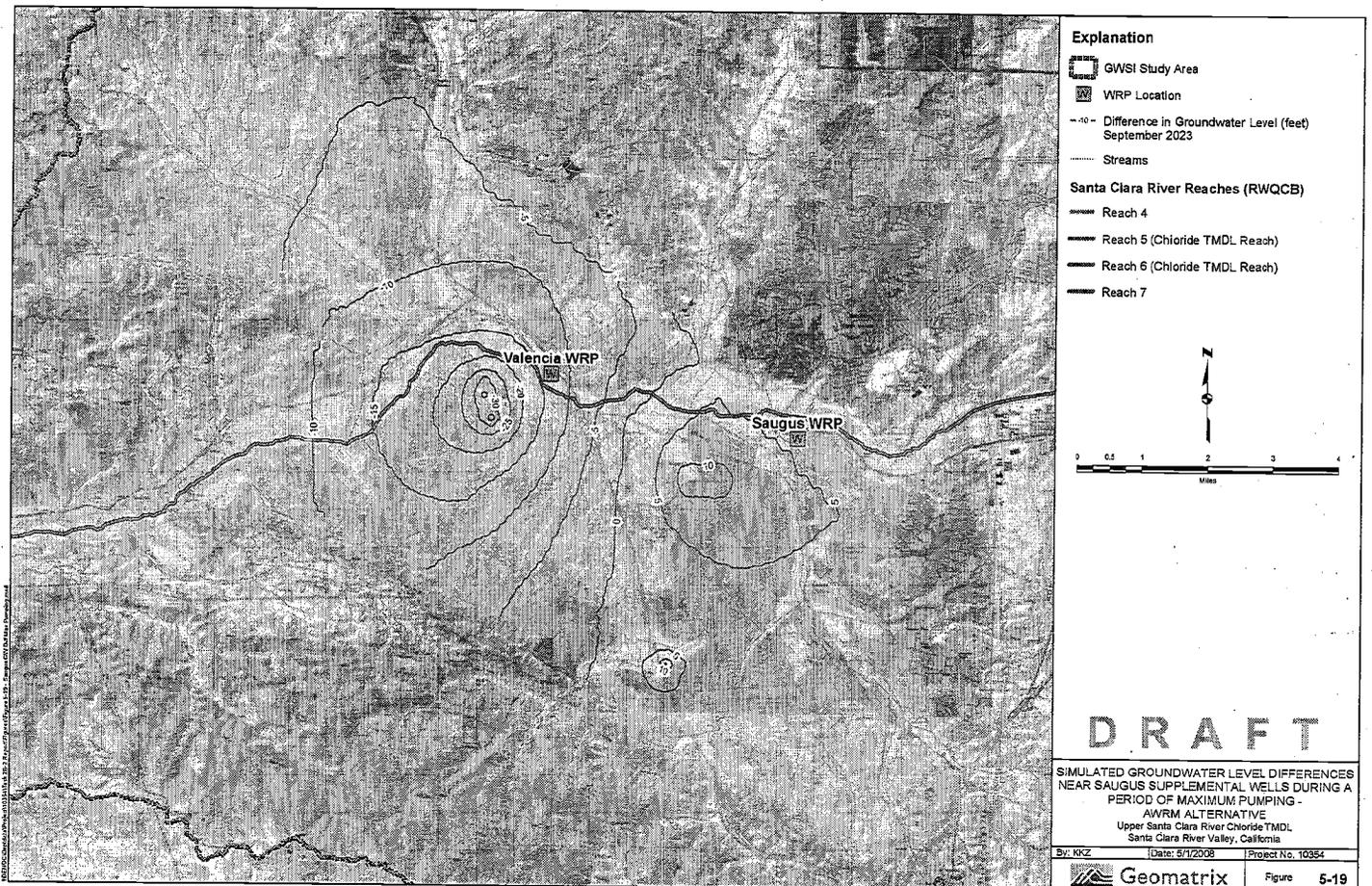
By: KKZ | Date: 5/1/2008 | Project No. 10354  
 Geomatrix | Figure 5-14

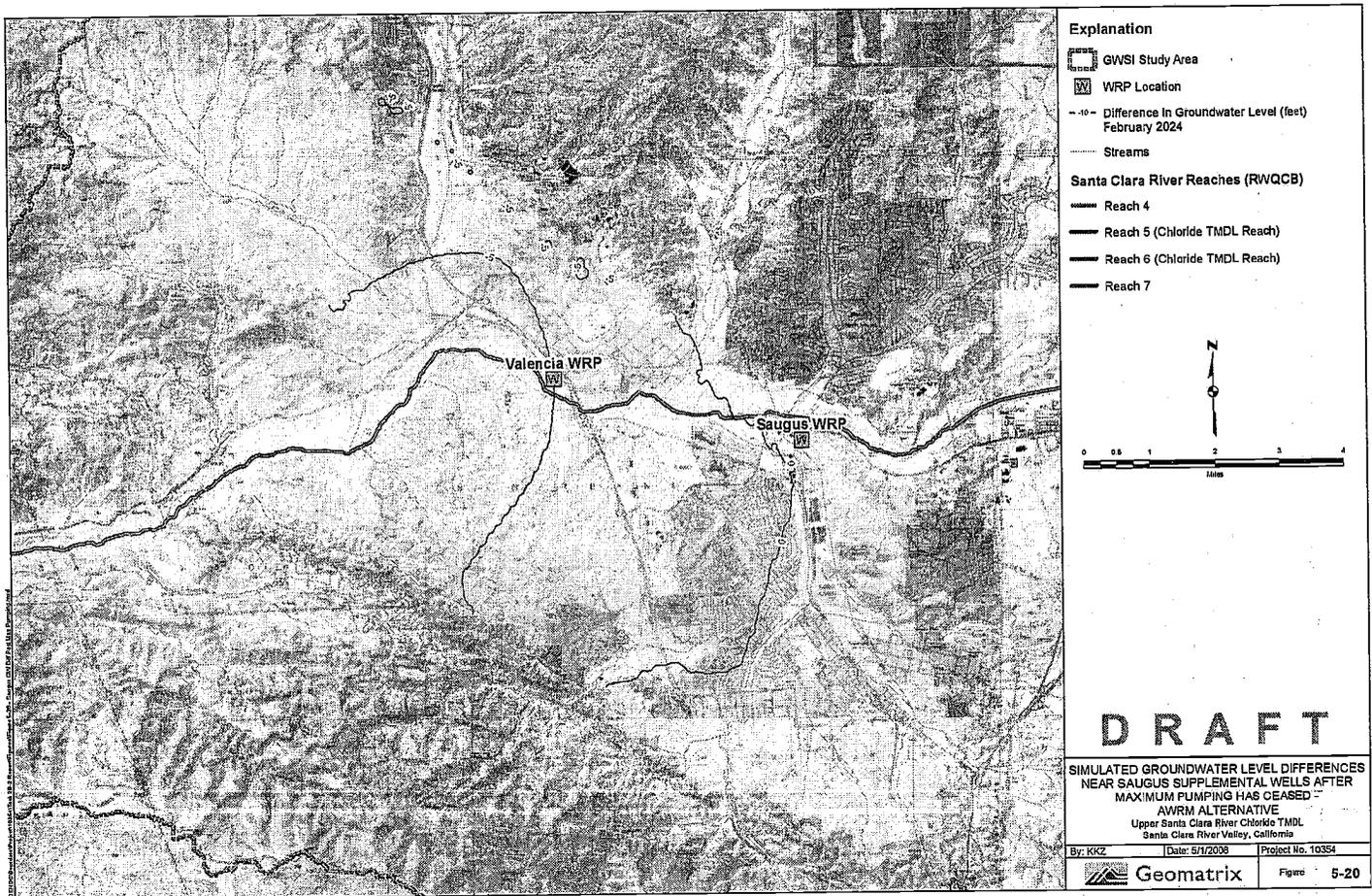


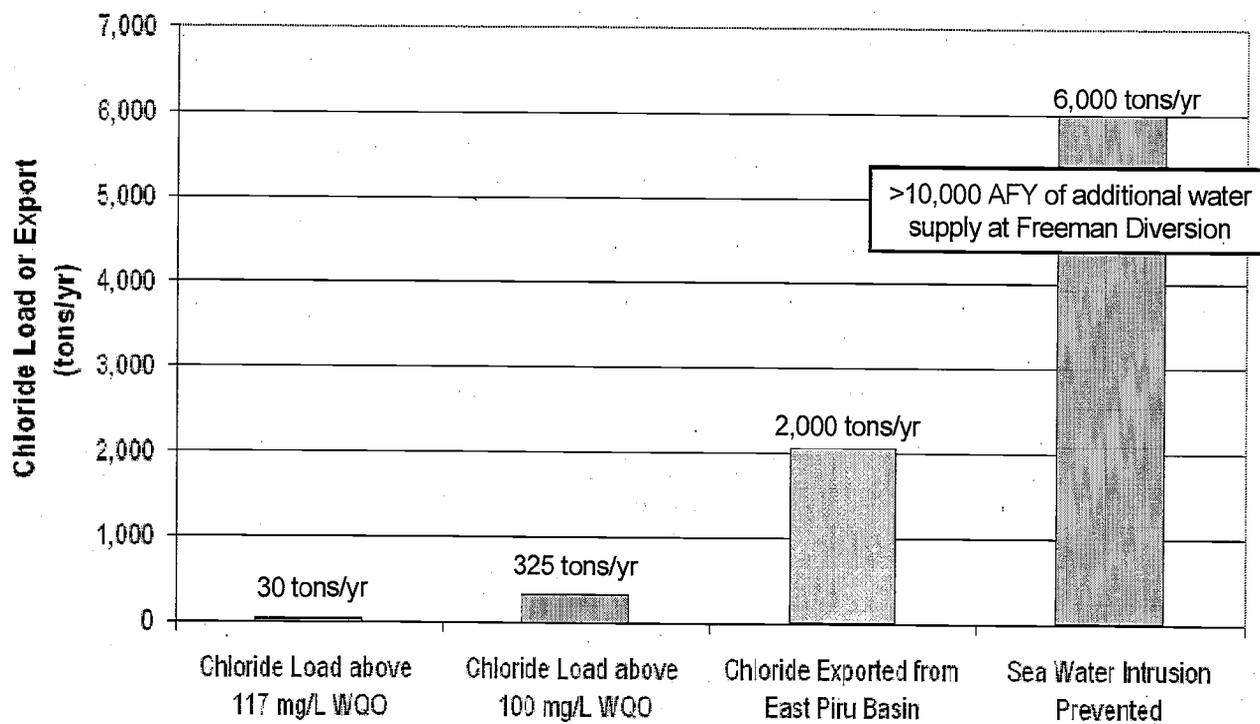




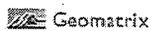








Source: Bachman (2008)



PREDICTED CHLORIDE LOAD BALANCE WITH THE AWRM PROGRAM  
 Upper Santa Clara River Chloride TMDL  
 Santa Clara River Valley, California

Project No.  
 10354

Figure  
 5-21







# **ATTACHMENT 71**



Final - September 3, 2008

CSD C# 4435

MEMORANDUM OF UNDERSTANDING FOR IMPLEMENTATION OF  
AN ALTERNATIVE WATER RESOURCES MANAGEMENT PROGRAM

Among the

SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY  
UPPER BASIN WATER PURVEYORS  
UNITED WATER CONSERVATION DISTRICT, AND  
VENTURA COUNTY AGRICULTURAL WATER QUALITY COALITION

October 2008

Final - September 3, 2008

MEMORANDUM OF UNDERSTANDING FOR THE IMPLEMENTATION OF  
AN ALTERNATIVE WATER RESOURCES MANAGEMENT PROGRAM

This Memorandum of Understanding for the Implementation of an Alternative Water Resources Management Program ("MOU") is entered into effective October 23, 2008, by and among CASTAIC LAKE WATER AGENCY ("CLWA"), CLWA's SANTA CLARITA WATER DIVISION ("SCWD"), VALENCIA WATER COMPANY ("VWC"), NEWHALL COUNTY WATER DISTRICT ("NCWD"), and LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 36 ("LACWD"), which are collectively referred to as the "UPPER BASIN WATER PURVEYORS ("UBWPs")," the SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY ("SCVSD"), the UNITED WATER CONSERVATION DISTRICT ("UWCD"), and the VENTURA COUNTY AGRICULTURAL WATER QUALITY COALITION ("VCAWQC"), individually referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. A total maximum daily load (TMDL) for chloride in the Upper Santa Clara River (Reaches 5 and 6) was adopted by the California Regional Water Quality Control Board – Los Angeles Region ("Regional Board") and became effective on May 5, 2005. The TMDL established waste load allocations of 100 mg/L for the SCVSD's Saugus and Valencia Water Reclamation Plants (WRPs). The TMDL implementation schedule allows for several special studies to determine whether existing water quality objectives and waste-load allocations for chloride can be revised, and provides for an 11-year schedule to attain compliance with the final water quality objectives and waste-load allocations for chloride.
- B. The conventional approach to achieving compliance with the existing 100 mg/L water quality objective and waste-load allocations for chloride would be through constructing desalination facilities at the SCVSD's Saugus and Valencia WRPs and a 43-mile brine line through the Santa Clara River Watershed to an ocean outfall off the Ventura coast. The Parties have collaboratively developed an alternative approach to water resources management that will achieve TMDL compliance, which is set forth in an exhibit to this MOU (Exhibit 1) and entitled "the Alternative Water Resources Management Program" ("the AWRM Program"). This program uses a basin water supply management approach to achieve the final water quality objectives and waste load allocation for chloride determined through the TMDL collaborative process. The AWRM Program, in comparison with the conventional approach, would have economic, public acceptance, feasibility, timing, environmental quality, and water supply benefits.
- C. The Parties recognize that the AWRM Program provides multiple benefits for stakeholders in Los Angeles and Ventura Counties. These benefits include the revision of water quality objectives, provision of tertiary recycled water and potential provision of desalinated recycled water that will support increased water recycling and thereby increase water supplies in the City of Santa Clarita and unincorporated areas of Los Angeles County. In addition, the AWRM Program will implement water supply facilities in Ventura County and provide desalinated recycled water to these water supply facilities that will allow for the conjunctive use of groundwater and surface water resources to increase water supplies and improve water quality in groundwater and surface waters of the Santa Clara River watershed.

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- D. The Parties have determined that this MOU is an appropriate format for initiating implementation of the AWRM Program, and will benefit the water resources of the Santa Clara River Watershed.
- E. The Parties desire to establish and maintain cooperative and reciprocal relationships with each other for the planning and preliminary design of facilities and operations that will implement and monitor the effectiveness of the AWRM Program. In order to do this, the Parties are willing to designate individual representatives to participate in an Oversight Committee that will provide oversight of the implementation of the AWRM Program.
- F. The Parties acknowledge that a Joint Powers Authority (JPA) may be formed to implement specific activities anticipated by this MOU.
- G. The Parties recognize and acknowledge SCVSD's rights under California Water Code, Section 1210, as it pertains to the recycled water, whether tertiary or desalinated, that is produced from the SCVSD's facilities. The Parties further recognize and acknowledge that the primary and first use of all desalinated recycled water is to comply with requirements of the USCR Chloride TMDL.
- H. The UBWPs and UWCD have conferred and come to an agreement on the call for any desalinated recycled water for secondary uses in Los Angeles and Ventura Counties.
- I. The Parties recognize that the implementation of the AWRM Program is subject to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq* ("CEQA"). The Parties intend by this MOU to address the manner in which they intend to fulfill their responsibilities under CEQA in regard to the AWRM program and the project specific actions that may be taken by the Parties. This MOU is not intended to limit the Parties' discretion to consider alternatives and additional mitigation measures in regard to the AWRM Program.

#### MEMORANDUM OF UNDERSTANDING

The Parties therefore agree as follows:

- 1.1 **Guiding Principles for AWRM Program.** The Parties agree to abide by a set of guiding principles, as described in Exhibit 1, for the implementation of the AWRM Program, as well as any adaptation of the AWRM Program, if necessary, in the future.
- 1.2 **Revisions to Surface Water and Groundwater Water Quality Objectives and Associated Final Chloride Waste-Load Allocations and Effluent Permit Limits.** The Parties agree to support the revisions to the surface water and groundwater water quality objectives and all associated final chloride waste-load allocations and final effluent permit limits for the Saugus and Valencia WRPs set forth in Exhibit 1, as well as any regulatory actions necessary to allow groundwater to be discharged. The Parties agree to submit written and oral testimony to the Regional Board, the State Water Resources Control Board, and the United States Environmental Protection Agency, Region IX encouraging adoption of such revisions. The Parties also agree to undertake advocacy and outreach activities necessary to obtain the support and acceptance of stakeholder groups within their jurisdictional boundaries for the revisions to water quality objectives and associated final waste-load allocations and effluent permit limits necessary to implement the AWRM Program.

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**1.3 Uses of Desalinated Recycled Water.** In accordance with the California Water Code, Section 1210, the SCVSD will designate uses of its desalinated recycled water, at its sole discretion, as follows:

**1.3.1 Primary Uses of Desalinated Recycled Water.** The primary and first use of all desalinated recycled water is for SCVSD compliance-related purposes, which include but are not limited to: (1) complying with water quality objectives for Reaches 4A, 4B, and 5; (2) protecting salt-sensitive agricultural beneficial uses irrigated with Reach 4B surface water as required in the USCR Chloride TMDL; (3) removing past excess chloride load above 117 mg/L from East Piru Basin groundwater that is attributed to the District's facilities; and (4) maintaining a salt balance so that any future cumulative incremental chloride load above 117 mg/L to Reach 4B surface water that is attributed to the District's facilities is removed through the AWRM Program, as required in the USCR Chloride TMDL.

**1.3.2 Secondary Uses of Desalinated Recycled Water.** To the extent that SCVSD does not use its desalinated recycled water for the primary uses identified in Section 1.3.1, and there is sufficient supply available for secondary uses, the SCVSD will make available an amount up to 3 MGD of its remaining desalinated recycled water for calls for utilization by the UBWPs and the UWCD. In the event that the UBWPs desire to implement a program to augment local water supplies by beneficial use of the desalinated recycled water when the desalinated recycled water is not needed to meet the primary uses described in Paragraph 1.3.1, the UBWPs and UWCD shall meet and confer in good faith to develop a mutually agreed-upon division of any available desalinated recycled water for secondary uses. Deliveries of secondary use desalinated recycled water to the UBWPs or UWCD will be accommodated under recycled water agreement(s) between the party(ies) receiving deliveries and the SCVSD.

**1.3.3 Future Rights to Desalinated Recycled Water.** Because SCVSD's primary and first use of desalinated recycled water from facilities implemented under the AWRM program is for compliance related purposes, in accordance with Section 1.3.1, any secondary uses of desalinated water or delivery to the UBWPs or UWCD are not guaranteed. As such, any secondary use of desalinated recycled water from the AWRM Program or delivery to Los Angeles or Ventura Counties will not establish any right on the part of any recipient or other entity to future deliveries of any quantity of desalinated recycled water from the SCVSD.

**1.4 Implementation of Party Commitments.** Subject to completion of any required procedures under CEQA, each Party agrees to implement their respective commitments as described in the AWRM Program, and as follows:

**1.4.1 SCVSD Commitments.** Subject to compliance with CEQA, the SCVSD agrees to implement the following commitments in support of the AWRM Program:

- (a) Self-regenerating Water Softeners: The SCVSD shall continue with the planning and implementation of outreach programs and legal procedures for voluntary and mandatory removal of self-regenerating water softeners (SRWS).
- (b) Other Source Control Activities. The SCVSD shall consider funding other cost-effective source control activities on a case-by-case basis, if circumstances in the future necessitate the need for additional chloride reduction.

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- (c) AWRM Environmental Impact Report and Wastewater Facilities Plan: The SCVSD shall act as the Lead Agency and complete planning and programmatic environmental analysis under the California Environmental Quality Act ("CEQA") of the AWRM Program elements specified in Exhibit I in an Environmental Impact Report (EIR). In addition, the SCVSD shall complete facilities planning and project level CEQA analysis of the following wastewater-treatment related elements of the AWRM Program:
- i. Conversion of the disinfection processes at the Saugus and Valencia WRPs to Ultra-Violet Light Technologies.
  - ii. Construction of an advanced treatment facility at Valencia WRP, consisting of microfiltration (MF) and reverse osmosis (RO).
  - iii. Construction of brine disposal facilities associated with the brine generated from reverse osmosis technologies.
  - iv. Construction of a desalinated recycled water conveyance pipeline from Valencia WRP to the Camulos Ranch surface water diversion.
- (d) Certification of AWRM EIR and Wastewater Facilities Plan: The SCVSD shall act as the Lead Agency and consider certification of the AWRM EIR and Wastewater Facilities Plan in accordance with CEQA, which will include an assessment of the elements identified in 1.4.1(c) of this MOU by May 4, 2011 (TMDL Task 13a due date). Other signatories to this MOU may act as responsible agencies for the AWRM EIR, or use the AWRM EIR in connection with their own project approval processes.
- (e) Early Start Recycled Water Project: The SCVSD shall work with the UBWPs to develop an early start recycled water project. The objectives of the early start recycled water project are to utilize recycled water from the Saugus Water Reclamation Plant and to reduce the risk of invasive fish migration to critical downstream habitats.
- (f) Recycled Water Agreement: The SCVSD and CLWA shall amend or replace the existing recycled water agreement to expand the quantity of recycled water that can be purchased by CLWA from the SCVSD.
- (g) CLWA's Recycled Water Program: The SCVSD shall support the implementation of the CLWA's Recycled Water Program, through in-kind services to support regulatory reports/activities needed to utilize recycled water, lobbying efforts to secure grant funds for recycled water infrastructure investments, and in-kind technical support for the CLWA's application for low-interest State Revolving Fund (SRF) loans for the construction of recycled water infrastructure facilities.
- (h) Minimum Streamflow Study: Because the supply of recycled water is limited by minimum streamflow requirements in Reach 5 of the Santa Clara River, the SCVSD, together with the UBWPs and possibly others, shall fund a minimum streamflow study to quantify the habitat requirements of Reach 5. The cost allocation of this study shall be determined by mutual agreement.
- (i) Groundwater Recharge Program in Los Angeles County: In the event that the UBWPs desire to implement a groundwater recharge program with recycled water, for the purpose of augmenting Los Angeles County water supplies, the SCVSD shall support the UBWPs efforts to obtain regulatory approvals from the Los Angeles Regional Water Quality Control Board, California Department of Public Health, and State Water Resources Control Board, as necessary. Support shall include written

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and oral testimony and in-kind technical support on regulatory and technical reports and documents needed to utilize secondary use desalinated recycled water to augment local water supplies.

- (j) Completion of Wastewater Facilities: Subject to the scheduling provisions of Section 1.4.5, the SCVSD shall complete and operate the approved wastewater facilities addressed in the Final AWRM EIR and Wastewater Facilities Plan by May 4, 2015 (Revised TMDL Task 13d due date).
- (k) Ventura County Water Supply Facilities Scope of Work: The SCVSD shall contract with a firm or firm(s) that are jointly selected by the SCVSD and UWCD, to prepare a conceptual engineering design and engineer's cost estimate for the following Ventura County water supply facilities within 12 months of the approval date of the revised Chloride TMDL:
- i. East Piru extraction well network, consisting of 10 extraction wells, with a rated pumping capacity of 2,000 gallons per minute per well.
  - ii. East Piru conveyance pipelines, consisting of:
    1. Desalinated recycled water conveyance pipeline from the Camulos Ranch surface water diversion to the East Piru extraction well network.
    2. Blended discharge (RO + Extracted Groundwater) conveyance pipeline from the East Piru extraction well network to the Santa Clara River near the Fillmore Fish Hatchery, in Reach 4A of the Santa Clara River.

The engineer's cost estimate will include the cost for CEQA documentation and construction permitting of the Ventura County water supply facilities. Once completed and approved by the SCVSD and UWCD (or another designated Lead Agency), the conceptual engineering design and cost estimate shall be identified as Exhibit 2 of this MOU, and serve as the agreed-upon scope of work and the basis for the SCVSD's financial commitment and CEQA analysis for the implementation of the Ventura County water supply facilities for the AWRM Program.

- (l) Financing - Design, Permitting, CEQA Documentation and Construction of the Ventura County Water Supply Facilities: The SCVSD shall finance the design, construction permitting, CEQA documentation, construction and construction management of the facilities identified in Exhibit 2 of this MOU, subject to and contingent upon all of the following:
- i. The Lead Agency for the implementation of the facilities identified in Exhibit 2 has completed and certified a Project Level EIR, procured all necessary permits for construction of the recommended project, and completed all commitments identified in Section 1.4.3(c);
  - ii. The construction and cost of the facilities is in accordance with the final design and bid documents for the specific facilities identified in Exhibit 2.
  - iii. The SCVSD's financial responsibility is limited to the cost of design, construction permitting, CEQA documentation, construction, and construction management for only those facilities identified in Exhibit 2 of this MOU. The SCVSD's financial commitment for CEQA documentation and construction permitting will not exceed the cost estimate for these tasks, as identified in Exhibit 2, unless approved by the SCVSD. Any incremental

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costs associated with the design, permitting, CEQA documentation, construction, and construction management of other facilities implemented by the Lead Agency that are outside the agreed upon scope of work, will be the responsibility of the Lead Agency.

- iv. The SCVSD has the right to review and approve design and bid documents, with the selection of the recommended contractor(s) by the Lead Agency, based on the lowest competitive bid.
  - v. The SCVSD has reviewed all pertinent construction management records, for the purpose of resolving any disputes related to cost of constructing the facilities identified in Exhibit 2.
  - vi. The SCVSD has established an escrow account with the Lead Agency to fund the implementation of the Ventura County water supply facilities through a mutually agreed upon disbursement process that is tied to the achievement of project milestones and deliverables approved by the SCVSD.
- (m) Operation and Maintenance Costs of Ventura County Water Supply Facilities: During the operation of the Ventura County water supply facilities, the SCVSD shall pay the proportionate cost of the operation and maintenance of the Ventura County water supply facilities associated with removing past excess chloride load above 117 mg/L from East Piru Basin groundwater attributed to its facilities and any future incremental load of chloride above 117 mg/L to Reach 4B surface water attributed to its facilities. The proportionate cost of operation and maintenance of these facilities will be calculated based on procedures that will be mutually determined by the SCVSD and UWCD. When these procedures are determined, they will be identified as Exhibit 3 of this MOU.
- (n) Alternative Water Supplies to Reach 4B Surface Water Diverters: The SCVSD shall provide an alternative water supply that is of suitable quality and quantity to surface water diverters in Reach 4B of the Santa Clara River, when the surface water quality exceeds 117 mg/L at the Santa Clara River near the Los Angeles – Ventura County Line. This provision is contingent upon the execution of a separate agreement between the SCVSD and Reach 4B surface water diverter(s) which, when completed, will be identified as Exhibit 4 of this MOU, and will, at a minimum, include the following terms and conditions:
- i. Any Reach 4B surface water diverter must provide evidence of its legal right to divert surface water from Reach 4B of the Santa Clara River;
  - ii. Any Reach 4B surface water diverter must identify the acreage and location by street address or assessor's parcel number of each salt-sensitive crop (i.e. avocados, strawberries, and nursery crops) that is irrigated with surface water diverted from Reach 4B of the Santa Clara River.
- (o) Early Start Supplemental Water Releases: Prior to the completion of the wastewater treatment facilities identified in Section 1.4.1(c), the SCVSD shall make all reasonable efforts to procure supplemental waters for release to the Santa Clara River for the purpose of enhancing the assimilative capacity of the Santa Clara River, improving water quality conditions in Reach 4B, and if possible, attaining water quality objectives. The procurement of these early start supplemental waters is contingent upon a number of factors and will be obtained through a separate agreement with the UBWPs, as discussed in Section 1.4.2.

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- (p) Performance Requirements for Supplemental Water Release: The SCVSD shall establish performance requirements for supplemental water releases to Reaches 5 and 6 of the Santa Clara River, and provide them to the UBWPs to develop a plan, approved by the SCVSD, that provides for supplemental water releases in accordance with Section 1.4.2(b).
- (q) Financing – Design, Permitting, CEQA Documentation and Construction of New Supplemental Water Facilities. If the supplemental water plan in Section 1.4.2(b) involves the construction of new facilities (i.e. conveyance pipelines to the Santa Clara River), the SCVSD will finance the design, construction permitting, CEQA documentation, construction and construction management of any new supplemental water facilities subject to and contingent upon all of the following:
- i. The SCVSD and Lead Agency, identified in Section 1.4.2(c) shall agree on the scope of work and cost estimate for any new supplemental water facilities necessary to implement the AWRM Program. The SCVSD will contract with a firm or firms that are jointly selected by the SCVSD and UBWPs, to prepare a conceptual engineering design and engineer's cost estimate for new supplemental water facilities identified in the supplemental water plan. The engineer's cost estimate shall include the cost for CEQA documentation and construction permitting of the new supplemental water facilities. Once completed and approved by the SCVSD and Lead Agency, the conceptual engineering design and cost estimate shall be attached with Exhibit 5 of this MOU (supplemental water agreement and plan), and serve as the agreed-upon scope of work and the basis for the SCVSD's financial commitment and CEQA analysis for the implementation of new supplemental water facilities.
  - ii. The Lead Agency has completed and certified a Project Level EIR, procured all necessary permits for construction of the recommended project, and completed all commitments identified in Section 1.4.2(d).
  - iii. The construction and cost of the facilities is in accordance with the final design and bid documents for the new supplemental water facilities.
  - iv. The SCVSD's financial responsibility is limited to the cost of design, construction permitting, CEQA documentation, construction, and construction management for only those facilities in the agreed upon scope of work (attached in Exhibit 5). The SCVSD's financial commitment for CEQA documentation and construction permitting will not exceed the cost estimate for these tasks, unless approved by the SCVSD. Any incremental costs associated with the design, construction permitting, CEQA documentation, construction, and construction management of other facilities implemented by the Lead Agency that are outside the agreed upon scope of work, will be the responsibility of the Lead Agency.
  - v. The SCVSD has the right to review and approve design and bid documents with the selection of the recommended contractor(s) by the Lead Agency, based on the lowest competitive bid.
  - vi. The SCVSD has reviewed all pertinent construction management records, for the purpose of resolving any disputes related to cost of constructing any new supplemental water facilities.

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vii. The SCVSD has established an escrow account with the Lead Agency to fund the implementation of any new supplemental water facilities through a mutually agreed upon disbursement process that is tied to the achievement of project milestones and deliverables approved by the SCVSD.

- (r) Modification of the Castaic Lake Flood Flow Agreement: The West Branch Contractors of the State Water Project and Downstream Water Users to the 1978 Castaic Lake Flood Flow Agreement, anticipate requesting a modification of the 1978 Castaic Lake Flood Flow Agreement with the California Department of Water Resources. In the event that such a modification is requested, the SCVSD shall support the modifications request through written and oral testimony to any necessary regulatory agencies, so long as these modifications are consistent with compliance with WQOs and requirements of the USCR Chloride TMDL.
- (s) Extension of the Groundwater-Surface Water Interaction Model (GSWIM): Together with the UWCD, the SCVSD agrees to participate in the financing of the extension of the existing GSWIM from its current model boundary at the "A Street, Fillmore," to the "Santa Clara River at the Freeman Diversion." SCVSD's financial contribution shall be 75% of the total cost to extend the model boundary and will be contingent upon UWCD contributing the remaining cost to extend the GSWIM boundary and, in good faith, negotiating and securing low cost supplemental water, if available, on an annual basis for the term of the MOU, in accordance with Section 1.4.3(f).
- (t) SCVSD Commitment Contingencies: The commitments described in Section 1.4.1 of this MOU may be terminated (by SCVSD) if any of the termination contingencies set forth in Section 1.9 of the MOU occur.

**1.4.2 UBWPs Commitments.** Subject to compliance with CEQA, the UBWPs agree to implement the following commitments in support of the AWRM Program:

- (a) Support for Revisions to WQOs and Implementation of AWRM Program:
- i. Revisions to WQOs: In accordance with the AWRM Program and Section 1.2 of this MOU, the Upper Basin Water Purveyors agree to support the necessary revisions to surface water and groundwater quality objectives and associated final waste-load allocations and effluent permit limits for chloride for the Saugus and Valencia WRPs.
  - ii. Implementation of AWRM: The implementation of the AWRM Program will require the SCVSD to make changes to the point of discharge, place of use, and/or purpose of use of its recycled water, and may require the SCVSD to file a wastewater change petition with the State Water Resources Control Board, in accordance with the California Water Code, Section 1211. The Upper Basin Water Purveyors will support the SCVSD efforts in the submittal of any wastewater change petitions required to support the AWRM Program, which include:
    1. Wastewater change petitions for the purpose of recycled water uses in the Santa Clarita Valley and Piru Basin;
    2. Wastewater change petitions for the purpose of changing the location of the point of discharge of the SCVSD's water reclamation plants.

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- (b) Procurement of Supplemental Waters: Based on the performance requirements provided by the SCVSD, the UBWPs shall develop a supplemental water plan involving an imported water-local groundwater exchange program, in support of the AWRM Program. The CLWA, on behalf of the UBWPs, shall develop a plan to procure, make reliable, deliver, treat, and convey imported water to replace local groundwater utilized as supplemental water as envisioned in the AWRM Program. To the fullest extent possible, the plan shall be developed to utilize available and unused Ventura County annual State Water Project (SWP) Table A and other water allocations, in cooperation with the UWCD as described in Section 1.4.3(f). The plan and its estimated costs shall be submitted to the SCVSD for review, comment, and approval. Based on the approved plan, the Upper Basin Water Purveyors shall execute the plan in accordance with an agreement to be negotiated (Exhibit 5). The SCVSD shall pay for the costs of executing the plan in accordance with the agreement (Exhibit 5) as well as provisions identified in Section 1.4.1(q), if applicable. The UBWPs shall make all reasonable efforts to execute the supplemental water plan for the AWRM Program. However, the UBWPs shall have no obligation to provide supplemental water for the AWRM Program to the SCVSD if extenuating factors outside the control of the UBWPs (i.e., earthquake, flood, fire, or legal challenges to use of banked or imported SWP water), prevent or impede the ability to execute the supplemental water plan.
- (c) Lead Agency CEQA Responsibilities: The UBWPs (or another designated agency) agree(s) to be the Lead Agency for the purpose of completing any necessary project-level environmental assessments under CEQA related to the procurement of supplemental water, operating an imported water – groundwater exchange program, releasing supplemental waters to the Santa Clara River to improve water quality and attain water quality objectives, or constructing conveyance pipelines to route supplemental water to the Santa Clara River.
- (d) Planning, Permitting, Design and Construction Costs for New Supplemental Water Facilities: If new supplemental water facilities are necessary, the Lead Agency will make all reasonable efforts to control the cost of any new supplemental water facilities that will be financed by the SCVSD in accordance with Section 1.4.1(q), and at a minimum, include the following review procedures:
- i. The Lead Agency shall develop for SCVSD review and approval, a detailed project implementation schedule that identifies key project milestones/deliverables and a schedule for financial disbursements. When completed, the project implementation and finance disbursement schedule shall be attached within Exhibit 5.
  - ii. The Lead Agency shall document all change orders and impacts to project budget and submit them to the SCVSD for approval. Any cost overruns associated with change orders for the planning, construction permitting, design, construction, or construction management of new supplemental water facilities that are not approved by the SCVSD shall be the responsibility of the Lead Agency. SCVSD shall not unreasonably withhold approval of change orders that appropriately relate to the project.

The Lead Agency shall receive financial disbursements related to the planning, design, construction and construction management activities for new supplemental water facilities, through an escrow account that will be funded based on an agreed upon disbursement process between the Lead Agency and SCVSD that is tied to the

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completion of key project milestones and project deliverables in accordance with the detailed implementation schedule and bid documents.

(e) UBWPs Commitment Contingencies: The UBWPs commitments in Sections 1.4.2(a) through 1.4.2(c) are contingent upon the execution of a separate agreement between the SCVSD and UBWPs, which when completed, shall be identified as Exhibit 5 of this MOU, and which will be based on the following principles:

- i. The UBWPs are made financially whole, in terms of the total cost to implement any supplemental water releases that support the AWRM Program.
- ii. The UBWPs are provided replacement water of suitable quality and reliability for any local groundwater that is utilized as supplemental water in an exchange program with imported water supplies.

In addition, the UBWPs commitments in Sections 1.4.2 may be terminated (by the UBWPs) if any of the termination contingencies set forth in Section 1.9 of the MOU occur.

**1.4.3 UWCD Commitments.** Subject to compliance with CEQA, the UWCD agrees to implement the following commitments in support of the AWRM Program:

(a) Support for Revisions to WQOs and Implementation of AWRM Program:

- i. Revisions to WQOs: In accordance with the AWRM Program and Section 1.2 of this MOU, the UWCD agrees to support the required revisions to surface water and groundwater quality objectives and associated final waste-load allocations and effluent permit limits for chloride for the Saugus and Valencia WRPs to implement the AWRM plan.
- ii. Implementation of AWRM: The implementation of the AWRM Program will require the SCVSD to make changes to the point of discharge, place of use, or purpose of use of its recycled water, which may require the SCVSD to file a wastewater change petition with the State Water Resources Control Board, in accordance with the California Water Code, Section 1211. The UWCD will support the SCVSD efforts in the submittal of any wastewater change petitions required to support the AWRM Program, which include:

1. Wastewater change petitions for the purpose of recycled water uses in the Santa Clarita Valley and Piru Basin;
2. Wastewater change petitions for the purpose of changing the location of the point of discharge of the SCVSD's water reclamation plants.

(b) Lead Agency CEQA Responsibilities: UWCD (or another designated agency) agrees to act as the Lead Agency for the implementation of the Ventura County water supply facilities identified in Exhibit 2, and shall be responsible for any project-level environmental analysis required under CEQA for these facilities, and the procurement of any permits necessary for construction of these facilities.

(c) Planning, Permitting, Design and Construction Costs: The Lead Agency will make all reasonable efforts to control the cost of the Ventura County Water Supply facilities

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that will be financed by the SCVSD in accordance with Section 1.4.1(l), and at a minimum, include the following review procedures:

- i. The Lead Agency shall develop for SCVSD review and approval, a detailed project implementation schedule that identifies key project milestones/deliverables and a schedule for financial disbursements. When completed, the project implementation and finance disbursement schedule shall be attached within Exhibit 2.
- ii. The Lead Agency shall document all change orders and impacts to project budget and submit them to the SCVSD for approval. Any cost overruns associated with change orders for the planning, construction permitting, design, construction, and construction management of the Ventura County water supply facilities that are not approved by the SCVSD shall be the responsibility of the Lead Agency. SCVSD shall not unreasonably withhold approval of change orders that appropriately relate to the project.

The Lead Agency shall receive financial disbursements related to the planning, design, construction and construction management activities for new supplemental water facilities, through an escrow account that will be funded based on an agreed upon disbursement process between the Lead Agency and SCVSD that is tied to the completion of key project milestones and project deliverables in accordance with the detailed implementation schedule and bid documents.

- (d) Ownership and Maintenance of Ventura County water supply facilities: Once constructed, the UWCD (or another designated agency) will assume ownership and maintenance responsibilities of the Ventura County water supply facilities and any permitting responsibilities associated with the operation and maintenance of the facilities identified in Exhibit 2 of this MOU.
- (e) Use of Developed Water Supplies: To the extent that AWRM Program activities result in water supplies that would otherwise not be available to UWCD, UWCD shall utilize its best efforts to utilize the developed water supplies from the AWRM Program to achieve sustainability with respect to current groundwater demand-supply imbalances within its service area.
- (f) Procurement of Supplemental Waters: Based on the UBWPs supplemental water plan (1.4.2(b)), the UWCD shall make good faith efforts to secure any available SWP water annually, as needed, from the Ventura County Table A allocation as supplemental water in support of the AWRM Program. UWCD's groundwater recharge operations receive primary consideration for any available SWP water from Ventura County's Table A allocation with any available balance secured to support the AWRM Program. UWCD, in good faith, will annually negotiate the purchase of any available SWP water at the lowest possible agreed upon rate with its partners, City of Ventura and Casitas Municipal Water District, review the purchase agreement with CLWA and SCVSD, execute the appropriate purchase agreement documents, and invoice CLWA and copy the SCVSD for the cost of purchasing any secured SWP water for the AWRM Program. The parties acknowledge that the City of Ventura and Casitas may not wish to enter into a purchase agreement with UWCD. Thus, there is no guarantee that supplemental water can be obtained.

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(g) UWCD Commitment Contingencies: The commitments described in Sections 1.4.3 of this MOU may be terminated (by UWCD) if any of the termination contingencies set forth in Section 1.9 of the MOU occur.

**1.4.4 VCAWQC Commitments.** The VCAWQC agrees to implement the following commitments in support of the AWRM Program:

(a) Support for Revisions to WQOs and Implementation of AWRM Program:

i. Revisions to WQOs: In accordance with the AWRM Program and Section 1.2 of this MOU, the VCAWQC agrees to support the necessary revisions to surface water and groundwater quality objectives and associated final waste-load allocations and effluent permit limits for chloride for the Saugus and Valencia WRPs.

ii. Implementation of AWRM: The implementation of the AWRM Program will require the SCVSD to make changes to the point of discharge, place of use, and/or purpose of use of its recycled water, which may require the SCVSD to file a waste water change petition with the State Water Resources Control Board, in accordance with the California Water Code, Section 1211. The VCAWQC will support the SCVSD efforts in the submittal of any wastewater change petitions required to support the AWRM Program, which include:

1. Wastewater change petitions for the purpose of recycled water uses in the Santa Clarita Valley and Piru Basin;
2. Wastewater change petitions for the purpose of changing the location of the point of discharge of the SCVSD's water reclamation plants.

(b) Use of Developed Water Supplies. VCAWQC shall support UWCD's efforts to utilize developed water supplies from the AWRM program to achieve sustainability with respect to current groundwater demand-supply imbalances within its service area.

(c) VCAWQC Commitment Contingencies: The commitments described in Sections 1.4.4 of this MOU may be terminated (by VCAWQC) if any of the termination contingencies set forth in Section 1.9 of the MOU occur.

**1.4.5 Schedule of Implementation Commitments.** The Parties have prepared a preliminary schedule, attached in Exhibit 1, which describes the tasks and estimated time to implement the AWRM Program by each of the respective parties. The SCVSD shall be responsible for implementing all wastewater related facilities as identified in Section 1.4.1(c). The UWCD or another designated Lead Agency shall be responsible for implementing all Ventura County water supply facilities as identified in Exhibit 2. The UBWPs or another designated agency shall be responsible for implementing all supplemental water activities and, if necessary, construct facilities as identified in Section 1.4.2(b) and 1.4.2(d). Detailed schedules of the implementation activities of each party shall replace the schedules in Exhibit 1, as they are developed and completed. The Parties acknowledge that the AWRM Program implementation will be an ongoing and evolving process and may change due to future amendments to the AWRM Program, challenging implementation issues or other unforeseen circumstances. The Parties agree that if delays in the implementation schedule occur because of the circumstances

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discussed above, the SCVSD will request and the UWCD and VCAWQC will support extensions in the TMDL Implementation Schedule from the Regional Board, as appropriate, in order to accommodate such delays for the TMDL. Any changes or adaptations to the AWRM Program or AWRM Program implementation schedule shall be made in accordance with Section 1.6 of this MOU.

- 1.5 **Program Committee Oversight.** The General Manager or President of each Party (or their designees) shall meet as the AWRM Program Oversight Committee ("Oversight Committee") within 30 days of the execution of this MOU. The Oversight Committee may establish appropriate subcommittees, if necessary, to implement the AWRM Program and determine the meeting times and locations for the various committee/subcommittee meetings. The Oversight Committee or subcommittees will discuss and coordinate the implementation and monitoring of the AWRM Program, and, if necessary, develop a mutually agreed upon mediation process to resolve any disputes that may arise between the Parties during the implementation of the AWRM Program.
- 1.6 **Adaptation of the AWRM Program.** The Oversight Committee will be responsible for making determinations of any necessary adaptations of the AWRM Program that are necessary during implementation. Adaptation of the AWRM Program must be approved by all Parties, and effectuated through an amendment of the MOU describing the adaptations of the AWRM Program mutually agreed upon by all Parties.
- 1.7 **Term.** This MOU shall remain in effect until May 4, 2016 and shall be automatically renewed for additional one-year increments thereafter unless otherwise unanimously decided by members of the Oversight Committee that the term of the MOU shall be allowed to expire.
- 1.8 **Duplicate Originals.** This MOU shall be executed as duplicate originals, each of which, when so executed, will be deemed to be an original and all of which taken together will constitute one and the same agreement.
- 1.9 **Termination Contingencies.** The Parties may elect to terminate this MOU in the event of any of the following contingencies, in which case this MOU shall be of no further force and effect:
  - 1.9.1 Should the Regional Board, State Water Resources Control Board, U.S. EPA, Region IX, or the California Office of Administrative Law fail to revise the water quality objectives for groundwater and surface water to the values shown in Exhibit 1, as necessary to implement the AWRM Program.
  - 1.9.2 Should any of the Lead Agencies responsible for implementing major elements (i.e. Conversion to Ultra Violet Disinfection Technology, Procurement of Supplemental Waters, Advanced Treatment Facilities at the Valencia WRP, Brine Disposal Facilities, East Piru Extraction Well Network, Desalinated Recycled Water Pipelines to Camulos Ranch and East Piru, or East Piru Blended Discharge Conveyance Pipeline – Exhibit 1) of the AWRM Program fail to complete or certify the necessary environmental impact reports or other assessments needed to comply with CEQA.
  - 1.9.3 Should any of the Parties not implement their specific commitments as specified in Sections 1.4.1 through 1.4.4 of this MOU.

If such termination contingencies occur, all commitments described in Sections 1.4.1 through 1.4.4 of this MOU shall terminate and be of no further force or effect. In the event of MOU termination, each party shall bear their own project-specific costs incurred prior to termination. Any controversies concerning the responsibility for such costs shall be subject to mediation upon

Final - September 3, 2008

terms to be agreed upon by the Oversight Committee. This MOU does not in any way relieve the Parties of any obligations under the TMDL. Inability by any Party to complete AWRM Program element implementation on schedule (Exhibit 1), due to circumstances beyond the Party's reasonable control as determined by the Oversight Committee, shall not constitute grounds for termination of this MOU.

- 1.10 Warranties of Authority.** Each Party hereby represents and warrants that it is fully authorized to enter into this MOU; that it has taken all necessary internal legal actions to duly approve the making and performance of this MOU; that no further internal approval is necessary; and that the making and performance of this MOU does not violate any provision of any governing statutes or regulations, articles of incorporation, charters or by-laws.
- 1.11 Exhibits for the MOU.** The exhibits for this MOU are as follows, with Exhibits 2 through 5 to be included in the future, when such exhibits are developed by the parties and become available:
- 1.11.1 Exhibit 1 – The Alternative Water Resources Management Program**
- 1.11.2 Exhibit 2 – Conceptual Engineering Design, Cost Estimate and Scope of Work for the Ventura County Water Supply Facilities of the AWRM Program**  
  
(To be developed and attached to this MOU in the future)
- 1.11.3 Exhibit 3 – Procedures for the Determination of Future Operation & Maintenance Costs of the Ventura County Water Supply Facilities of the AWRM Program Between the SCVSD and the UWCD**  
  
(To be developed and attached to this MOU in the future)
- 1.11.4 Exhibit 4 – Alternative Water Supply Agreements Between the SCVSD and Santa Clara River, Reach 4B Surface Water Diverters**  
  
(To be developed and attached to this MOU in the future)
- 1.11.5 Exhibit 5 – Supplemental Water Agreement, Supplemental Water Plan, and Conceptual Engineering Design / Cost Estimate / Scope of Work for the Supplemental Water Facilities of the AWRM Program**  
  
(To be developed and attached to this MOU in the future)

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The Parties are signing this MOU as follows.

United Water Conservation District

By:   
General Manager

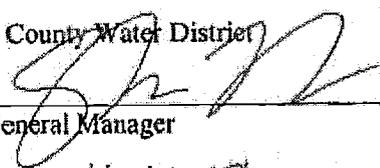
Date: 10/10/08

Castaic Lake Water Agency

By:   
General Manager

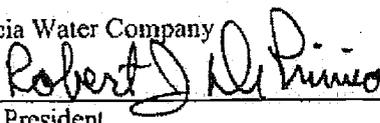
Date: 10/10/08

Newhall County Water District

By:   
General Manager

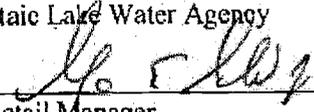
Date: 10.10.08

Valencia Water Company

By:   
President

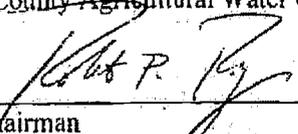
Date: 10/10/08

Santa Clarita Water Division  
of Castaic Lake Water Agency

By:   
Retail Manager

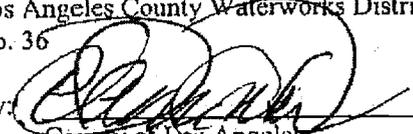
Date: 10/10/08

Ventura County Agricultural Water Quality  
Coalition

By:   
Chairman

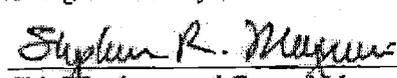
Date: 10/14/08

Los Angeles County Waterworks District  
No. 36

By:   
County of Los Angeles

Date: 10/27/08

Santa Clarita Valley Sanitation District  
of Los Angeles County

By:   
Chief Engineer and General Manager

Date: 10-23-08

## **Exhibit 1 - Alternative Water Resources Management Program**

### **Upper Santa Clara River Chloride TMDL Background**

The California Regional Water Quality Control Board - Los Angeles Region (Regional Board) adopted the Upper Santa Clara River (USCR) Chloride Total Maximum Daily Load (TMDL) in 2002, establishing waste-load allocations for the Santa Clarita Valley Sanitation District's (SCVSD) Valencia and Saugus WRPs at 100 mg/L. Amendments to the TMDL in 2004 and 2006 established a phased TMDL approach, which allowed for the development of several scientific studies and potential site-specific objectives (SSOs) for chloride that the Regional Board may consider to revise the existing 100-mg/L water quality objectives (WQOs). The TMDL implementation schedule specified, among other requirements, that special scientific studies be conducted to: a) evaluate the appropriate chloride threshold for the protection of sensitive agriculture; b) evaluate the appropriate chloride threshold for the protection of endangered species; and c) develop a groundwater/surface water interaction model to evaluate the impacts of chloride loading from all sources on water quality. The results of these studies would then become the technical basis by which potential SSOs for chloride could be developed for Regional Board consideration. The TMDL required development of these studies in a collaborative process to ensure substantial agreement between the Regional Board staff, SCVSD's staff, and other stakeholders, regarding the scientific and technical basis for establishing water quality objectives for chloride. Each of the major studies conducted as part of the TMDL and their current status are summarized as follows.

Threatened and Endangered Species Chloride Threshold Study (T&Es Study) – The T&Es Study was completed in November 2007 and determined that the 1988 United States Environmental Protection Agency ambient water quality criteria for chloride for the protection of aquatic life (230 mg/L Cl as chronic and 860 mg/L Cl as acute) are protective of locally important T&Es.<sup>i</sup> The chloride threshold for the protection of locally important T&Es was considerably higher than the threshold range for the protection of salt-sensitive agriculture.

Agricultural Chloride Threshold Study (Ag Study) - The Ag Study was a two-part study, with a Literature Review and Evaluation (LRE) completed in September 2005,<sup>ii</sup> and an evaluation of the appropriate averaging period completed in January 2008.<sup>iii</sup> The Ag Study determined that the appropriate chloride threshold for salt-sensitive agriculture

<sup>i</sup> Advent-Environ, 2007. *Evaluation of Chloride Water Quality Criteria Protectiveness of Upper Santa Clara River Aquatic Life: An Emphasis on Threatened and Endangered Species*. May 2007.

<sup>ii</sup> CH2M Hill, 2005. *Final Report: Literature Evaluation and Recommendations, Upper Santa Clara River Chloride TMDL Collaborative Process*. September 2005.

<sup>iii</sup> NewFields Agricultural and Environmental Resource, 2007. *Technical Memorandum: Compliance Averaging Period for Chloride Threshold Guidelines in Avocado*. December 2007.

## **Exhibit 1 - Alternative Water Resources Management Program**

(avocados, strawberries, and nursery crops) grown in the USCR watershed is a guideline range between 100 and 117 mg/L Cl, with an averaging period of approximately 3 months.

Groundwater – Surface water Interaction Model (GSWIM) Study – The GSWIM Study developed a calibrated numerical model in March 2008,<sup>xv</sup> to evaluate the impact of WRP effluent discharges to the river on downstream surface water and groundwater in the Los Angeles and Ventura County portion of the Santa Clara River watershed. The GSWIM is now being utilized to evaluate various alternatives to comply with the existing water quality objectives and potential SSOs in consideration. One of the alternatives being considered is the Alternative Water Resources Management (AWRM) Program, which is described in more detail below.

Site Specific Objectives (SSO) and Anti Degradation Analysis (ADA) Study – The SSO and ADA Study provides the technical and regulatory basis for the Regional Board to consider potential SSOs that support the AWRM Program, as discussed in more detail below. As part of the SSO effort, a white paper on the agricultural beneficial uses in Reaches 5 and 6 of the USCR was developed in September 2007,<sup>y</sup> which assessed whether salt-sensitive agriculture was an existing or potential beneficial use. The white paper concluded that salt-sensitive agriculture was not an existing or potential beneficial use for surface water or underlying groundwater that could be impacted by surface water in Reaches 5 and 6. Since salt-sensitive agriculture was not an existing or potential beneficial for the surface waters or underlying groundwater that could be impacted by surface water in these reaches, SSOs higher than the Ag Study threshold range of 100-117 mg/L are potentially possible, and are being considered as part of the AWRM Program. The SSO-ADA study<sup>z</sup> has recommended the following SSOs for chloride, TDS and sulfate for surface water reaches and groundwater in the USCR watershed, as shown in Table 1:

<sup>xv</sup> CH2M Hill, 2008. *Final Report: Task 2B-1 – Numerical Model Development and Scenario Results, East and Piru Subbasins*. March 2008.

<sup>y</sup> Santa Clarita Valley Sanitation District, 2007. White Paper No. 2A Agricultural Beneficial Use Considerations for Santa Clara River – Reaches 5 and 6., September 2007.

<sup>z</sup> Larry Walker and Associates. *Draft Report: Upper Santa Clara River Chloride TMDL Task 7 and 8 Report- Site Specific Objective and Anti-degradation Analysis.*, July 2008.

**Exhibit 1 - Alternative Water Resources Management Program**

Table 1 -SSOs to Support AWRM Program

Surface Water SSOs for AWRM Program			
Mineral WQO	Reach 4B* (3 to 12-month avg.)	Reach 5 (12-month avg.)	Reach 6 (12-month avg.)
Chloride	100  117 (SWP Cl < 80 ppm) 130 (SWP Cl >= 80 ppm)	100  150	100  150
TDS	1300	1000	1000
Sulfate	600	400	<del>250</del> 450
Groundwater SSOs for AWRM Program			
Mineral WQO	East Piru (3 to 12-month avg.)	Castaic Valley (12-month avg.)	Santa Clara - Bouquet & S.F. Canyons (12-month avg.)
Chloride	<del>200</del> 130 to 150 (TBD)	150	<del>400</del> 150
TDS	<del>2500</del> 1300 (TBD)	1000	<del>700</del> 1000
Sulfate	<del>1200</del> 600 (TBD)	350	<del>250</del> 450

\* When water quality in Reach 4B (Blue Cut) exceeds 117 mg/L, an alternative water supply will be provided to Reach 4B surface water diverters to protect salt-sensitive agricultural uses.

**Alternative Water Resources Management Program Background**

Since November 2007, the Santa Clarita Valley Sanitation District (SCVSD), Ventura County Agricultural Water Quality Coalition (VCAWQC), United Water Conservation District (United Water), and the Upper Basin Water Purveyors<sup>iii</sup> have been working together to develop an alternative water resources management (AWRM) Program for the USCR Chloride TMDL. The purpose of the AWRM Program is to develop a regional watershed solution for chloride as an alternative to compliance with the existing 100 mg/L water quality objective, recognizing that compliance with the existing 100 mg/L WQO would be a challenging and costly project, requiring many years to implement. The AWRM Program considers the use of SSOs and water resource management facilities that would allow for the full protection of all beneficial uses, while simultaneously providing a more feasible compliance solution, maintaining a chloride balance in the USCR Watershed, and providing salt export and water supply benefits to Ventura County stakeholders. Through this process, the SCVSD, VCAWQC, United Water, and the Upper Basin Water Purveyors have come to conceptual agreement on the guiding principles,

<sup>iii</sup> Castaic Lake Water Agency, Valencia Water Company, Newhall County Water District, Los Angeles County Water Works District No. 36, and the Santa Clarita Water Division of the Castaic Lake Water Agency.

## **Exhibit 1 - Alternative Water Resources Management Program**

key elements, implementation tasks and agency responsibilities associated with the AWRM Program. Discussion of the guiding principles, each of these specific elements of the AWRM Program, and implementation task and agency responsibilities, is presented in the following sections.

### **The Guiding Principles of the AWRM Program**

The following guiding principles have been established between the SCVSD, VCAWQC, United Water, and the Upper Basin Water Purveyors for the development and implementation of the AWRM Program:

- The AWRM Program will strive to avoid and, if necessary, mitigate any water quality impacts to direct agricultural users of surface and groundwater from the Santa Clara River in East Piru (i.e., Camulos Ranch).
- The AWRM Program will not cause long-term water quality degradation of groundwater, and agricultural uses of groundwater will be protected. (i.e., salt balance in any affected basin can be achieved within a reasonable time).
- The AWRM Program will include a plan to improve groundwater quality in East Piru Basin and expedite water quality improvements. (i.e., water quality in groundwater and surface water in East Piru Basin will be improved before the end of the USCR Chloride TMDL implementation compliance period).
- The AWRM Program will improve water supplies in Ventura County.
- The AWRM Program will be implemented, monitored and funded by the Santa Clarita Valley Sanitation District.
- The AWRM Program will provide for stakeholder oversight during implementation.
- The AWRM Program must comply with regulations and protect all beneficial uses.

### **Key Elements of the AWRM Program**

The AWRM Program consists of several key elements, which combined, would provide a regional watershed solution for the Upper Santa Clara River Chloride TMDL that benefits all stakeholders within the watershed. The key elements of the AWRM Program include: (1) implementing measures to reduce chloride in the recycled water at the SCVSD's WRP discharges; (2) constructing advanced treatment for a portion of the recycled water from the SCVSD's Valencia WRP; (3) procuring supplemental water (i.e. local groundwater or surface water) for release to the Santa Clara River to improve water quality conditions and attain

## **Exhibit 1 - Alternative Water Resources Management Program**

WQOs; (4) constructing water supply facilities in Ventura County; (5) providing alternative water supply to protect salt-sensitive agricultural beneficial uses of the Santa Clara River; (6) supporting the expansion of recycled water uses within the Santa Clarita Valley; and (7) revising the surface water and groundwater WQOs to support all of these elements. Each of these key elements is discussed in further detail, below.

### *Element No. 1: Reduction of Chloride Levels in WRP Recycled Water*

As part of the AWRM Program, as well as any solution to the TMDL, the SCVSD will reduce the chloride levels in the recycled water discharged from the Valencia and Saugus WRPs. Reduction in the recycled water chloride levels would be achieved through enhanced source control, specifically the removal of self-regenerating water softeners (SRWS), which are a significant source of chloride to the SCVSD's sanitary sewer collection system, and conversion of the current beach-based disinfection facilities, which contribute an additional 10 mg/L of chloride in recycled water at each WRP, to Ultra-Violet Light Disinfection technology. Through removal of SRWS and conversion to UV disinfection technologies, the incremental chloride contribution from wastewater sources above the contribution from water supply can be reduced to a level of approximately 50 mg/L. This reduction in chloride will allow for the SCVSD's Valencia and Saugus WRPs to comply with revised WQOs in varying water supply chloride conditions,<sup>viii</sup> and minimize the amount of advanced treatment required. As discussed below, revisions to the existing WQOs are necessary to support this AWRM Program element.

### *Element No. 2 Advanced Treatment at the SCVSD's Valencia WRP*

While removal of chloride loading through enhanced source control would help the Saugus and Valencia WRPs comply with revised WQOs a majority of the time, additional chloride reduction would still be necessary for compliance with downstream revised WQOs in Reach 4B, through the construction and operation of a 3 MGD advanced treatment facility, using Micro-Filtration (MF) and Reverse Osmosis (RO) treatment technologies at the Valencia WRP. These facilities would serve four purposes: (1) continuous removal of approximately 3,200 pounds per day of chloride from the WRP effluent; (2) reducing chloride levels in the Santa Clara River in Reach 4B, through discharge of the high quality Valencia RO product water to the Santa Clara River, when necessary to achieve compliance with revised WQOs for this reach; (3) delivering high quality Valencia RO product water to blend with surface water diversions in Reach 4B so that the irrigation water quality is of sufficient quality to protect salt-

<sup>viii</sup> Imported water supply chloride concentrations have often exceeded 100 mg/L during drought conditions, due to the influence of poor quality imported water supplies delivered from the State Water Project stored at the Castaic Lake Reservoir.

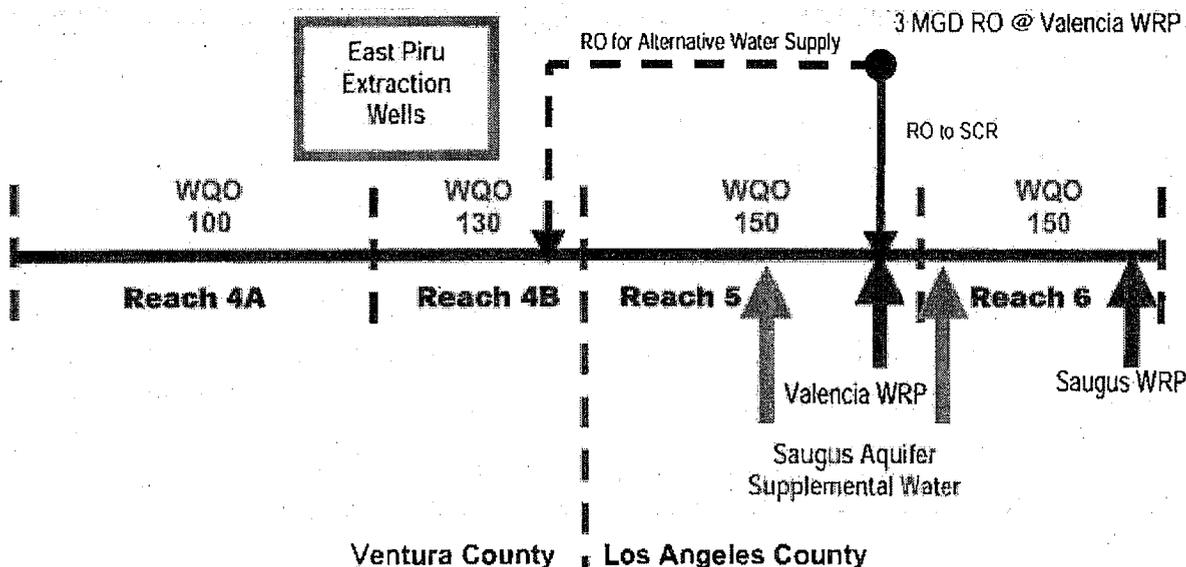
**Exhibit 1 - Alternative Water Resources Management Program**

sensitive agricultural uses, when necessary; and (4) providing a salt export and water supply benefit to Ventura County through delivery of the high quality Valencia RO product water to the Ventura County water supply facilities. These facilities and the salt export and water supply benefits associated with these facilities are discussed in greater detail below.

In addition to the advanced treatment facilities, construction of brine disposal facilities to dispose of the brine waste from the RO treatment process via deep well injection would be required. The use of deep well injection becomes a more plausible and sustainable brine disposal option, with a smaller advanced treatment facility, as proposed in the AWRM Program. The brine disposal for a 3MGD MF-RO facility is estimated at 0.5 MGD.

As mentioned above, when necessary, the high quality Valencia RO product water would be discharged directly to the Santa Clara River to reduce chloride levels in the river and comply with revised WQOs. Based on the results of the GSWIM Study, the discharge of Valencia RO product water to the river would occur, when chloride levels in the State Water Project (SWP) water stored in the Castaic Lake Reservoir are greater than or equal to 80 mg/L. The GSWIM study also found that the use of supplemental water released to the Santa Clara River, discussed in more detail below, is needed in certain critical conditions of extreme drought to assure compliance with the revised WQOs in Reach 4B. Finally, a portion of the high quality Valencia RO product water would also be delivered to blend with surface water diverted for irrigation of salt-sensitive agriculture, so that the irrigation water quality is less than 117 mg/L. A schematic of this operational management of the Valencia RO during conditions when the imported SWP exceeds 80 mg/L is presented in Figure 1a.

Figure 1a. AWRM Operation when SWP Cl  $\geq$  80 mg/L



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## Exhibit 1 - Alternative Water Resources Management Program

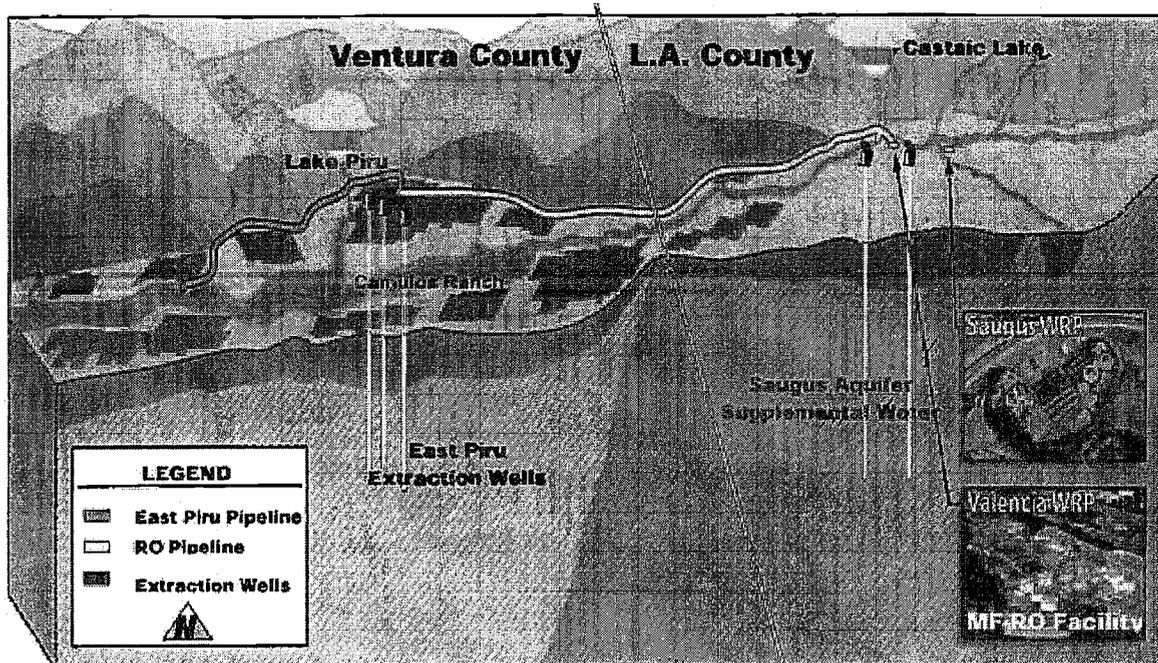
### Element No. 3: Procuring Supplemental Water for Releases to the Santa Clara River

Recognizing that conducting environmental studies, permitting, designing and constructing an MF-RO facility at the Valencia WRP will take a significant period of time, the AWRM Program includes a commitment, contingent upon the necessary environmental assessments required under the California Environmental Quality Act, to provide supplemental water from the Saugus Aquifer and/or some other local water resource, to the Santa Clara River as an interim measure prior to completion of the AWRM Program facilities. Additionally, as discussed previously, the GSWIM study found that the use of supplemental water released to the Santa Clara River would be needed during extreme drought conditions to comply with revised WQOs for Reach 4B. These supplemental waters would be delivered through contractual arrangements between the SCVSD and the Upper Basin Water Purveyors.

### Element No. 4: Ventura County Salt Export and Water Supply Benefits

In order to export accumulated salt in groundwater and provide the water supply benefits for Ventura County, a key element of the AWRM Program is the construction of the Ventura County water supply facilities, as shown in Figure 2.

Figure 2. AWRM Program Facilities



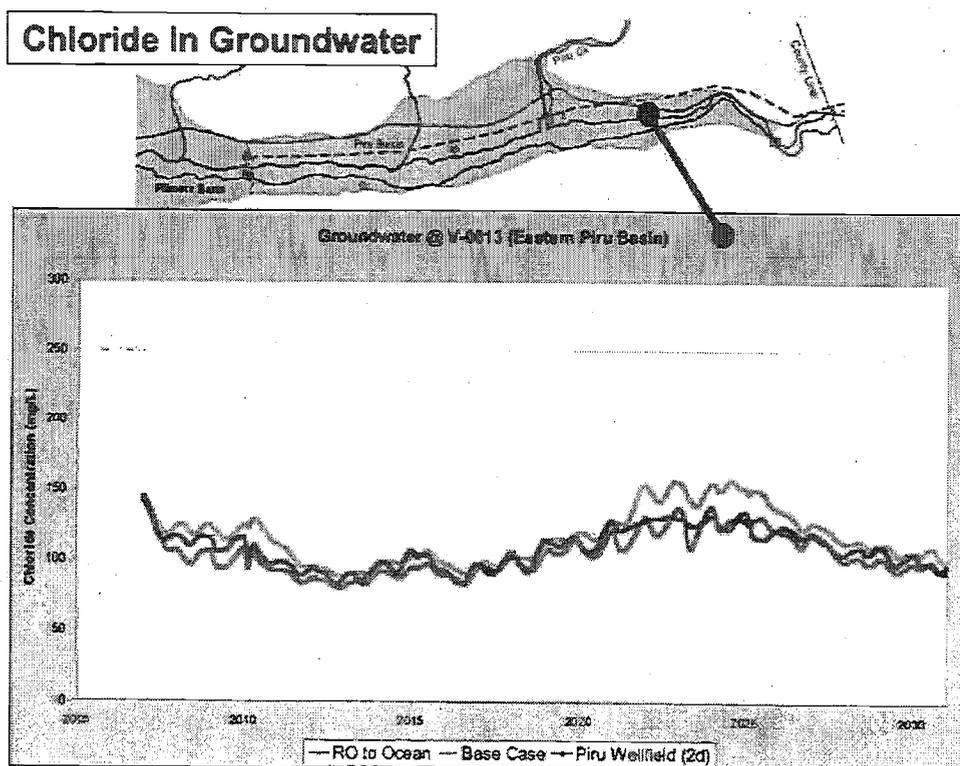
These facilities which would allow for salt export and water supply benefits by blending high quality Valencia RO product water with more saline groundwater in East Piru, to develop a

### Exhibit 1 - Alternative Water Resources Management Program

blended water supply that is less than 95 mg/L in chloride. The Ventura County water supply facilities would be comprised of the following: (1) 10 groundwater extraction wells in the East Piru groundwater basin; (2) a 12-mile RO product water conveyance pipeline from the Valencia WRP to the East Piru extraction wells; and (3) a 6-mile conveyance pipeline for the blended East Piru groundwater and Valencia WRP RO product water (East Piru Pipeline) for discharge to Reach 4A of the Santa Clara River, downstream of the "Dry Gap."

Collectively, these facilities would be utilized for water supply and salt export benefits. Through the blending of high quality Valencia RO product water with more saline groundwater underlying Reach 4B, a new blended water supply can be developed and managed, which will not only export salt accumulated in groundwater in the East Piru basin, but comply with downstream surface water WQOs in Reach 4A, and increase water supplies in Ventura County. In addition, the extraction of more saline groundwater underlying Reach 4B, will allow for greater recharge of high quality storm flows in the SCR, which are typically low in chloride, lowering chloride levels in the groundwater. The reduction in chloride levels associated with AWRM Program, identified as "Piru Wellfield (Option 2d)," is presented in Figure 3.

Figure 3. Chloride in Groundwater in East Piru



Source: Bachman, Steve, 2008. *Alternative Water Resources Management Program-Effects in Ventura County*. June 2008.

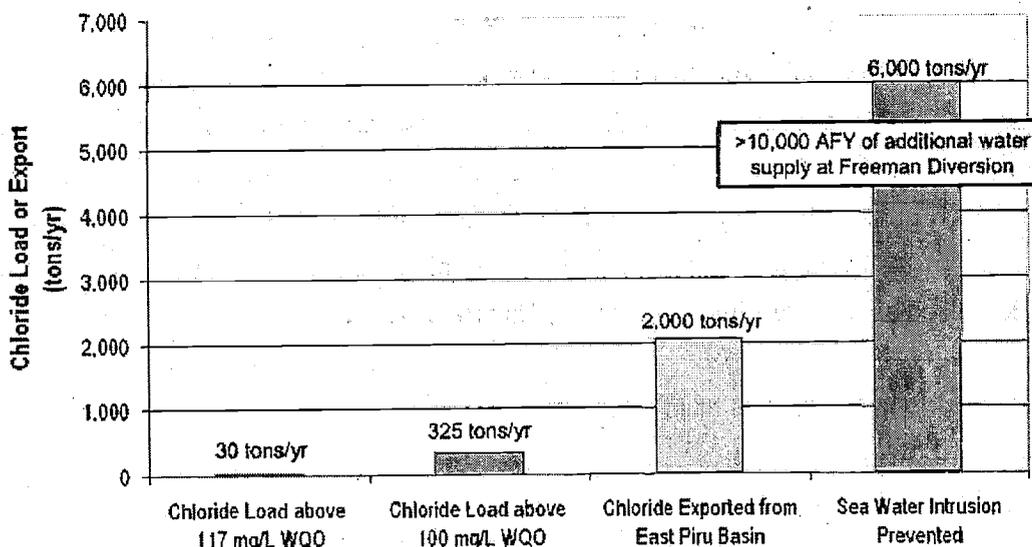
August 15, 2008

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### Exhibit 1 - Alternative Water Resources Management Program

The salt export from East Piru Basin and resultant reduction in saltwater intrusion provided by the increased water supply benefits, vastly outweigh the incremental loading above the WQO that occurs during extreme drought conditions, when SWP chloride levels are elevated.\* A comparison of the yearly excess chloride loading above the existing (100 mg/L) and revised (117 mg/L) WQOs in Reach 4B, with the yearly chloride export through the extraction wells and prevention of saline intrusion are shown in Figure 4.

Figure 4. Chloride Balance with the AWRM Program



#### Element No. 5: Protection of Salt-Sensitive Agricultural in Reach 4B

The AWRM Program recognizes that chloride levels in Reach 4B of the Santa Clara River may exceed the protective range for salt sensitive agriculture of 100 - 117 mg/L chloride, as determined by the Ag. Study, discussed previously. In order to protect this salt sensitive agricultural beneficial use along Reach 4B of the SCR, the AWRM Program proposes to protect surface water diverters along this reach of the SCR with a suitable alternative water supply, when chloride concentrations in surface water exceed 117 mg/L making surface water quality unsuitable for the direct irrigation of salt-sensitive crops with surface water. Alternative water supplies will be provided to temporarily protect salt-sensitive agricultural uses in Reach 4B, through the delivery of high quality RO product water to blend with Reach 4B surface water

\* Imported water supply chloride concentrations have often exceeded 100 mg/L during drought conditions, due to the influence of poor quality imported water supplies delivered from the State Water Project stored at the Castaic Lake Reservoir.

## **Exhibit 1 - Alternative Water Resources Management Program**

diverted for irrigation of salt-sensitive crops, so that the blended irrigation water quality is 117 mg/L or less. The use of alternative water supplies allows for the full protection of beneficial uses, during temporary and intermittent periods when water quality due to extreme drought conditions does not support those beneficial uses.

### *Element No. 6: Support for Expansion of Recycled Water Uses in the Santa Clarita Valley*

The AWRM Program includes provisions to support recycled water uses in the Upper Basin Water Purveyor service areas. Increasing recycled water uses in the Santa Clarita Valley, will not only improve water supply reliability in the area, but also, reduce the chloride loading directly discharged to the Santa Clara River From the WRP discharges.

### *Element No. 7: Revisions to WQOs to support the AWRM Program*

As indicated above, the feasibility of the AWRM Program is dependent upon revising the existing water quality objectives for surface water and groundwater to various levels that support the different elements of the AWRM Program. A summary of the recommended WQO revisions for surface water and groundwater, in support of the AWRM Program, were previously presented in Table 1. Through revision of these surface water and groundwater WQOs, the amount of advanced treatment required to achieve compliance with these WQOs is significantly reduced, which allows for the disposal of brine wastes generated from the RO processes through deep well injection as opposed to the construction of a 43-mile brine line and ocean outfall. In addition, the revision of these WQOs would better facilitate the permitting of recycled water uses in the Santa Clarita Valley, which will improve water supply reliability in the area, and reduce the chloride loading from recycled water that can now be beneficially reused, as opposed to directly discharged to the Santa Clara River. Ultimately, the cumulative benefits of the AWRM Program elements will improve water quality in surface water and groundwater, improve water supplies to Ventura County, protect all beneficial uses, and reduce the amount of advanced treatment and associated brine disposal needed for compliance.

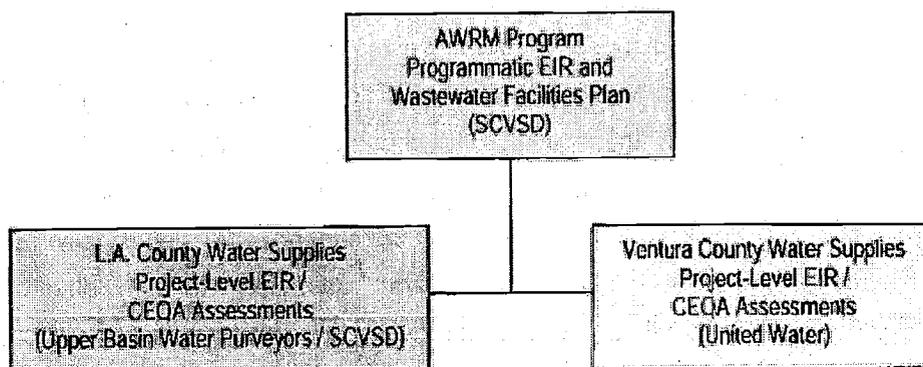
### **Implementation Tasks and Responsibilities for the AWRM Program**

The SCVSD will be the lead agency for the development of a Programmatic Environmental Impact Report (PEIR) to assess the AWRM Program, and if appropriate, certify the PEIR, make CEQA findings, and approve the project. The SCVSD has the principal responsibility for carrying out and implementing the AWRM Program, because it is a necessary program to comply with the Upper Santa Clara River Chloride TMDL. In addition to the PEIR, the SCVSD will conduct a Facilities Plan for the necessary wastewater treatment facilities

### Exhibit 1 - Alternative Water Resources Management Program

associated with AWRM Program (i.e. UV Disinfection, MF-RO Facilities and Brine Disposal Facilities). The United Water Conservation District (or another agency in Ventura County with water supply responsibilities) will become the lead agency responsible for conducting Project Level EIR / CEQA Assessments to implement the Ventura County water supply facilities associated with AWRM Program (i.e. Conveyance pipelines, East Piru extraction wells, and East Piru pipeline). Finally, the Upper Basin Water Purveyors/SCVSD will identify a lead agency for the purpose of conducting Project-Level EIR / CEQA Assessments to utilize and deliver supplemental water to achieve compliance on an interim and long-term basis for the AWRM Program. Figure 5 is a schematic that defines the proposed agency roles and responsibilities for implementing the necessary planning elements of the AWRM Program. Figure 6 is a preliminary implementation schedule associated with various, planning, design and construction activities required to implement the AWRM Program. The AWRM Program will achieve compliance with the schedule deadlines associated with TMDL Tasks 13a, 13b, 13c and 13d of the Upper Santa Clara River Chloride TMDL.

Figure 5. AWRM Program Implementation by SCVSD, United Water and Upper Basin Water Purveyors







# **ATTACHMENT 72**





## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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STEPHEN R. MAGUIN  
Chief Engineer and General Manager

November 14, 2008  
File No. 31-370-40.4A

Ms. Tracy Egoscue, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

Dear Ms. Egoscue:

**Comment Letter - Proposed Amendment to the Water Quality Control  
Plan for the Los Angeles Region to Re-consider the Upper Santa Clara River  
Chloride TMDL and Consider Conditional Site Specific Objectives for Chloride**

The Santa Clarita Valley Sanitation District of Los Angeles County (Sanitation District), would like to thank the California Regional Water Quality Control Board - Los Angeles Region (Regional Board) for the opportunity to provide comments on the proposed amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to re-consider the Upper Santa Clara River (USCR) Chloride Total Maximum Daily Load (TMDL) and to consider conditional site specific objectives (SSOs) for chloride. The Sanitation District owns and operates the Valencia and the Saugus Water Reclamation Plants (WRPs) located within the Santa Clarita Valley, which provide primary, secondary and tertiary treatment to produce recycled water that is reused or discharged to the Upper Santa Clara River.

The Sanitation District strongly supports the proposed amendment to the Basin Plan because it provides an opportunity for the implementation of the Alternative Water Resources Management (AWRM) Program, an innovative watershed-wide and stakeholder-supported program to comply with the Upper Santa Clara River Chloride TMDL. Since November 1, 2007, various Los Angeles and Ventura County stakeholders within the Santa Clara River watershed, including the Sanitation District, have worked together to develop the AWRM Program as a viable alternative for Regional Board consideration. The AWRM Program is a watershed-based approach to manage chloride in Santa Clara River and underlying groundwater basins and involves: (1) reducing chloride levels in recycled water through automatic water softener removals and conversion to ultraviolet light disinfection processes; (2) small-scale advanced treatment of wastewater with local brine disposal; (3) supplemental water to reduce chloride levels in the river; (4) alternative water supplies to protect salt-sensitive agriculture, when necessary; and (5) facilities to remove high chloride groundwater in Ventura County from the watershed. The stakeholders<sup>1</sup> have entered into a Memorandum of Understanding (MOU) for the Implementation of

<sup>1</sup> The stakeholders to the AWRM Program MOU include the following: (1) Santa Clarita Valley Sanitation District of Los Angeles County; (2) United Water Conservation District; (3) Ventura County Agricultural Water Quality Coalition; and (4) Upper Basin Water Purveyors, comprised of the Castaic Lake Water Agency (CLWA), Valencia Water Company, Newhall County Water District, Santa Clarita Water Division of CLWA, and Los Angeles County Waterworks District No. 36.

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the AWRM Program. This MOU, effective October 23, 2008, is submitted for inclusion in the administrative record as Attachment A. The MOU represents the collective commitment of the stakeholders to implement a watershed-wide solution to the chloride problem that not only protects all beneficial uses, but provides the most diverse set of water resource benefits for the watershed.

Among the key elements of the AWRM Program MOU is a commitment by the Sanitation District to implement source control measures to reduce chloride in recycled water at the Saugus and Valencia WRPs. The Sanitation District has already made significant progress on source control measures through the adoption of the Santa Clara River Chloride Reduction Ordinance of 2008, which requires the removal of all automatic water softeners, from the Sanitation District's service area by June 30, 2009. In accordance with California Health and Safety Code Section 116787, the ordinance was approved by a majority of voters in the November 4, 2008 General Election, and will become effective on January 1, 2009. A copy of the ordinance is included as Attachment B.

In addition, the AWRM Program MOU specifies a commitment by both the Sanitation District and the United Water Conservation District (United Water) to jointly fund an extension of the Groundwater-Surface Water Interaction Model (GSWIM) to the Freeman Diversion. The GSWIM extension will be able to better address potential water level and water quality concerns raised by the City of Fillmore, inform decisions regarding the future operation of the AWRM Program extraction wells discharging to Reach 4A, and also identify mitigation measures that may be required of the Reach 4A discharge permittee to assure that the operation of the AWRM Program extraction wells protects downstream beneficial uses.

Both the Sanitation District and United Water are also working with the Camulos Ranch to address their potential concerns related to water levels and interim/future water quality in East Piru, associated with AWRM Program. Future agreements related to the operation of AWRM Program extraction wells and the provision for an alternative water supply of suitable quality, will have to be developed between the Sanitation District, United Water and the Camulos Ranch to implement the AWRM Program and assure that the AWRM facilities are operated in a manner that does not impair the Ranch's beneficial uses.

#### Minor Comments on the Staff Report, Tentative Resolution and Attachments to the Tentative Resolution

Attachment C is comprised of copies of the Staff Report, Tentative Resolution, and Attachments to the Tentative Resolution, which include recommended edits proposed by both Regional Board and Sanitation District staff.

Comments on the Staff Report are summarized as follows:

1. Recommendations on the appropriate compliance period to assess the cumulative net chloride loading above 117 mg/L trigger for the Reach 4B critical condition SSO (Section 4.1.b.3, and Section 4.2.a.3);
2. Clarifications related to future projected growth and WRP flows and how that was modeled by GSWIM and how they affect the anti-degradation analysis discussion. (Sections 2.6, Section 3.5, Section 6, and Section 7.3);
3. Clarifications on the typical operational modes of the AWRM Program (Section 4 and Figure 3);

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4. Clarifications on "rated capacity" versus capacity factor as it relates to the operation of RO membranes (see Section 4.2, Table 8, and Section 8.0);
5. Recommendation to include an annual average conditional SSO for groundwater in the Castaic Valley area, to be consistent with similar averaging periods recommended for groundwater in the Santa Clara – Bouquet & San Francisquito Canyons and Lower areas East of Piru Creek;
6. Clarifications on compliance costs presented in Sections 5.4.1 and 5.4.2, and in Table 11; and
7. Various minor editorial comments.

Comments on the Tentative Resolution and Attachments to the Tentative Resolution are summarized as follows:

1. Recommendations on the appropriate compliance period to assess the cumulative net chloride loading above 117 mg/L trigger for the Reach 4B critical condition SSO;
2. Clarifications on "rated capacity" versus capacity factor as it relates to the operation of RO membranes;
3. Recommendation to include an annual average conditional SSO for groundwater in the Castaic Valley area, to be consistent with similar averaging periods recommended for groundwater in the Santa Clara – Bouquet & San Francisquito Canyons and Lower areas East of Piru Creek;
4. Recommendation to include language in the Tentative Resolution acknowledging that the required TMDL studies for TMDL Tasks 4, 5, 6, 7, 8, 9, 10b and 10c have been completed;
5. Clarifying language in the Tentative Resolution that effective October 23, 2008, Los Angeles and Ventura County stakeholders have entered into a MOU to implement the AWRM Program;
6. Clarifying language related to the implementation and schedules for required groundwater and surface water trend monitoring by the Sanitation District and the future Reach 4A Permittee;
7. Various minor editorial comments.

#### Final Reports for TMDL Task Nos. 3, 4, 5, 6, 7, 8, 9, 10b and 10c

The Sanitation District has enclosed a CD (Attachment D) for inclusion in the administrative record that contains the electronic copies of all final reports related to the TMDL special studies. The inclusion of these final reports completes the Sanitation District's requirements related to the various special studies identified in TMDL Task Nos. 3, 4, 5, 6, 7, 8, 9, 10b and 10c.

#### Summary and Conclusions

In closing, the Sanitation District would like to reiterate its strong support for the Regional Board staff's recommendation to adopt conditional SSOs for chloride and urges the Regional Board to approve this important Basin Plan amendment. The Sanitation District believes that the proposed amendment to

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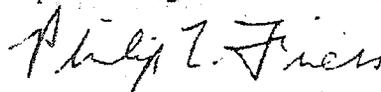
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the Basin Plan and the resultant chloride SSOs necessary to implement the AWRM Program, will provide an opportunity to implement a solution to the Chloride TMDL that provides the maximum benefit to the people of the State. The Sanitation District would like to commend the Regional Board staff for their dedication and support during the TMDL collaborative process studies, which have been instrumental in the development of a stakeholder consensus solution to the Chloride TMDL for the Regional Board's consideration. If you have any questions or comments, please contact the undersigned at (562) 908-4288, extension 2501.

Very truly yours,

Stephen R. Maguin



Philip L. Friess  
Department Head  
Technical Services Department

PLF:BL:nm  
Attachment

cc: Samuel Unger, RWQCB  
Jenny Newman, RWQCB  
Bert Rapp, City of Fillmore  
Matthew Freeman, Camulos Ranch  
Michael Solomon, United Water Conservation District

# **ATTACHMENT 73**



MINUTES OF THE ADJOURNED REGULAR MEETING  
OF THE BOARD OF DIRECTORS OF THE  
SANTA CLARITA VALLEY SANITATION DISTRICT  
HELD AT THE SANTA CLARITA CITY HALL  
COUNCIL CHAMBERS, FIRST FLOOR  
23920 WEST VALENCIA BOULEVARD,  
SANTA CLARITA, CALIFORNIA

May 26, 2009  
3:30 o'clock, P.M.

The Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County met pursuant to adjournment as ordered by this Board of Directors at the regular meeting held May 13, 2009. The Secretary reported that a copy of the Order of Adjournment was posted as required by law and that proper affidavits of the posting are on file in the Secretary's office.

There were present: Laurene Weste, Director from Santa Clarita  
Frank Ferry, Chairperson, Director from Santa Clarita

Absent: Donald R. Knabe, Director from Los Angeles County

Also present: Kimberly S. Compton, Secretary of the District

RE: SERVICE CHARGE, INDUSTRIAL  
WASTEWATER SURCHARGE AND  
CONNECTION FEE PROGRAMS, SERVICE  
CHARGE REPORT AND COLLECTION  
ON TAX ROLL - HOLD COMBINED  
PUBLIC HEARING

The Chairperson announced that today the Board would hold a combined public hearing on the proposed service charge rates, the collection of the 2009-10 service charge on the property tax roll, the proposed industrial wastewater surcharge rates, and the proposed connection fee rates.

A letter from the Chief Engineer and General Manager dated May 21, 2009, accompanied the agenda and described the recommended Board actions, together with a copy of the Service Charge Report, the preliminary budget, the proposed Service Charge Ordinance providing for the collection of the service charge on the tax roll, the proposed Industrial Wastewater Surcharge Rate Ordinance, and the proposed Connection fee Rate Ordinance. The proposed rate increases are substantial and needed primarily to comply with the Regional Water Quality Control Board (RWQCB) chloride limit but also to provide for continued operation of existing facilities, including coverage of existing debt service, over the next three fiscal years, as discussed in the letter to the Board.

The Chief Engineer and General Manager gave a brief history of chloride regulation and compliance. He stated that in 1961, the RWQCB, which governs the discharge of the Saugus and Valencia Water Reclamation Plants (WRPs), adopted the first chloride limit for effluent discharge to the Santa Clara River. The limit adopted at that time was established at a fixed level above the chloride content of the water supply. The District responded to the new limits by adopting an ordinance to ban all self-regenerating water softeners that discharge brine to the sewer. Those two factors, the nexus to the water supply quality and the reduction in chlorides to the WRPs from removal of water softeners, along with drought relief, allowed compliance until 1997. In that year, the water softener industry was successful with litigation challenging softener bans in other parts of California that invalidated the effect of the District's 1961 ordinance. Also, at that time, the RWQCB sought a fixed chloride limit that would apply regardless of the quality of the water supply. He then discussed the subsequent efforts of the staff to work with the RWQCB concerning reasonable chloride limits, also addressed in the May 21, 2009 letter. The RWQCB adopted a total maximum daily load (TMDL) standard for chloride in 2002 for the discharge to the Santa Clara River. The District did not agree with the standard that was adopted due to the lack of supporting science. The District was hopeful that additional scientific studies would provide support for a higher limit to allow compliance solely with the removal of automatic water softeners.

He discussed the District's very successful program to remove water softeners which is important because of the contribution softener use has on the chloride levels in the wastewater. He also discussed the importance of the legislative success to reinstate the authority to ban water softeners including SB 475 by Senator George Runner and Proposition S. As of the meeting date, approximately 70 percent of the water softeners had been removed. He mentioned two benefits of the water softener removal program. The first benefit of the softener removal program is that the overall cost to comply with the chloride limit will be reduced by about \$75 million. Secondly, the program was crucial in demonstrating Santa Clarita Valley's

SCV; Book 2; May 26, 2009; ARM; Page 1 of 5

commitment to chloride reduction, which was necessary for negotiations with stakeholders to even begin on the Alternative Compliance Plan. He noted that the Santa Clarita Valley water agencies were involved in those negotiations.

He described the three general elements of the Alternative Compliance Plan: advanced treatment at a capacity greatly reduced from that originally needed to comply with the RWQCB limits; facilities to reduce chlorides in the groundwater basin; and, at times, an alternative water supply for a surface waste user of the Santa Clara River. This plan, approved by the RWQCB in December, cut the project cost (after softener removal) in half from \$500 million for the project required to meet the original RWQCB standard to \$250 million for the Alternative Compliance Plan. Nevertheless, in part because of the brief seven-year period allowed for implementation, the annual increases proposed over that period are substantial. He noted that the proposed actions before the Board were to cover only the first three years of the seven-year project implementation period.

He then introduced Mr. Phil Friess, Head of the Technical Services Department for the Sanitation Districts, to further discuss the components of the Alternative Compliance Plan including source control, advanced treatment, and salt management facilities.

Using PowerPoint slides, Mr. Friess advised that the first part of source control efforts is the water softener removal. With the elimination of all the water softeners, approximately 50 milligrams per liter of chloride will have been removed from the effluent at a cost of \$3.9 million dollars, which is the most cost-effective salt removal element in the Alternative Compliance Plan.

He stated that the second part of source control efforts would be conversion of effluent disinfection from a bleach-based process to ultraviolet light treatment at a cost of \$17 million. This will remove about 12 milligrams per liter of chloride from our effluent and is the second most cost-effective element of our program.

He advised that another element of the Alternative Compliance Plan is a 3-million gallon per day (MGD) micro-filtration reverse-osmosis treatment plant upgrade. This will provide an equivalent effluent chloride removal capacity of 19 milligrams per liter. Local brine disposal via deep well injection will eliminate the need for a 43-mile pipeline to the ocean for brine disposal. This advanced treatment upgrade with brine disposal via deep well injection is the most expensive element of effluent chloride removal in the Alternative Compliance Plan.

In response to Director Weste, Mr. Friess advised that a small micro-filtration reverse-osmosis upgrade at the Valencia WRP would be used to produce 3 MGD of desalinated wastewater and the brine from that process would be injected over a mile deep, isolated by bedrock beneath the Saugus aquifer.

He further stated that another major element of the Alternative Compliance Plan is the Ventura County Salt Management Facilities. These are needed to remove excess salt from the East Piru groundwater basin, by pumping salty groundwater and blending with desalinated effluent. The excess salt in the East Piru basin is in part due to the historical discharge from the wastewater treatment plants. In addition, during drought conditions in the future, higher salt will still be discharged from the treatment plants and will have to be removed by the salt management facilities.

The last obligation of the Alternative Compliance Plan is an alternative water supply for Camulos Ranch. The salt management facilities will also supply water to Camulos Ranch during drought conditions with a blend of pumped East Piru groundwater and desalinated wastewater.

He reiterated that taking the removal of self-regenerating water softeners into account, the implementation of the Alternative Compliance Plan is estimated to cost \$250 million. While still very expensive, the Alternative Compliance Plan project is half the cost of the project that would have been required to meet the original RWQCB limit.

At this time, Mr. Friess introduced Mr. John Gulledge, Head of the Financial Planning Department for the Sanitation Districts, who gave a summary of the major financial rate impacts and the proposed rates.

Using PowerPoint slides, Mr. Gulledge presented the proposed and projected rates through fiscal year 2015-16. He noted that the current service charge rate is about \$15 per month per single-family home and that, without the Alternative Compliance Plan, based on what is known today, the current service charge rate projected out over the seven-year period would be about \$23 per month per single-family home. At that point in time (2015-16), the Alternative Compliance Plan is projected to add approximately \$19 in capital needs and another

\$5 per month for operation and maintenance of the new facilities for a total projected monthly service charge of approximately \$47 in 2015-16.

He stated that the Alternative Compliance Plan would be financed either through the State Revolving Fund loan program over a twenty-year period or through bond sales over a 30-year period. The preferred alternative would be to use the State Revolving Fund loan program; however, he cannot guarantee the availability of this funding source at this time.

He then presented a slide showing the current wastewater service charge rate and the proposed rates for fiscal years 2009-10, 2010-11, and 2011-12. He also showed slides comparing the District's current and proposed rates with those of other nearby communities and for other utilities and services available in the Santa Clarita Valley. He stated that as the project is implemented, future costs will be better known; for instance, as bids are received for construction of various elements of the project. Projected rates beyond the proposed three-year period would be adjusted accordingly.

Director Ferry asked a question concerning the footnote on the slide that compared the current rates for Santa Clarita Valley with those of other agencies. Mr. Gullidge responded that the approximate \$7 figure referred to in the footnote would be added to the proposed service charge rate to obtain an estimate of the total cost to the homeowner for sewerage services including fees for local services.

Director Weste stated that she wanted to hold her questions until after the public testimony. She stated that a lot of emails, letters and calls have been received on this issue. She stated it was important for everyone to understand that the water and the habitat in the Santa Clara River, now regulated by Federal and State statutes, was created from Santa Clarita's wastewater effluent, which comes out clean enough, after treatment, to drink. She noted that the effluent has created abundant beauty and natural resources from here to Oxnard and that she is a strong supporter of protecting the river. She noted that the city, as well as the District, had taken actions to make sure that the water in the river is healthy and clean and the issue before the Board is not about the water being unhealthy, but rather about the salt content. She also noted there are potential fines for not complying with the chloride limits. The Chief Engineer and General Manager confirmed that fines could be in the millions of dollars for non-compliance. She voiced concern about the Alternative Compliance Plan in that she believed it was an unreasonable impact on homeowners.

The Chief Engineer and General Manager noted that, before beginning public testimony, he wanted to summarize the public input the Sanitation Districts has received. He stated that 42 protest letters were submitted with one letter containing 12 signatures. He also stated that 150 emails of protest were received as well as seven telephone calls in protest. The Chairperson advised that he would like to enter into the record approximately 200 emails that were received by the City of Santa Clarita.

Upon motion of Director Weste, duly seconded and unanimously carried, the Chairperson opened a combined public hearing scheduled at this time and place on the Service Charge, Industrial Wastewater Rates, and Connection Fee Programs, as well as on the Service Charge Report and on the collection of the service charge on the property tax roll.

The Secretary then called the following speakers:

1. Samuel Unger
2. Ed Dunn
3. Joan Dunn—who declined to speak.
4. Alan Ferdman
5. Geraldine Maurovich
6. Rudolph Maurovich
7. Richard Trimble
8. John Brooks
9. Ken Dean
10. Walter Watson
11. Larry L. Bird
12. Armine Jones
13. Timben Boydston
14. Brian Roney
15. Jackie Bick, representing Senator George Runner.
16. Marsha McLean
17. Allen Cameron
18. Larry Blanton

19. Cam Noltemeyer
20. Bill Arens
21. Tony Natoli
22. Mike Solomon
23. Stacey Kelleher

A local television company for the City of Santa Clarita videotaped the presentation, along with the public testimony. Director Weste requested the Secretary to have a transcript, attached, prepared from the videotape and provided to each Director; the Secretary filed the transcript with the public hearing documents. The following is a summary of the questions raised as taken from the transcript.

Director Ferry asked the following questions to the staff:

1. Has a regulatory limit ever been legally challenged? Has any Sanitation District ever legally challenged limits?
2. Can the Sanitation District re-circulate the Prop 218 notice?
3. Can the Sanitation District provide a simple analysis of the concentration of chloride?

Director Weste asked the following questions to the staff:

1. What are fines involved for non-compliance (\$/day)?
2. What happens to chloride levels after water softeners are all removed?
3. What is the criteria to protect agriculture in Clean Water Act / Porter-Cologne Act? Are they intended to protect any crop that a farmer can possibly plant?
4. Are there Special District dollars that can be taken away?
5. When do the costs drop off or go away? Will rates drop down after the project is built?
6. Is Peter Pitchess included in the chloride assessment and what does it contribute? What are its requirements for chloride?
7. What is the concentration in Piru Basin? What is it past Piru Basin?
8. Are farmers downstream paying for State Water Project (SWP) water? If they are on groundwater, are they over-pumping their wells?
9. If SWP is treated, what would the cost be?
10. Does Newhall Ranch have to meet the same standard? Do they have to build their own plant?
11. Is our water being pumped to solve a Ventura County salt-water intrusion problem?
12. Are there technologies that can be placed in individual homes that could solve the problem?
13. Are we the only ones facing this dilemma? Are there other communities facing this dilemma over salt? What is the concentration of chloride allowed in other communities?
14. What is the chloride in the State Water Project (SWP) water right now? Is it the policy of the State that they can send it to you any way they want and you have to treat it before it goes out?
15. Is it true that the residential community only contributes 20% of the chloride?
16. What are the impacts of farmer's activities and what do they contribute, and how are they regulated?
17. What are the requirements for deep well injection and how is this regulated?
18. With 1,500-2,000 softeners left, what will be impact on water quality? When do you plan to measure chloride levels?
19. Have we explored all of our options?

The speakers asked the following questions to the staff:

1. How is Alternative Compliance Plan related to Newhall Ranch development?
2. Can the Sanitation District make any other adjustments now to keep taxes as low as possible?

3. How is Peter Pitchess detention center related to project?
4. Where can I find key studies done by the District?
5. What are the alternatives? Are there cheaper options that can be explored with onsite residential reverse-osmosis units?
6. What is the natural salinity of river before discharge of effluent? Are we having to clean up water because it simply runs through our Valley?
7. Who conducted the studies and who paid for them?
8. What are the administrative procedures for tax increases for the Sanitation District? Can rates be reduced after project is built? What is the cost breakdown between capital and O&M for the project? Can the capital cost be billed separately from the property tax bill?
9. What has changed since the 1999-2002, when the Sanitation District believed that the impact to agriculture and groundwater was unfounded?

Director Ferry advised the public that the District is not the responsible party for creating the need to raise the rates. The District is responding to the federal and state mandates on chloride limits. He stated that he has many concerns regarding the science and the effects on the avocado and strawberry farms.

The Directors stated that they would like to see the water softener removal program completed prior to moving forward. They also requested that a meeting be arranged with RWQCB representatives to discuss the causation issues and more reasonable chloride regulation with drought consideration, and to also meet with State Senator Runner, Assemblyman Smythe, and Congressman McKeon regarding potential legislative relief as well as the Governor.

Director Weste stated that she doesn't believe that all options have been explored yet. She believes that the farmers are getting better water, free of charge, than the City receives. And, at this time, she does not support this large increase because it is an unreasonable impact on homeowners. She stated that she is not refusing in any way to solve the problem, but would like to be part of the solution.

The Chief Engineer and General Manager proposed that the District staff prepare a response to issues raised by the Directors and members of the public regarding the proposed rate increases, and that another meeting be scheduled in the City of Santa Clarita for further consideration of the rates, the Directors concurred.

There being no further public comment, the Chairperson closed the public hearing.

RE: SERVICE CHARGE REPORT AND  
COLLECTION ON TAX ROLL - SERVICE  
CHARGE, INDUSTRIAL WASTEWATER  
SURCHARGE AND CONNECTION FEE  
ORDINANCES - DEFER

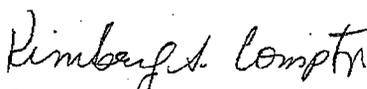
Following the public hearing, upon motion of Director Weste, duly seconded and unanimously carried, the Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County deferred the adoption of the Service Charge Report, the proposed Service Charge Ordinance, the proposed Industrial Wastewater Surcharge Rate Ordinance to a later date.

Surcharge Rate Ordinance, and the proposed Connection fee Rate Ordinance to a later date.

The meeting was adjourned by the Chairperson.

  
FRANK FERRY  
Chairperson

ATTEST:

  
KIMBERLY S. COMPTON  
Secretary

/ksc



# **ATTACHMENT 74**



MINUTES OF THE ADJOURNED REGULAR MEETING OF THE  
BOARD OF DIRECTORS OF  
SANTA CLARITA VALLEY SANITATION DISTRICT  
HELD AT THE OFFICE OF THE DISTRICT

July 27, 2010  
6:30 o'clock, P.M.

The Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County met in adjourned regular session.

There were present: Marsha McLean, Director from Santa Clarita  
Michael D. Antonovich, Alternate Director from Los Angeles County  
Laurene Weste, Chairperson, Director from Santa Clarita

Absent: None

Also present: Stephen R. Maguin, Secretary pro tem

Upon motion of Director Weste, duly seconded and unanimously carried, Mr. Stephen R. Maguin was appointed Secretary pro tem.

Upon motion of Director Antonovich, duly seconded and unanimously carried, the minutes of the special meeting held June 2, 2010, and regular meeting held June 9, 2010, were approved.

RE: WARRANTS

district, in the amount of \$902,825.79, were approved.

Upon motion of Director Antonovich, duly seconded and unanimously carried, warrants issued by the Dis-

RE: DEPARTMENTAL INVOICE

Antonovich, duly seconded and unanimously carried, was approved:

The following departmental invoice for the month of May 2010 was presented and upon motion of Director

No. 411

DEBIT:

S.C.V. - Operating Fund - Operation & Maintenance  
S.C.V. - Operating Fund - Local - Capital  
S.C.V. - Operating Fund - Local - Capital Improvement Fund

\$812,046.76  
112,647.00  
48,178.19

CREDIT:

S.C.V. - Operating Fund - Joint Administration - Credit

523.24 cr.  
\$972,348.53

CREDIT:

C.S.D. #2 - Operating Fund - Abatement of Expense - I.D.S.

\$972,348.53

RE: SERVICE CHARGE PROGRAM  
INDUSTRIAL WASTE SURCHARGE;  
CONNECTION FEE RATES; SERVICE  
CHARGE REPORT AND COLLECTION  
ON TAX ROLL - HOLD COMBINED  
PUBLIC HEARING

The Chief Engineer and General Manager announced that today the Board would hold a combined public hearing, and presented the proposed rate increases associated with the service charge, industrial wastewater surcharge, and connection fee rates, and the collection of the service charge on the property tax roll.

He advised that a letter describing the required Board actions together with a copy of the Service Charge Report, the preliminary budget, a resolution for collection of the service charge on the tax roll, the proposed ordinance prescribing the service charge rates and loading assumptions, the proposed ordinance prescribing the industrial wastewater surcharge rates, and the proposed ordinance prescribing the connection fee rates and loading assumptions were attached to the agenda.

The Chief Engineer and General Manager presented the service charge program and displayed several slides depicting the proposed rates including the portion necessary for continued support of existing facilities, and that necessary to support the planning and design of the facilities necessary to comply with chloride limits imposed as part of the Total Maximum Daily Load (TMDL) approval process. He then summarized the history of the chloride compliance mandate and described the 10-year battle with the Los Angeles Regional Water Quality Control Board (Regional Board) over the chloride standard, which culminated in 2006. After

the State Water Resources Control Board affirmed the Regional Board's action by unanimous vote in 2007, staff efforts turned toward development of the most cost-effective means of compliance with the Regional Board's mandate. The alternative compliance project was developed which involved a number of stakeholders including Ventura County agriculture interests. The alternative compliance plan would require a much smaller scale of advanced treatment facilities than originally required. Critical to the Regional Board's approval of the alternative compliance plan was the community's commitment to removing self-regenerating water softeners, which resulted in a reduction of approximately 60 mg/L in chloride levels discharged to the Santa Clara River. He commended the community for their efforts in removing these devices.

In 2009, the Board elected not to move forward with the alternative compliance project and directed staff to seek additional regulatory relief. Since then, the Chief Engineer and General Manager had negotiated a tentative extension of the compliance schedule and a tentative relaxation of the chloride standard. If approved by the Regional Board, these changes, assumed in the currently proposed rates, would reduce the project costs by \$40 million. He advised that failure to approve the rates to support the project would jeopardize the Regional Board's approval of the changes resulting in higher chloride standards, increased project costs and substantial fines.

The Chief Engineer and General Manager also described the proposed connection fee increases and stated that these fees were born solely by new users of the system, and those who have experienced significantly increased flows, to pay for future expansion of the system.

Director Weste described in detail the history of efforts to control self-regenerating water softeners by the District, the regulatory history of chlorides, and the possible fines for non-compliance under state and federal law. She also stated that she had reviewed in depth state and federal law requiring the Regional Boards to adopt TMDLs for water bodies in their region. She thanked the Santa Clarita Signal Newspaper, and radio station KHDS, for their coverage of the chloride issue, as well as the community, for removing their self-regenerating water softeners, which gave the community credibility with the Regional Board.

Director Weste asked District staff to evaluate the effectiveness of switching to ultraviolet (UV) light disinfection at the water reclamation plants to further reduce chlorides in the effluent. She also asked that District staff develop a plan to remove the remaining self-regenerating water softeners. She reiterated her request to evaluate the science underlying the chloride standard. She also requested further efforts to seek funding and legislative relief.

Director Antonovich expressed his concern with state and federal mandates to remove chloride despite the fact that much of the chloride comes from upstream via the State Water Project water supply. He stated his support for pursuing legislative relief.

Director McLean expressed her concern that the proposed rate increases would be devastating to businesses. She requested that an item be placed on a future agenda to discuss pursuing filing a claim for reimbursement with the California Commission on State Mandates. Director Weste and Director Antonovich concurred.

Director McLean requested a breakdown of the proposed service charges between what is needed to fund ongoing operations, and the chloride compliance project.

In response to Director McLean, the Chief Engineer and General Manager noted that \$3.92 of the proposed \$8.09 monthly increase over four years was needed to support existing facilities. He also stated a portion of the increase was to repay funds borrowed from the capital improvement fund over the last several years during which rates were below those recommended.

The Chief Engineer and General Manager stated that 7,732 written protests had been received. Director McLean asked if additional protests could be accepted after tonight. In response to Director McLean, the Chief Engineer and General Manager indicated that after the public hearing, no further protests could be accepted.

Upon motion of Director McLean, the Chairperson opened a combined public hearing scheduled at this time and place on Service Charge; Industrial Wastewater Surcharge, and Connection Fee Rates; and Collection of the Service Charge on the Property Tax Roll.

The Secretary pro tem then called the following speakers:

1) Lynne Planbeck; 2) Allan Cameron; 3) Valerie Thomas; 4) Robert Kelly; 5) Berta Gonzalez-Harper; 6) Patti Crossley; 7) Joseph Jasik; 8) Davit Lutness; 9) Michael Strahs; 10) David Lutness; 11) Judd Honadel; 12) Charles Werner; 13) Chuck Zimmerman; 14) Nancy Tujetsch; 15) Don Harbeson; 16) Dick Jeffrey; 17) Kevin Korenthal; 18) Alan Ferdman; 19) Tim Ben Boydston; 20) Ed Dunn; 21) Joan Dunn; 22) Natalie Danesh; 23) John Conley; 24) Ed Masterson; 25) Stephen Winkler; 26) B. J. Atkins (written

comments); 27) Carmillis Noltemeyer (written comments); 28) Donald and Sueko Ladeau; and 29) Brian Roney.

The City of Santa Clarita videotaped the meeting, along with the public testimony and staff responses. The Secretary filed the video transcript with the public hearing documents, and the video transcript is on file at the Districts' Administrative Office.

In response to questions from the public regarding water sources, the Chief Engineer and General Manager noted that increased imports in State Water Project water are not the only cause of the chloride compliance issue and that local groundwater supply currently has almost the same level of chloride as imported water. In addition, the chloride content of Lake Piru in Ventura County is lower than State Water Project water supplied to the District since it is diluted with local rainfall runoff. The use of other fresh water sources was looked at as a possible alternative to advanced treatment but was considered infeasible since it is usually not available during a drought, when it would be needed by the District for compliance. Lastly, given that the concrete-lined Los Angeles River was recently determined to be a federal jurisdictional water (i.e., navigable), it would be extremely unlikely that the natural Santa Clara River would ever be considered a non-navigable waterway and therefore not subject to federal laws.

There being no further public comment, the Chairperson closed the public hearing.

RE: SERVICE CHARGE PROGRAM  
ADOPT SERVICE CHARGE REPORT  
ADOPT RESOLUTION PROVIDING FOR  
COLLECTION OF CHARGES ON TAX ROLL

Following a public hearing, the Chief Engineer and General Manager noted that there was no motion for the proposed rates. He requested alternatively that the service charges necessary to fund existing programs be adopted and presented a proposed Resolution providing for collection of the service charges, and an increase of \$3.92 per month over four years, on the property tax roll, and recommended that the Resolution and Revised Service Charge Report be adopted.

Director McLean made a motion in support of introduction of a revised service charge report and introduction of a revised ordinance for the existing facilities only. The motion failed for lack of a second. Director Antonovich noted that, while the proposed rate increases associated with chloride compliance had been discussed in detail, the public had not been given adequate opportunity to comment on rate increases to support ongoing programs.

The Chief Engineer and General Manager recommended the Board adopt a Revised Service Charge Report and Resolution to collect the existing rates for service charge on the property tax roll.

Upon motion of Director Antonovich, duly seconded and unanimously carried, the Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County approved and adopted a Resolution providing for the existing rates for collection on the tax roll of service charges for fiscal year 2010-11; and the Revised *Santa Clarita Valley Sanitation District Service Charge Report for Fiscal Year 2010-11*, filed with the Board on July 27, 2010.

The following Resolution was adopted:

RESOLUTION PROVIDING FOR  
COLLECT SERVICE CHARGES ON TAX ROLL  
FOR FISCAL YEAR 2010-11 FOR  
SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY

BE IT RESOLVED, that pursuant to Section 5473 of the California Health and Safety Code, the Santa Clarita Valley Sanitation District of Los Angeles County elects to have the service charge imposed pursuant to Sections 3.01 through 3.08 of the Master Service Charge Ordinance of Santa Clarita Valley Sanitation District of Los Angeles County for fiscal year 2010-11 collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, the ad valorem taxes collected by the County of Los Angeles.

RE: SERVICE CHARGE PROGRAM  
INTRODUCE ORDINANCE PRESCRIBING  
SERVICE CHARGE RATE AND MEAN  
LOADINGS PER UNIT OF USAGE - NOT  
PASSED

The Chief Engineer and General Manager presented *An Ordinance Prescribing the Service Charge Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, and waive reading of said ordinance in its entirety. He advised over the four-year period, approximately half of the proposed rate increase is for continued operation of existing facilities. The other half of the proposed increase is related to planning and design of chloride management facilities to comply with the Regional Water Quality Control Board's requirements. A breakdown of the proposed rates was provided in the table attached

to the agenda. Multiple dwelling units and commercial properties are charged in proportion to their use compared to a single-family home.

**Proposed Rates Including Chloride Compliance Efforts**

	Current	Proposed			
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Existing Facilities	\$16.58 / month	\$18.50 / month (\$1.92 increase)	\$19.17 / month (\$0.67 increase)	\$19.83 / month (\$0.66 increase)	\$20.50 / month (\$0.67 increase)
Chloride Compliance Efforts	\$0 / month	\$0 / month (\$0.00 increase)	\$1.33 / month (\$1.33 increase)	\$2.75 / month (\$1.42 increase)	\$4.17 / month (\$1.42 increase)
Total Rate*	\$16.58 / month	\$18.50 / month (\$1.92 increase)	\$20.50 / month (\$2.00 increase)	\$22.58 / month (\$2.08 increase)	\$24.67 / month (\$2.09 increase)

\* Equivalent to annual rates as follows: \$199.00 for current fiscal year; \$222.00 for fiscal year 2010-11; \$246.00 for fiscal year 2011-12; \$271.00 for fiscal year 2012-13; and \$296.00 for fiscal year 2013-14.

Upon motion of Director McLean, there being no second, *An Ordinance Prescribing the Service Charge Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, was not passed.

RE: SERVICE CHARGE PROGRAM  
 INTRODUCE ORDINANCE PRESCRIBING  
 INDUSTRIAL WASTEWATER SURCHARGE  
 RATES - NOT PASSED

The Chief Engineer and General Manager presented *An Ordinance Prescribing Industrial Wastewater Surcharge Rates for Santa Clarita Valley Sanitation District of Los Angeles County*, and waive reading of said ordinance in its entirety. He advised the proposed

industrial wastewater surcharge rate increases are consistent with the proposed service charge rate increases.

Upon motion of Director McLean, there being no second, *An Ordinance Prescribing Industrial Wastewater Surcharge Rates for Santa Clarita Valley Sanitation District of Los Angeles County*, was not passed.

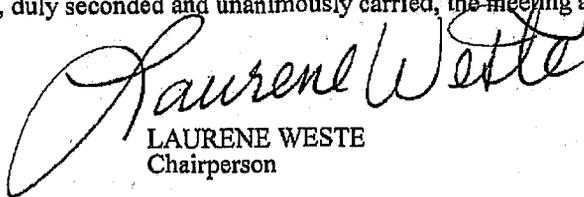
RE: SERVICE CHARGE PROGRAM  
 INTRODUCE ORDINANCE PRESCRIBING  
 THE CONNECTION FEE RATE AND MEAN  
 LOADINGS PER UNIT OF USAGE - NOT  
 PASSED

The Chief Engineer and General Manager presented *An Ordinance Prescribing the Connection Fee Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, and waive reading of said ordinance in its entirety. He

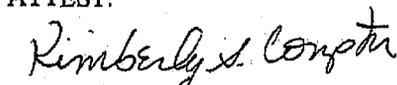
advised in this District, the current connection fee rate is \$3,800 per capacity unit. The proposed rates for fiscal years 2010-2011, 2011-12, 2012-13, and 2013-2014 are \$4,300 per capacity unit, \$4,800 per capacity unit, \$5,200 per capacity unit, and \$5,500 per capacity unit, respectively.

Upon motion of Director McLean, there being no second, *An Ordinance Prescribing the Connection Fee Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, was not passed.

Upon motion of Director McLean, duly seconded and unanimously carried, the meeting adjourned.

  
 LAURENE WESTE  
 Chairperson

ATTEST:

  
 KIMBERLY S. COMPTON  
 Secretary

/dd

# **ATTACHMENT 75**

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

MINUTES OF THE SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF THE  
SANTA CLARITA VALLEY SANITATION DISTRICT  
HELD AT THE SANTA CLARITA CITY HALL

April 14, 2011  
6:00 o'clock, P.M.

Pursuant to the call of the Chairperson and upon written notice of the secretary setting the time and place of a special meeting and mailed to each Director at least 24 hours before the meeting, a special meeting of the Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County was held, at the Santa Clarita City Hall, 23920 Valencia Boulevard, Santa Clarita, California, on April 14, 2011, at 6:00 p.m., for the purpose of:

1. Receive and Order Filed Action Appointing Ms. Laurie Ender as Alternate Director from the City of Santa Clarita
2. Approve Minutes of Regular Meeting Held March 9, 2011
3. Approve Warrants in Amount of \$726,815.25
4. Approve Departmental Invoice in Amount of \$845,295.69
5. Re: Wastewater Rates
  - (a) Hold Combined Public Hearing on Service Charge Report, Service Charge Rates, Industrial Wastewater Surcharge Rates, Connection Fee Rates, and Collection of Service Charge on Property Tax Roll
  - (b) Adopt Service Charge Report
  - (c) Introduce *An Ordinance Prescribing the Service Charge Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County and Providing for the Collection of Such Charges on the Tax Roll*, and Waive Reading of Ordinance in its Entirety
  - (d) Introduce *An Ordinance Prescribing Industrial Wastewater Surcharge Rates for Santa Clarita Valley Sanitation District of Los Angeles County*, and Waive Reading of Ordinance in its Entirety
  - (e) Introduce *An Ordinance Prescribing the Connection Fee Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, and Waive Reading of Ordinance in its Entirety

There were present: Marsha McLean, Director from Santa Clarita  
Laurene Weste, Chairperson, Director from Santa Clarita

Absent: Gloria Molina, Director from Los Angeles County

Also present: Stephen R. Maguin, Secretary pro tem

Upon motion of Director Antonovich, duly seconded and unanimously carried, Mr. Stephen R. Maguin was appointed Secretary pro tem.

RE: ALTERNATE DIRECTOR  
FROM CITY OF SANTA CLARITA

The Secretary presented a copy of an action taken by the City Council of the City of Santa Clarita at a meeting held January 25, 2011, stating that Ms. Laurie

Ender, a member of the City Council of the City of Santa Clarita, was appointed to serve as alternate Director from the city.

Upon motion of Director McLean, duly seconded and unanimously carried, the action was accepted and ordered filed.

Upon motion of Director McLean, duly seconded and unanimously carried, the minutes of the regular meeting held March 9, 2011, were approved.

RE: WARRANTS  
the amount of \$726,815.25, were approved.

Upon motion of Director McLean, duly seconded and unanimously carried, warrants issued by the District, in

RE: DEPARTMENTAL INVOICE  
McLean, duly seconded and unanimously carried, was approved:

The following departmental invoice for the month of February was presented and upon motion of Director

No. 288

DEBIT:

S.C.V. - Operating Fund - Operation & Maintenance	\$693,073.23
S.C.V. - Operating Fund - Joint Administration - Capital	1,982.53
S.C.V. - Operating Fund - Local - Capital	110,847.27
S.C.V. - Operating Fund - Local - Capital Improvement Fund	<u>39,392.66</u>
	\$845,295.69

CREDIT:

C.S.D. #2 - Operating Fund - Abatement of Expense - I.D.S.	\$845,295.69
------------------------------------------------------------	--------------

RE: SERVICE CHARGE PROGRAM  
HOLD COMBINED PUBLIC HEARING  
ON SERVICE CHARGE REPORT AND  
COLLECTION ON TAX ROLL

The Chief Engineer and General Manager announced that today the Board would hold a combined public hearing, and presented the proposed rate increases associated with the service charge, industrial wastewater surcharge, and connection fee rates, and the collection of the service

charge on the property tax roll.

Upon motion of Director Weste, duly seconded and unanimously carried, the Chairperson opened a combined public hearing scheduled at this time and place on the Service Charge Report, service charge rates, industrial wastewater surcharge rates, connection fee rates, and collection of service charge on property tax roll for the Santa Clarita Valley Sanitation District of Los Angeles County. The Chief Engineer and General Manager advised that a letter describing the required Board actions together with a copy of the Service Charge Report and preliminary budget accompanied the agenda. He advised that notices were mailed to 68,281 residential, commercial, and small industrial parcels, and that the District was contacted by 10 property owners, five were telephone calls and five submitted letters of opposition. Copies of the letters in opposition to the proposed increase were attached to the agenda.

In accordance with Section 5473 of the Health and Safety Code of the State of California, the *Santa Clarita Valley Sanitation District Service Charge Report for Fiscal Year 2011-12*, was filed on February 9, 2011, and publication of two newspaper notices for today's public hearing were published in *The Signal Newspaper*. The Service Charge Report addresses the continued collection of the service charge for the District on the tax roll. These charges are needed to supplement the District's existing revenue sources for the forthcoming fiscal year, as discussed in the letter dated April 6, 2011, to the Boards, which also included copies of ordinances prescribing the service charge rates and mean loadings and providing for the collection of the service charge on the tax roll, industrial wastewater surcharge rates, and connection fee rates and mean loadings for fiscal year 2011-12.

The Chairperson stated that he would like to smooth the proposed connection fee rates as part of an effort to be friendly to business during these tough economic times. After some discussion between the Board members and the Chief Engineer and General Manager, the Chairperson made a motion to smooth the proposed connection fees rates for fiscal years 2011-12, 2012-13, and 2013-14 from staff's recommendation to \$4,400, \$5,000, and \$5,500 respectively. The motion passed unanimously.

The Chairperson announced this was the time for any questions or comments by members of the public. The following individuals addressed the Board.

Alan Ferdman, Canyon Country Advisory Committee, 27248 Walnut Springs, Canyon Country: Mr. Ferdman complimented District's staff for their efforts to provide additional information to the public in an effort to provide justification for the proposed service charge rate increases. He stated that the additional information did provide him sufficient information for him to conclude that the proposed rate increase was justified and he could support the increase. However, he further stated that he still did not have enough information to feel comfortable supporting the proposed connection fee increases. In particular, he was

concerned that the total amount of revenue the fees would generate is more than needed to expand the treatment facilities.

The Chief Engineer and General Manager responded that he appreciated the efforts of Mr. Ferdman to understand the need for the proposed service charge rate increase and his support in that regard. As for the connection fee rates, he responded that they are established based upon an analysis of the total cost of providing service to new users and that the District evaluates those costs on an annual basis.

Ed Dunn, Canyon Country: Mr. Dunn addressed a number of issues related to lack of justification for the proposed rate increases, the funds should not be used to build new facilities for chloride compliance, and further stated that existing users should not be paying to provide capacity to new users, especially as it relates to future Newhall Ranch users (a copy of Mr. Dunn's written testimony is on file at the Districts office).

The Chief Engineer and General Manager responded that District's staff had held a series of eight workshops in the community as part of an effort to inform the community about the proposed rate increase. He further stated that none of the proposed rate increase would be used for facilities to comply with the chloride standard. With respect to the Newhall Ranch project, he indicated that those temporary connections would pay a connection fee and service charge to the District such that existing users would not be subsidizing them.

Sandy Sanchez, Building Industry Association, Santa Clarita: Ms. Sanchez addressed the connection fee and requested that the Board either delay the fee completely or reduce the overall amount by smoothing out the transition from the current level to the proposed level for the future connection fee. She discussed the economic hard times facing her industry and requested whatever relief the Board could support. She further requested that the connection fees be paid by developers when they get the occupancy permit and not the building permit.

The Chief Engineer and General Manager responded by stating that the Board has already shown their support to smoothing out the rate increase for the connection fees and that he would be happy to work with the building industry to see if we could reach an arrangement that would provide some additional relief regarding the timing of the payment, but at the same time be protective of the District's interest.

Cam Noltemeyer, SCOPE, 25936 Sardinia Court, Santa Clarita: Ms. Noltemeyer objected to the proposed rate increases and criticized both the District and City of Santa Clarita for allowing extensive growth which has brought us to the problems that we face today.

There being no further comments, the Chairperson closed the public hearing.

RE: SERVICE CHARGE PROGRAM  
ADOPT SERVICE CHARGE REPORT  
INTRODUCE ORDINANCE PRESCRIBING  
SERVICE CHARGE RATE AND MEAN  
LOADINGS PER UNIT OF USAGE

Following the public hearing, upon motion of Director Weste, duly seconded and unanimously carried, the Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County approved and adopted the *Santa Clarita Valley Sanitation District Service Charge Report for Fiscal Year 2011-12*, which was

filed with the Clerk of the Board on February 9, 2011.

The Chief Engineer and General Manager presented *An Ordinance Prescribing the Service Charge Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County and Providing for the Collection of Such Charges on the Tax Roll*, and waive the reading of the ordinance in its entirety, and recommended that the Ordinance be introduced. He advised that in this District, the current service charge rate per single-family home (SFH) is \$16.58 per month (\$199 per year). The proposed rates for fiscal years 2011-12, 2012-13, and 2013-14, are \$17.92 per month (\$215 per year), \$19.25 per month (\$231 per year), and \$20.58 per month (\$247 per year), respectively, an increase of \$1.33 per month per SFH. The proposed service charge rates are based on the District continuing to receive its current allocation of the property taxes. Multiple dwelling units and commercial properties are charged in proportion to their use compared to a SFH.

Upon motion of Director Weste, duly seconded and unanimously carried, *An Ordinance Prescribing the Service Charge Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County and Providing for the Collection of Such Charges on the Tax Roll*, was introduced and, after a reading of the title thereof, further reading of the Ordinance was waived.

RE: WASTEWATER DISPOSAL  
INTRODUCE ORDINANCE PRESCRIBING  
UNIT CHARGE RATES FOR SURCHARGE

Following the public hearing, the Chief Engineer and General Manager presented *An Ordinance Prescribing Industrial Wastewater Surcharge Rates for Santa Clarita Valley Sanitation District of Los Angeles County*, and waive the reading of the ordinance in its entirety, and recommended that the Ordinance be

introduced. The industrial wastewater surcharge rates are consistent with the proposed service charge rates. The proposed rates, as set forth in the Ordinance, are as follows:

Parameter	Proposed Rates - Fiscal Years		
	2011-12	2012-13	2013-14
Flow (per million gallons)	\$ 861.00	\$ 903.00	\$ 946.00
COD (per 1,000 lbs. of chemical oxygen demand)	\$ 196.10	\$ 205.70	\$ 215.30
SS (per 1,000 lbs. of suspended solids)	\$ 482.40	\$ 506.10	\$ 529.80
Peak Flow (gallons per minute of peak flow)	\$ 121.80	\$ 127.80	\$ 133.80
Short Form (flat rate per million gallons)	\$ 2,917.00	\$ 3,060.00	\$ 3,203.00

Upon motion of Director Weste, duly seconded and unanimously carried, *An Ordinance Prescribing Industrial Wastewater Surcharge Rates for Santa Clarita Valley Sanitation District of Los Angeles County*, was introduced and, after a reading of the title thereof, further reading of the Ordinance was waived.

RE: WASTEWATER DISPOSAL  
INTRODUCE ORDINANCE  
PRESCRIBING CONNECTION  
FEE RATE

Following the public hearing, the Chief Engineer and General Manager presented *An Ordinance Prescribing the Connection Fee Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, and waive the reading of the

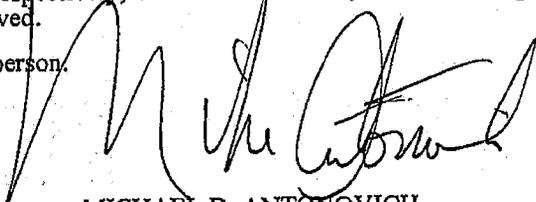
ordinance in its entirety, and recommended that the Ordinance be introduced. In this District, the current connection fee rate is \$3,800 per capacity unit. The proposed rates for fiscal years 2011-12, 2012-13, and 2013-14 are \$4,800, \$5,200, and \$5,500 per capacity unit, respectively.

Upon discussion of the Board and staff, the Santa Clarita Valley Sanitation District of Los Angeles County, proposed revised connection fee rates for fiscal years 2011-12, 2012-13, and 2013-14 to \$4,400, \$5,000, and \$5,500, per capacity unit, respectively.

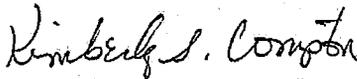
The Chief Engineer and General Manager recommended that the Board introduce the revised connection fee rates for fiscal years 2011-12, 2012-13, and 2013-14.

Upon motion of Director Weste, duly seconded and unanimously carried, *An Ordinance Prescribing the Connection Fee Rate and Mean Loadings per Unit of Usage for Santa Clarita Valley Sanitation District of Los Angeles County*, with connection fee rates for fiscal years 2011-12, 2012-13, and 2013-14 revised to \$4,400, \$5,000, and \$5,500, per capacity unit, respectively, was introduced and, after a reading of the title thereof, further reading of the Ordinance was waived.

The meeting was adjourned by the Chairperson.

  
MICHAEL D. ANTONOVICH  
Chairperson

ATTEST:

  
KIMBERLY S. COMPTON  
Secretary

/dd

# **ATTACHMENT 76**





COUNTY SANITATION DISTRICTS  
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400  
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998  
Telephone: (562) 699-7411, FAX: (562) 699-5422  
www.lacsd.org

STEPHEN R. MAGUIN  
Chief Engineer and General Manager

June 1, 2010  
File: 31-370.10

Councilmembers  
City of Santa Clarita  
23920 Valencia Blvd., Ste. 300  
Santa Clarita, CA 91355

Dear Councilmembers:

**Response to Comments Made During the May 25, 2010  
City Council Meeting – Public Hearing on Proposed Rate Increases**

At the May 25, 2010 City Council meeting of the City of Santa Clarita, you instructed staff to prepare a response to issues raised by the councilmembers and members of the public regarding the proposed rate increases. With this letter, I am transmitting the written responses.

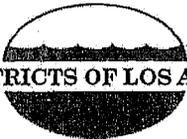
If you have any questions regarding the material, please call me at (562) 908-4238.

Very truly yours,

Stephen R. Maguin

SRM:BML:dhs  
Attachment

DOC #1591311

  
SANITATION DISTRICTS OF LOS ANGELES COUNTY

**SANTA CLARITA VALLEY SANITATION DISTRICT  
OF LOS ANGELES COUNTY**

**Response to Questions Raised at the May 25, 2010  
City of Santa Clarita Council Meeting**

**City of Santa Clarita, CA  
City Hall Council Chambers**

**June 1, 2010**

DOC #1591456

DOC #1591456

1654

CSD001775

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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**QUESTIONS FROM MAYOR LAURENE WESTE**

- (W-1) Can you simply describe how the Clean Water Act began and how it led to a federal and state mandate to reduce chloride? Where we were, where we are now, and what are our options?

The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. Growing public awareness of significant water pollution problems and widespread public support for strong new measures to address water pollution led to sweeping amendments of the Act in 1972 and 1977, whereby the law became commonly known as the Clean Water Act (CWA). The CWA required States to establish beneficial uses and water quality standards to protect all uses for waters of the United States. Additionally, the CWA gave the U.S. Environmental Protection Agency the authority to implement stringent water quality based discharge limits and pollution control programs called Total Maximum Daily Loads (TMDL) for waters of the United States that were not meeting established water quality standards. The EPA delegated authority to the State Water Resources Control Board (SWRCB) to implement the requirements of the CWA in California. The Los Angeles Regional Water Quality Control Board (RWQCB), one of nine RWQCBs within the SWRCB, implements the requirements of the CWA and state law for our local waters. In 1975, as required by the CWA, the RWQCB established beneficial uses for the Santa Clara River, a water of the United States, including agricultural water supply and groundwater recharge. In 1978, the RWQCB established a 100 milligram per liter (mg/L) standard for chloride for the Santa Clara River to protect the agricultural supply use and to reflect the background water quality conditions at that time. Subsequently, in 1989, discharge permits were adopted for the Saugus and Valencia WRPs that included discharge limits for chloride at 100 mg/L, which were unattainable with the existing treatment system. In 2002, because the Santa Clara River was not attaining water quality standards, the RWQCB, as required by the CWA, adopted a TMDL prescribing a compliance schedule for the Saugus and Valencia Water Reclamation Plants (WRPs) to achieve a 100 mg/L discharge limit.

- (W-2) What options have been considered? What are the costs for these options? Can we just take our discharge out of the river or recycle it all? Pump it out to the ocean? Pump it to the Castaic Lake Reservoir? What about pumping back future Newhall Ranch RO water to dilute Santa Clarita treatment plant discharges?

The Sanitation District has explored many alternatives for compliance with the chloride standards. The main options identified for compliance with the original 100-mg/L standard included 1) large-scale advanced treatment of the treatment plant discharges to the Santa Clara River, 2) conveyance and ocean disposal of all treatment plant discharges, 3) discharge of treated wastewater effluent at alternate location upstream on the Santa Clara River.

Advanced Treatment. Advanced treatment of the treatment plant discharges to the river require a large micro filtration and reverse osmosis facility, approximately 20 million gallons per day (MGD) and waste brine discharge facilities consisting of a 43-mile conveyance pipeline and a 3-mile ocean outfall. The estimated cost for this option was approximately \$500 Million (assuming all automatic water softeners are removed).

Ocean Disposal. Ocean disposal of treatment plant discharges requires a large 43-mile conveyance pipeline and 3-mile ocean outfall sufficient to convey the majority of treatment plant discharges (34 MGD) to the Pacific Ocean off the coast of Ventura. Due to protection of endangered species in the river, the Sanitation District would be required to provide advanced treatment of enough treatment plant discharges to support the aquatic habitat. The amount of advanced treatment under this option would also likely exceed the 3 MGD of small-

## Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting

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scale advanced treatment for the alternative compliance plan. This option would drastically reduce the hydrologic support to the river. The estimated cost for this option was approximately \$550 - \$600 Million.

Alternate Discharge Location. Discharging of the treatment plant effluent at an alternate location upstream on the Santa Clara River requires the conveyance pipelines and pumping facilities to discharge the recycled water to the upper reaches of the river, away from downstream salt-sensitive agriculture. It was thought this would minimize the impacts to the downstream users by taking advantage of the assimilative capacity of the river. The estimated cost for this option was approximately \$300 Million, however, modeling conducted by the Sanitation District showed this alternative would not achieve compliance with the existing 100 mg/L standard, and also degraded groundwater basins in eastern Santa Clarita Valley, which are used for potable water supply.

Several other options, such as taking all discharge out of the river through recycling all water and/or pumping to Castaic Lake, and pumping back Newhall Ranch Sanitation District WRP advanced treated recycled water to dilute Sanitation District treatment plant discharges are not feasible for the reasons discussed below, and would likely be more costly than the alternative compliance plan.

- Taking all treatment plant effluent produced by the Sanitation District would leave the river substantially drier and adversely affect the environmental and social value of the river to the community, and would likely not be permitted by the RWQCB, SWRCB, the California Department of Fish & Game or the U.S. Fish & Wildlife Service due to the threatened & endangered species that may occur in the river or in the adjacent riparian habitat.
- Even if taking all discharge out of the river was permitted, recycling 100% of the treatment plants' effluent is not a viable option because there is not enough demand for recycled water all of the time, particularly during cold and rainy winter weather, resulting in the need to still discharge significant amounts of water to river that have to meet the 100 mg/L standard. During times of discharge to the river, the amount of advanced treatment needed to still comply with permit limits would exceed the 3 MGD of small-scale advanced treatment for the alternative compliance plan. It should be noted that Castaic Lake Water Agency's (CLWA) regional recycled water master plan identifies a maximum demand for approximately 50% of the recycled water produced by the Sanitation District, with the distribution system planned to be built over the next 20 years. Currently only 400 Acre Feet per year (AFY) of recycled water is actually used by CLWA, which is less than 2% of the total treatment plant discharges to the river. As such, there will always be a need to discharge to the river, which would require that such discharge meet the 100 mg/L chloride limit.
- Even if taking all discharge out of the river were permitted, pumping it to Castaic Lake would not be feasible for regulatory, political and economic reasons. The State Department of Public Health would not permit the direct use of recycled water (whether tertiary or advanced treated) for public consumption. In addition all users of imported potable water stored behind Castaic Lake, would not permit an activity that allows recycled water to be discharged and mixed in the reservoir. There would also be significant "Toilet-to-Tap" concerns from local residents. Finally, the cost of this option would greatly exceed the large scale advanced treatment option, since more advanced treatment and brine disposal would be necessary, and infrastructure to pump the advanced treated water to Castaic Lake would have to be built and operated at great expense.

## Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting

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- Pumping back Newhall Ranch Sanitation District advanced treated recycled would not be feasible because to comply with the 100 mg/L standard requires 20 MGD of advanced treatment. The total capacity of the Newhall Ranch Sanitation District WRP at build-out is only 6.8 MGD, and given recent economic downturn, the build-out is not likely to be achieved for several years, beyond the May 2015 compliance date for the TMDL. The cost of pumping back this advanced treated recycled water would also be very high.

(W-3) Are we in compliance today with 100 mg/L standard? What about the relaxed standards?

Neither the treatment plant discharges nor chloride in the river meet the 100 mg/L standard, which is the only limit that currently applies. The figures below (see response to question W-4) show the historical chloride in treatment plant discharges and in the river since the enactment of the Clean Water Act in the early 1970's. It is clear that the treatment plant discharges have rarely met the 100 mg/L standard, and the river, particularly over the last decade, has consistently exceeded the standard. Because the river was not meeting the 100 mg/L standard, it was listed as a Federally impaired water body, requiring a TMDL.

When comparing more recent water quality conditions to the relaxed standards, the treatment plant discharges are easily achieving the 150 mg/L, and the river has generally met 117 mg/L over the last few months. But compliance with the relaxed 150 mg/L objective for treatment plant discharges is to be expected because this limit was specifically negotiated to ensure the treatment plant discharges always comply. Compliance with the 117 mg/L river objective during drier periods will require some desalinated water from the proposed advanced treatment plant upgrade proposed in the Alternative Compliance Plan. The key issue is that these relaxed limits are *conditional*, contingent on the Sanitation District implementing the alternative compliance plan.

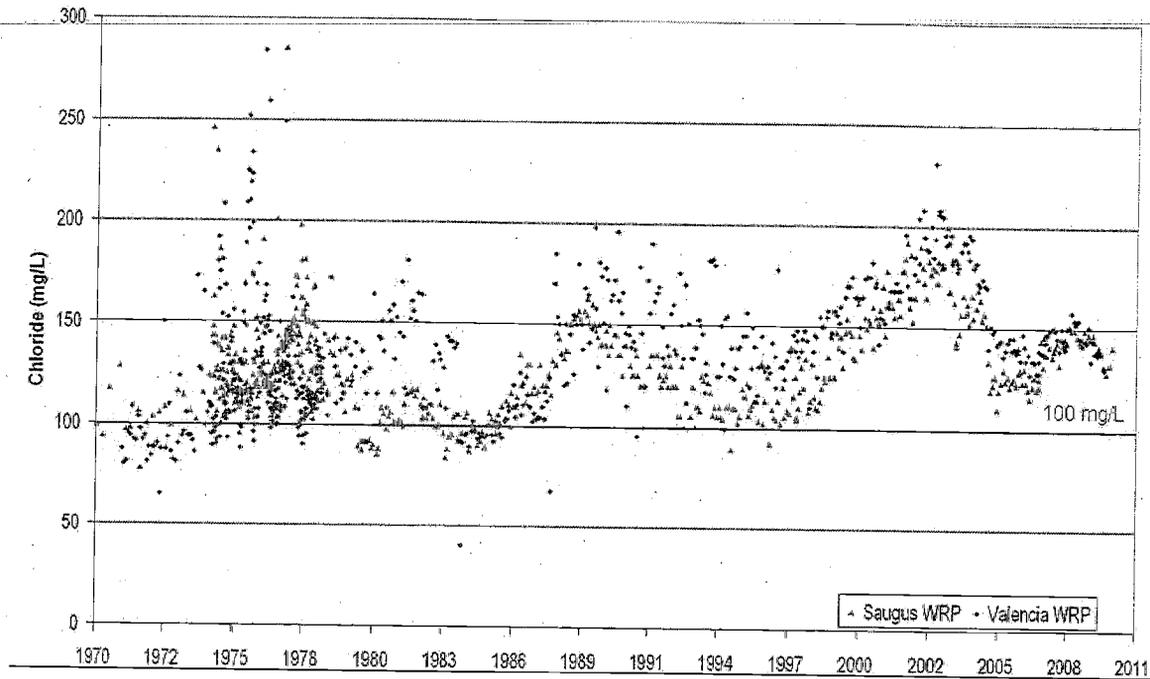
The Sanitation District is seeking additional relief during drought to raise the 130 mg/L river limit during drought to 150 mg/L, which would avoid the need to purchase dilution water and discharge it to the river to mitigate high chloride levels in drought times. This additional drought relief would reduce costs by \$40 million.

(W-4) What is Ventura County willing to accept? Are they getting free water with the Alternative Compliance Plan?

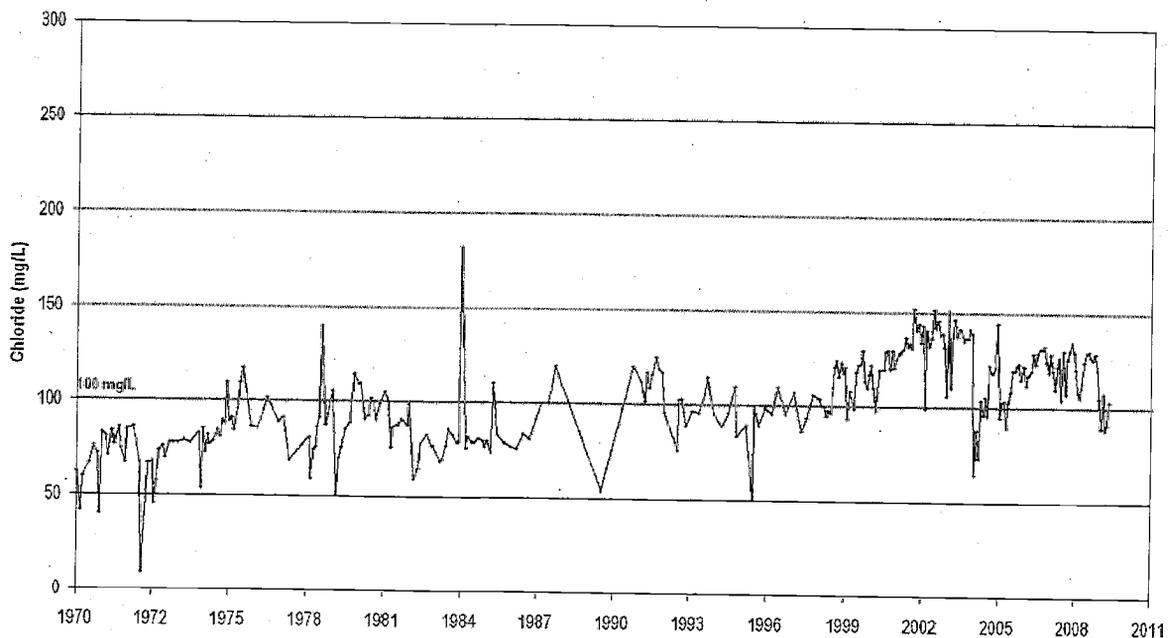
The United Water Conservation District, which manages the surface water and groundwater resources for the Ventura County portion of the Santa Clara River watershed, has expressed concerns about increasing chloride levels in the East Piru groundwater basin, due to the recharge of the groundwater from river flows that originate from Los Angeles County. During drought, Sanitation District WRP discharges comprise the majority of river flows that cross the County Line, at elevated chloride concentrations, and then infiltrate into the local groundwater aquifers. As a result, the chloride levels build-up in groundwater. This has been seen in the past in the 2000-2004 time frame, when drought conditions, coupled with the community's high usage of automatic water softeners, led to treatment plant discharges over 200 mg/L, and river and groundwater chloride concentrations near 170 mg/L. The figures below show the historic chloride trends in treatment plant discharges and in the river at the County Line and groundwater levels in East Piru Basin.

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Chloride Concentrations in Treatment Plant Discharges to the Santa Clara River

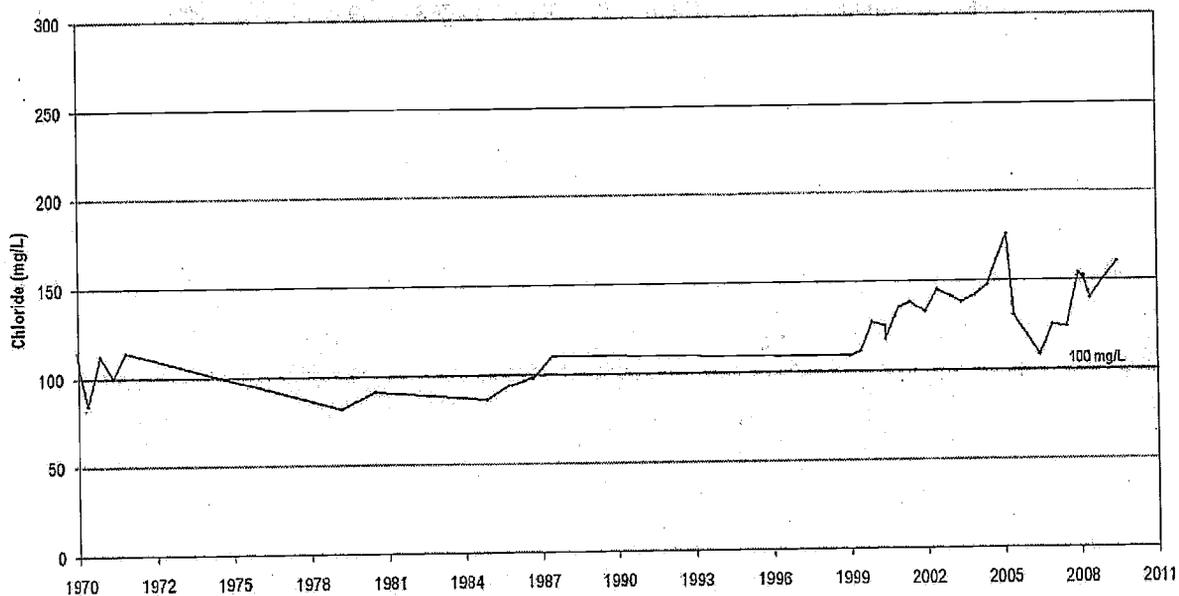


Chloride Concentrations in the Santa Clara River at the Los Angeles-Ventura County Line



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Chloride Concentrations in Groundwater – East Piru Basin



Recent chloride monitoring in the East Piru groundwater basin, conducted by the United Water Conservation District, appears to indicate that chloride levels are still elevated, even with lower chloride river levels at the County line. It is for this reason that salt management facilities were a key element, in combination with the Sanitation District's commitment to remove the automatic water softeners, in the Alternative Compliance Plan, because it provided a mechanism to export salt loading from the East Piru groundwater basin. The salt management facilities contemplated in the Alternative Compliance Plan would extract high chloride groundwater in East Piru that was impacted by treatment plant discharges and blend the groundwater with advanced treated recycled water to facilitate removal of the excessive chloride loading in East Piru. The blended advanced treated recycled water and groundwater would be exported out of the basin and still meet downstream water quality standards at 100 mg/L, while also increasing surface water flows than can be captured for irrigation water in Ventura County. Hence, while the primary purpose of salt management facilities is to mitigate excessive chloride loading to East Piru groundwater basin caused by historic and future recycled water discharges in LA County, a secondary benefit of the facilities derived by Ventura County was a new irrigation water supply. The secondary benefit derived by the salt management facilities was a key reason, in combination with the Sanitation District's commitment to remove the automatic water softeners, that Ventura County stakeholders, who had previously opposed any relaxation of standards, overwhelmingly supported the revised standards that the Sanitation District received in December 2008.

The salt management facilities also address the primary concern from the RWQCB and Camulos Ranch (the 1,800-acre farming operation that uses river water and East Piru groundwater to cultivate salt-sensitive agriculture) that the salt-sensitive agricultural use is being protected in the East Piru groundwater basin, during drought. When river flows exceed the conditional relaxed standard of 117 mg/L, some portion of advanced treated water would be provided to Camulos Ranch to protect its salt-sensitive use. This mitigation measure was required by the RWQCB as a condition to approve any relaxed standards for chloride in the river during drought.

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(W-5) How many other Ventura County cities along the Santa Clara River, have removed softeners? What are their chloride limits, current discharge levels, and what are they doing to comply?

- The Piru Wastewater Treatment Plant (WWTP) is located near the confluence of the Santa Clara River and Piru Creek and has a design capacity of 0.5 MGD but does not directly discharge to the Santa Clara River. The Piru WWTP discharges to percolation ponds along the Santa Clara River. The Piru WWTP has a permit limit for chloride at 100 mg/L. Piru WWTP is required to undertake a study to identify, monitor, and estimate mass loadings of possible sources of chloride and propose a mitigation plan to mitigate chloride loadings from controllable sources and bring chloride levels in the effluent into compliance with the 100 mg/L within two years of approval of the plan by the RWQCB. The Piru WWTP is located along Reach 4A of the Santa Clara River, which is not currently listed for exceeding chloride water quality objectives due to the dilution from Piru Creek. It should be noted that the Piru WWTP discharges 2.5% of flow that the Sanitation District WRP's discharge.
- The City of Fillmore has constructed a new treatment plant utilizing a membrane bioreactor treatment system with UV disinfection. Fillmore has eliminated all discharge to the Santa Clara River, through water recycling and/or subsurface disposal. The elimination of direct discharge to the river reduces the City's liability under federal NPDES permits (i.e. mandatory minimum penalties and TMDLs), and is a viable option because they only discharge 1 MGD, which is 5% of the flow that the Sanitation District WRP's discharge. Prior to 2009, the City was discharging effluent to Reach 3 of the Santa Clara River, which is currently listed as impaired for chloride and has a water quality objective of 100 mg/L. The City of Fillmore had received notices of violation for its discharge from the existing WWTP, including for exceedences of suspended solids, coliform and chloride effluent limits, and in September 2005 the RWQCB imposed an administrative civil liability penalty on the City for these violations in the amount of \$264,000. In 2004, The City passed an ordinance in which made it illegal to install brine-discharging water softeners and in Fall 2008, the City initiated a buyback program for water softeners. The use of UV disinfection would minimize chloride added through treatment processes such as with disinfection using sodium hypochlorite. Because the City's water supply is primarily local groundwater with low levels of chloride, 30-40 mg/L, these actions are expected to bring the City into compliance with the chloride effluent limits of 100 mg/L. To date the City has removed 65 softeners, and expects to remove 350 more. Due to the small volume of flow that is treated (1 MGD) as compared to Sanitation District (20 MGD), the removal of these softeners is expected to greatly improve water quality for the treatment plant discharges.
- The City of Santa Paula has constructed a new treatment plant utilizing a membrane bioreactor treatment system and UV disinfection. The City's new plant has been online since Mid-May 2010, and will soon eliminate all discharge to the Santa Clara River, through water recycling, percolation and/or evaporation ponds. The elimination of direct discharge to the river reduces the City's liability under federal discharge permits (i.e. mandatory minimum penalties, TMDLs). The City was discharging effluent to Reach 3 of the Santa Clara River, which is listed as impaired for chloride and has a water quality objective of 100 mg/L. The City intends to comply with a groundwater chloride limit of 110 mg/L through a combination of source control and UV disinfection. In 2007, the City passed an ordinance in which made it illegal to install brine-discharging water softeners and authorized the City Manager to initiate a buyback program for water softeners. The use of UV disinfection would minimize chloride added through treatment processes such as with disinfection using sodium hypochlorite. Because the City's water supply is primarily local groundwater with low levels of chloride, 40-50 mg/L, these actions are expected to bring the City into compliance with the chloride effluent limits of 110 mg/L. The City is also contemplating centralized softening to encourage and/or require their residents to remove their softeners

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- The City of Ventura operates the Ventura Water Reclamation Facility, which has a design capacity of 14 MGD and discharges treated effluent to the Santa Clara River Estuary. The estuary has no chloride objectives, nor are there any agricultural beneficial uses. As such, the City has no compliance issues with chloride.
- The City of Oxnard operates an ocean discharging treatment plant. The ocean has no chloride objectives, nor are there any agricultural beneficial uses designated, since seawater has chloride concentrations of 19,000 mg/L. As such, the City has no compliance issues with chloride. The City is contemplating rebates for softeners in order to improve its recycled water quality and provide more and better quality recycled water to customers to relieve capacity of their ocean outfall and allow for more growth in the future.

(W-6) What is the criteria to protect agriculture in Clean Water Act / Porter-Cologne Act? Are they intended to protect any crop that a farmer can possibly plant?

Both the State's Porter-Cologne Act and the Federal Clean Water Act require that water quality standards be established to protect existing and potential beneficial uses supported by surface water and/or groundwater resources in the State and under Federal jurisdiction, respectively. As part of the State's Basin Planning process, in 1975, the RWQCB established beneficial uses for the Santa Clara River Watershed, which includes the Agricultural (AGR) beneficial use. Once these beneficial uses have been designated, water quality objectives are required to protect *the entire* spectrum of uses that fall under this category. In 2007, the Sanitation District conducted a study to evaluate whether salt-sensitive agriculture exists or has the potential to exist in Reaches 5 and 6 of the SCR, where the Valencia and Saugus WRPs discharge recycled water. The key findings from this evaluation were that salt-sensitive crops *do not exist nor have the potential to exist* in Reaches 5 and 6. In response to that study, the RWQCB conditionally upon implementation of the Alternative Compliance Plan revised the standard in the Santa Clarita Valley reaches to 150 mg/L, even though this relaxation exceeded the threshold for salt-sensitive crops of 117 mg/L. For the Ventura County Reach 4B, salt-sensitive crops are an existing use, which requires full protection under the Clean Water Act, regardless of whether the Sanitation District "buys out the farmer," as has been suggested by the community.

(W-7) Can we discuss the potential liabilities for fines with the public?

Under Government Code §54963(a), a person may not disclose confidential information that has been acquired by being present in a closed session authorized by various sections of the Brown Act, including conferences with legal counsel re litigation under section 54956.9, to a person not entitled to receive it, unless the legislative body authorizes the disclosure of that information.

(W-8) Does State Law trump the Federal Clean Water Act, if the Prop 218 process (as required by the State) leads to a rejection of rate increases by the public?

No, state law does not trump the Clean Water Act. Under Proposition 218 a service charge rate increase proposed for adoption by the District board would be overturned if a majority of the ratepayers file a written protest. In that event, the Sanitation District would not have the funds available to implement the compliance project but the requirement for compliance with federal law is not eliminated. Non-compliance would presumably lead to enforcement actions by the RWQCB including enforcement orders and fines.

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(W-9) What happens if we refuse to pay the fines imposed by the State? Is there any case law about this scenario?

This issue will be discussed in closed session.

(W-10) When will fines be issued by Regional Water Quality Control Board? How long can this be delayed? How much has to be done right now - can't some of the project/rate increase wait?

The RWQCB is authorized to take enforcement action against the Sanitation District if and when the Sanitation District is in violation of or threatening to violate any of its future permit requirements based on the TMDL (effluent limitations (interim or final), interim implementation plan deadlines, reporting, etc.).

The current compliance schedule requires that a progress report on Planning and Design activities be provided to the RWQCB by November 4, 2010, with an environmental impact report and facilities plan completed by May 4, 2011, and completion of the project for compliance by 2015.

Should the Sanitation District fail to comply with these deadlines or should the RWQCB determine that the Sanitation District is not making substantial progress, the RWQCB may determine that the Sanitation District is threatening to violate its permit requirements and would have the authority to take enforcement action.

In order to stretch out the compliance schedule as long as possible, the Sanitation District staff have negotiated with the RWQCB staff on a phased approach to the implementation of the alternative compliance plan, which will, if approved by the RWQCB, extend the schedule for the completion of the implementation plan interim deadlines such as the environmental impact report and facilities plan to May 2012, and construct the ACP facilities in phases with final compliance by May 2022. If the proposed rate package to support planning and design of the Alternative Compliance Plan facilities is approved by the Sanitation District Board, the negotiated schedule relief with the RWQCB could materialize and provide substantial reduction in service charge rates, while providing more time to seek state and federal funding for the project phases.

Nevertheless, the Sanitation District must immediately initiate work on a facilities plan and environmental documents followed by design and construction of the required facilities. Any delays in implementing the Alternative Compliance Plan may obstruct the Sanitation District's ability to complete the necessary facilities on time and may expose the Sanitation District to enforcement actions by the RWQCB.

(W-11) What is the status of receiving state and federal funding for the project?

In response the Sanitation District Board's direction in 2009 and in order to minimize the impact of implementing the Alternative Compliance Plan to the ratepayers, the Sanitation District has aggressively pursued outside sources of federal and state funding. The Sanitation District submitted an appropriations request for fiscal year 2011 to Congressman McKeon, Congressman Gallegly, Senator Boxer, and Senator Feinstein for funding under the State and Tribal Assistance Grants (STAG) program (through the U.S. Environmental Protection Agency) for \$1 million but were unsuccessful in being awarded an appropriation. The Sanitation District also submitted, but unfortunately did not receive funding for, an appropriations request in fiscal year 2010 for STAG funding.

The Sanitation District prepared requests for an Army Corps of Engineers Water Resources Development Act (WRDA) funding authorization for \$8 million that were submitted to Congressman McKeon, Congressman

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Gallegly, and Congresswoman Capps in 2009. Congressmen McKeon and Gallegly submitted our request for consideration to the House Transportation and Infrastructure Committee. However, both Congressmen withdrew all of their requests under the House Republican caucus policy against requesting earmarked funding for local projects. The Sanitation District submitted requests for \$12 million for WRDA funding authorization to Senators Feinstein and Boxer in May 2010. Senator Feinstein did not act on this request, and the request is still pending with Senator Boxer.

The Sanitation District will submit additional requests for STAG funding and WRDA authorization for funding (and subsequent appropriations) in the future. However, Congressional appropriations committees, as well as the Obama Administration, have policies against funding "new start" projects until the current backlog of authorized (but not yet funded) projects has been cleared, which may delay funding being awarded.

Within the State, voters passed Proposition 84 in 2006, which provides up to \$900 Million dollars statewide to fund water and water quality related projects. The Sanitation District has participated in the Department of Water Resources Integrated Regional Water Management Program as part of the Upper Santa Clara River IRWM Group. The Sanitation District has submitted several projects that comprise the Alternative Compliance Plan for consideration in future funding applications for the region. Up to \$215 Million in funding is projected to be available for the Los Angeles and Ventura County funding area, which includes four separate IRWM regions including the Upper Santa Clara River.

In the November 2010 General Election, California Voters will have the opportunity to vote on an \$11 Billion Statewide Water Bond Proposition, the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which may provide additional funding opportunities to minimize the impact of implementing the Alternative Compliance Plan on the Sanitation District's ratepayers.

Over the long-term, the Sanitation District estimates that up to \$10,000,000 in state and federal funds would be available for implementation of the Alternative Compliance Plan by 2020.

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**QUESTIONS FROM MAYOR PRO-TEM MARSHA McLEAN**

(M-1) How often do drought conditions occur? How long do they last?

The TMDL defines that critically dry conditions (i.e. drought) occur, when the imported State Water Project water exceeds 79 mg/L. Since 1980, when imported State Water Project water deliveries began in the Santa Clarita Valley, the concentration of chloride in the State Water Project water has exceeded 79 mg/L, approximately 25% of the time, with this condition of drought lasting for up to 6 years.

(M-2) What is the breakdown in chloride contribution from various sources? Are our residents having to pay for the enormous cost to comply with chloride, even though they contribute only a small fraction of the chloride load?

Based on current conditions, the breakdown on sources of chloride in treatment plant discharges is as follows:

Sector	Chloride Contribution	% Contribution
Water Supply (GW and surface)	80 mg/L	61%
Residential	28 mg/L	22%
Treatment Plant (Disinfection)	12 mg/L	9%
Commercial & Industrial	10 mg/L	8%
Total	130 mg/L	100%

The water supply that comes from local groundwater and imported water stored in Castaic Lake has chloride levels currently near 80 mg/L. Residents who consume this water for indoor uses (toilets, showers, dishwashing, cooking, washing clothes, etc.) and discharge to the sewer add about 28 mg/L of chloride, or 22% of the total chloride in treatment plant discharges. Commercial and Industrial sectors who consume this water and then discharge to the sewer add 10 mg/l of chloride. When wastewater is treated, it must be adequately disinfected with chlorine before discharge to the river, which adds another 12 mg/L to the treatment plant discharges.

In total the municipal use of water (i.e., the residential, commercial, industrial and treatment plant disinfection contribution) adds 50 mg/L of chloride to the chloride already in the water supply. Of the 50 mg/L of municipal use, 28 mg/L or 56% is from residential sources. The cost of chloride compliance will be borne by all users of water who discharge their wastewater to the sewer system, based on the amount of water that is used by each connection.

(M-3) What are our legislative options? How do we get the process going, and what are our chances of success?

The Sanitation District Board could take action at a Board meeting to direct staff to seek an author for a bill to seek state and/or federal legislative relief from the requirements of the chloride TMDL. Unfortunately, most water quality legislation that has been enacted in recent years has either created new or expanded regulatory programs or tightened existing regulatory programs. We are unaware of any attempts to relax water quality requirements or lengthen schedules for compliance that have succeeded in the state Legislature or in Congress.

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Even if state legislation could be implemented, it is possible that the US Environmental Protection Agency (USEPA) would step in and establish its own TMDL for the Santa Clara River. Federal legislation would also be needed but would be very unlikely given the democratic controlled legislature and democrat president.

In summary, a legislative solution has a low probability of success.

(M-4) What is the Prop 218 process? What action are you asking the Sanitation District Board to take at the next meeting of the Board? Who votes on the rate increase, the residents or Board members?

Implementation of rates under Prop. 218 is a multi-step process involving individual noticing, a public hearing, and then introduction and adoption of the implementing ordinances. Specifically, the process begins when the Sanitation District Board receives and files a service charge report pursuant to the requirements of the California Health & Safety Code. The service charge report itself does not set the rates; however, it does provide information on what charges are being proposed for collection on the property tax roll. At the same time the Board receives and files the service charge report, it will also authorize the printing and mailing of the public notices required under Prop. 218. The Board is being requested to take these two actions at its next meeting.

Once the Board takes these actions, Sanitation District staff will coordinate the printing and mailing of the public notices. Under Prop. 218, an individual notice must be mailed to every property owner whose parcel is connected to the sewer system. At a minimum, the notice must provide the amount of the fee or charge proposed to be imposed, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge. The Sanitation District has typically gone beyond the minimum requirements by including more detailed information on the nature of the projects being undertaken, providing links to other resources such as the Sanitation District's website, and providing contact information (including a toll free number). We also include information on the availability of a rebate program for parcels with low water use. In addition, the notice provides information to the property owners on how to submit a protest. For more detailed information, see the response to the following question.

Before any action can be taken to implement new rates, the Sanitation District Board must hold a public hearing. By law, this public hearing must be held a minimum of 45 days after the Prop. 218 notices are mailed. Although not required by Prop. 218, the Sanitation District has frequently held information meetings during this 45-day period and proposes to do so again this year. The dates and locations of the information meetings are provided in the Prop. 218 notice. At these meetings, staff makes a detailed presentation regarding the proposed actions and then is available to answer any and all questions.

At the public hearing, the Board will consider all input received. Under the provisions of Prop. 218, the Sanitation District Board can take no action on the proposed rates if written protests are submitted by more than 50% of the owners of the impacted parcels. Assuming that less than 50% of the property owners submit a written protest, the proposal then moves to the Sanitation District Board for their consideration. While most fees and charges are subject to a vote of the property owners, Prop. 218 specifically exempts water, wastewater, and trash collection fees from this requirement. Hence, only the Sanitation District Board members will vote on the proposed rates. After considering all of the public input, the Sanitation District Board can elect to implement a different rate than what was proposed so long as the new rate is less than or equal to

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the proposed rate. It cannot implement a higher rate without going through the Prop. 218 process all over again.

If the Sanitation District Board opts to implement the proposed rate, it does so by introducing a service charge rate ordinance. The Sanitation District Board will then consider adoption of the service charge rate ordinance at a subsequent Board meeting that occurs at a minimum of 5 days after introduction. Adoption of the ordinance requires a two-thirds vote.

One of the ways the Sanitation District has undertaken to minimize expenses is to have the County collect the service charge on the property tax bill on our behalf at a cost of only 25¢ per parcel. In order to take advantage of this low-cost option, the Sanitation District must comply with the statutory requirement that the Prop. 218 process be completed by August 10. To this end, the following dates are recommended:

Receive and File Service Charge Report	June 2
Mail Prop. 218 Notice	June 11
Hold Public Hearing, Introduce Ordinance	July 27 (45 days after notices are mailed)
Adopt Ordinance	Week of August 2

(M-5) **What educational materials will go out with the Prop 218 notice, and will these materials prominently state that residents have a right to protest?**

Public notices regarding the proposed sewer service charge rate increase will be sent to every property owner within the Sanitation District service area in accordance with Proposition 218. These notices will provide property owners basic information about the Sanitation District, the regulatory mandates that resulted in the chloride limits, the efforts by the Sanitation District to develop the most cost effective approach to complying with the chloride limit including the Alternative Compliance Plan, and the proposed rate increases for the next four years which are to support the continued operation of the existing facilities along with the planning and design work for facilities required to meet the current regulatory requirements provided they are not revised. The notice will also direct people to the Sanitation District's website for more detailed information, including links to relevant technical studies. Additional information will also be provided with respect to contacting the District for more information including a toll free telephone number and the process for protesting the proposed rate increase. The public notice will also provide information on dates and times for six planned workshops to be held at the Santa Clarita City Hall and two Town Council Meetings, West Ranch and Castaic Area. Staff will also be working closely with City of Santa Clarita staff to respond to requests for additional information from the community. Lastly, in addition to legally required publications related to the public hearing the Sanitation District staff will be providing press releases and meeting with the editorial board for the paper to provide further opportunities for information to be made available to the community.

(M-6) **How many parcel owners are there in the Sanitation District? How many protests are needed to stop the process from going forward?**

There are currently 68,897 parcels connected to the sewerage system in the Sanitation District service area. If 50% (34,449) of the parcel owners submit written protest, the rate setting would stop pursuant to the provisions of prop. 218.

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(M-7) Why did the RWQCB cut the schedule for the scientific studies in 2006? Why didn't they allow more time for the studies to be carried out?

In 2006, the RWQCB reconsidered the TMDL and amended the TMDL schedule. The RWQCB considered the results of the special studies that had been completed to date, which included the Literature Review and Evaluation (LRE) and the Extended Study Alternatives (ESA) Report and found it appropriate to accelerate the study period of the Implementation Plan, because the studies showed that the range of chloride values (100 – 117 mg/L), protective of AGR and groundwater recharge (GWR) beneficial uses, was significantly smaller than originally anticipated. The RWQCB made the following findings as their basis to the decision to cut the implementation schedule:

- "Staff finds that the work to date provides critical information on the chloride hazard concentration for salt-sensitive crops. Completion of the first Special Study, the Literature Review and Evaluation (LRE), provided a scientifically defensible baseline to support a Water Quality Objective (WQO) that is protective of agricultural supply beneficial use (AGR). The LRE established a chloride guideline concentration of 100-117 milligrams per liter. The chloride guideline concentration established by the LRE may be further refined through extended agricultural studies, which may take decades to complete.
- Staff finds that the duration of time and the treatments for an extended field study (proposed in the ESA Report) might not be sufficient to address all the factors that may affect the chloride threshold level, and, absent a lengthy TMDL schedule extension, might not provide conclusive data to meet the TMDL schedule.
- Staff finds that advanced treatment most likely will be needed to improve the effluent chloride concentration and consistently meet chloride targets ranging from 100 - 117 mg/L established by the LRE."

(M-8) Wouldn't the cost of the peripheral canal be less expensive, because it would be shared by other State Water Project Contractors, than then cost of the Alternative Compliance Plan? What about treating SWP water?

Based on discussions with staff of CLWA, they claim that cost of the peripheral canal is between \$9 and \$11 billion, and the proportionate share to the Santa Clarita Valley residents costing about the same as the alternative compliance program. However, there is no guarantee that completion of the long-proposed peripheral canal or other project would sufficiently reduce chloride levels in the Santa Clarita Valley's imported water at all times. There is no guarantee as to the timing when a project to build around-the-Delta Conveyance Facilities will be completed. The Sanitation District is required to comply with the requirements of the chloride TMDL by 2015. Unless there was a guarantee that the long-awaited fix to the State Water Project (SWP) would be built in a similar timeframe and would result in compliance, it is difficult to see how the RWQCB would accept it as a compliance alternative. As such, the mere prospect that it may be built does not preclude the need for the Sanitation District to comply with the RWQCB's requirements by May 2015, or else face significant imposition of fines.

The Sanitation District has not conducted a formal cost estimate of treating all of the SWP water as an alternative to large scale advanced treatment of wastewater because it believed this alternative would be significantly more expensive. Treating the water supply was thought to be a more expensive option because only a fraction of the imported water is used for indoor residential, industrial and commercial use which ends up in the local sewer system, the larger portion of the potable water supply is used for outdoor irrigation, which does not reach to the sewer system. In 2008, CLWA reported the potable water supply consisted of

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approximately 42,000 AFY of SWP water and 34,000 AFY of local groundwater, or 76,000 AFY of water supply for potable uses. In comparison, the Sanitation District discharged approximately 20 MGD or 23,000 AF of recycled water to the Santa Clara River in 2008, representing about 1/3 of the potable water supply utilized in the Santa Clarita Valley.

The Sanitation District has estimated that in order to comply with a 100-mg/L chloride standard by treating its recycled water, it would need to provide advanced treatment for nearly 60% of the projected flow by the year 2030, or about 20 MGD, at a cost of approximately \$500 Million (assuming all automatic water softeners have been removed). In order to comply with the same standard by treating the SWP water before it reaches the sewer system, the Sanitation District estimates that it would need to provide advanced treatment for up to 85% of the projected imported SWP water, or about 73,000 AFY (66 MGD). Based on the previous cost estimates for treating the recycled water (20 MGD), the cost of this alternative could be up to three times the previous estimate, exceeding \$1.5 Billion.

In addition, approximately 11,000 AFY (10 MGD) of the potable water treated would be wasted in the form of the brine generated by the reverse osmosis treatment process. In order to make up the water supply lost, additional water resources would need to be developed to meet the full water demand of the Santa Clarita Valley. Hence, both on a cost-basis and a water resource basis, an upstream desalination plant to treat the SWP water is not a feasible alternative for compliance with the TMDL.

(M-9) Doesn't the SWRCB and RWQCB have the right to set water quality standards? Why is this a Federal Clean Water Act issue?

See response to question W-1 above.

(M-10) Is the science justified to set limits as they have been established by the RWQCB? Who has the scientific studies to set these limits for chloride?

See response to question to M-7.

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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**QUESTIONS FROM COUNCILMEMBER LAURIE ENDER**

(E-1) What is the make-up of the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board?

The SWRCB consists of five full-time salaried Members, each filling a different specialty position. Each board member is appointed to a four-year term by the Governor and confirmed by the Senate. The mission of the SWRCB is to ensure the highest reasonable quality for waters of the State, while allocating those waters to achieve the optimum balance of beneficial uses.

There are nine Regional Water Quality Control Boards (RWQCBs). The mission of the RWQCBs is to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the State's waters, recognizing local differences in climate, topography, geology and hydrology. Each RWQCB has nine part-time Members also appointed by the Governor and confirmed by the Senate. RWQCBs develop "basin plans" for their hydrologic areas, govern requirements/issue waste discharge permits, take enforcement action against violators, and monitor water quality.

Overall, the RWQCB members must by law be selected to represent the following categories: water supply, conservation, and production (1 member); irrigated agriculture (1 member); industrial water use (1 member); municipal government (1 member); county government (1 member); a responsible nongovernmental organization association with recreation, fish, or wildlife (1 member); and 3 members not associated with any of the above categories, 2 of whom have special competence in areas related to water quality problems

(E-2) What are state and federal fines for non-compliance (\$/day)?

Mandatory minimum fines of approximately \$2 million per year plus discretionary fines in the amount of \$100's million per year are possible. This question will be discussed in closed session.

(E-3) If we are fined, where does this money go?

Administrative civil liabilities and civil penalties assessed under the Water Code are paid into special state funds to be used for specific environmental purposes such as cleanups

(E-4) Who do we need to battle to resolve this issue? What can be done?

The water quality standards were established and approved by the RWQCB and the SWRCB respectively in accordance with state and federal law. Actions by the water boards to establish water quality standards can be challenged in court. These options will be discussed in closed session. Legislative actions can be taken but would likely need to be both state and federal to result in any relief from the need to comply with water quality standards.

Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting

QUESTIONS FROM COUNCILMEMBER BOB KELLAR

(K-1) Are there any more appeals left in the regulatory process with the SWRCB?

This will be discussed in closed session.

QUESTIONS FROM COUNCILMEMBER FRANK FERRY

(F-1) Can fines imposed by the State go toward paying for the project needed for compliance? Where else has this happened in the Los Angeles Region?

The SWRCB's Enforcement Policy states that use of fine monies for compliance projects is authorized only in connection with Mandatory Minimum Penalties for small communities with a financial hardship. The Sanitation District does not fit this description.

(F-2) Does the State have the ability to make the compliance project move forward absent the rates required pay for the project?

Through the courts, the state can place the Sanitation District under receivership in order to move forward. The receiver would not be exempt from the state constitution, however, and would have to comply with Proposition 218 in order to raise rates.

(F-3) What does the proposed rate increase for the next four years cover?

Approximately half of the proposed rate increases for the next four years will allow for the continued operation of existing facilities while the other half will provide funding for planning and design work for facilities that will be needed if the current regulatory requirements are not revised

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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**QUESTIONS FROM SPEAKERS**

(S-1) How can this chloride issue be our responsibility, if the State delivers us salty water?

The State and Federal mandate for chloride is for point sources of chloride that have National Pollutant Discharge Elimination System (NPDES) permits and chloride limits. Under current Federal policy, water transfers (including releases by water agencies from reservoirs) are not subject to federal regulation under NPDES permits that would require salt removal. The State would have to implement its own requirements to regulate salt in water transfers, as it deemed necessary, and there is currently no state mechanism in place to regulate pollutants in water transfers.

Further, while chloride levels in the imported water brought into the Santa Clarita Valley do contribute to the salinity problems, imported water would actually meet the 100 mg/L chloride standard for discharge to the river except in periods of severe drought. Approximately 40% of the chloride in treatment plant discharges is added by the Santa Clarita Valley community through municipal uses. The ratepayers of the Santa Clarita Valley have taken great steps to reduce their chloride burden by removing self-regenerating water softeners. Further reductions through source control are likely not practical and therefore additional treatment to remove the chloride added by municipal uses is necessary. Under federal law, the Santa Clarita Valley ratepayers must pay to reduce a portion of the chloride in treatment plant discharges originating from their use of the water.

(S-2) Why can't we ask the farmer to change his crops? Why can't we buy out the farm? Wouldn't this be cheaper?

Once the use has been established, the CWA requires that such a use always be protected, even if the farmer changes his crops or is bought out as suggested by the community. See response to question W-6 for more details.

(S-3) Why is it that the only appointed RWQCB member that does not have to meet conflict of interest issues is Agriculture?

Two types of conflict of interest rules pertain to RWQCB membership. The first, known as "income restriction" rules, actually affects who may be appointed to the SWRCB or a Regional Water Board. These rules are in the federal CWA, as well in provisions of the state's Porter-Cologne Water Quality Act that are designed to conform to the federal act. In summary, these provisions state that, if an individual received 10% or more of their income from the holder of an NPDES permit during the current or previous 2 years, they are ineligible to serve on either the State or Regional Water Quality Control Boards. The threshold is higher (50%) if the person is retired. These rules apply to Regional Water Quality Control Board members because Regional Water Quality Control Boards approve NPDES permits. Most farmers in California are either not permitted at all and are considered "nonpoint sources," or are subject to "waivers" of waste discharge requirements. These agricultural waivers establish conditions such as monitoring requirements that must be met. Since most of the agricultural community (with the exception of confined animal facilities) do not receive NPDES permits, they are not subject to the income restriction rules when it comes to appointment to the State or Regional Water Boards.

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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Additionally, Section 13207 of the California Water Code prohibits Regional Water Board members from participating in any board action related to permit issuance or enforcement actions in which the board member has a direct or indirect financial interest.

Note: The statute pertaining to Regional Water Quality Control Board membership was modified in 2003 to specify that one member of each Regional Water Quality Control Board must be a municipal elected official (city council member or mayor) and one member be a county elected official (supervisor). In many, if not most, instances, the county supervisors have been precluded from serving on the Regional Water Quality Control Boards due to the income restriction rule described above, due to the fact that counties hold municipal stormwater NPDES permits and the fact that many supervisors are paid full-time officials so are unable to meet the income restriction rule. For our RWQCB, Mary Ann Lutz fulfills the requirement for a municipal elected official representative.

(S-4) Isn't one of the reasons why the chloride issue is looming over Santa Clarita because of the amount of imported water that is delivered for development?

Increases in imported water to the Santa Clarita Valley have contributed to the chloride problem. Beginning in 1980, the Santa Clarita Valley imported 1,100 acre feet of SWP water. With more growth in the Santa Clarita Valley, there has been need for more imported water (increasing to 45,000 AFY by 2007), and treatment plant discharges have increased from approximately 5 MGD in 1975, when the Basin Plan for the Los Angeles region was established by the RWQCB, to over 20 MGD in 2010. The load of chloride in the river has also increased from approximately 5,400 pounds per day of chloride discharged to the river to over 23,000 pounds per day of chloride discharged to the river today.

(S-5) The treatment plant data over the last 2 years shows we are in compliance with 150 mg/L and over the last 6 months we are in compliance with the 117 mg/L in the river. More recent data shows that in the river at County line, we are now in compliance with the 100 mg/L level? Why do we need to do anything?

If the 150 and 117 mg/L limits were in effect, we would still need advanced treatment in the alternative compliance plan to meet the 117 mg/L limit in the river during drier conditions. Additionally, these limits are conditional upon implementation of the Alternative Compliance Plan. If the Alternative Compliance Plan is NOT implemented, then these limits will not apply. The only limits in effect right now are 100 mg/L for the treatment plant discharges and the river, which are both in a state of non-compliance. See response to question W-3.

(S-6) What is the scientific basis of the 100-117 mg/L range to protect agriculture? Is it junk science? What was the make-up of the Technical Advisors Panel?

The Agricultural Chloride Threshold Study identified a conservative protective range of 100 – 117 milligrams per liter of chloride. This protective range was affirmed by an independent Technical Advisor Panel (TAP) comprised of local experts and academia, indicating the 117 mg/l number came from a study characterized as the "most rigorous effort in developing irrigation water guidelines in crops." These experts also found that water quality that does not impact avocados is not likely to impact strawberry or nursery crops. A description of each TAP member is provided below.

Oleg Daugovich, Ph.D.

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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Dr. Daugovish works with the Ventura County Cooperative Extension, where he serves as the farm advisor for strawberry and vegetable crops in Ventura County. He conducts research and educational programs with emphases on pest control and environmental quality of production; addressing the needs of organic farmers in Ventura County. He has also served as a research assistant with the Department of Plant, Soil and Entomological Sciences at the University of Idaho; Department of Agronomy at the University of Nebraska; and the Stensund Ecological Center. Dr. Daugovish received his Ph.D. from the University of Idaho; M.S. from the University of Nebraska, B.S. from Latvia University of Agriculture. He is the author and co-author of 4 technical publications, 4 abstracts, and 6 technical proceedings.

**Ben A. Faber, Ph.D.**

Dr. Faber works with the Ventura County Cooperative Extension, serving as the soils/water/subtropical horticulture advisor in Ventura County. He has research experience in plant nutrition and soil management. His current research focuses on irrigation requirements of avocado and citrus, methods of controlling groundwater nitrate pollution, effects of yard waste mulches on citrus production and various methods for controlling micronutrient deficiencies in avocado. Dr. Faber received his Ph.D. from the University of California, Davis; M.S. Soil Fertility, University of California, Davis; B.S. Biology, University of California, Santa Cruz. He is the author and co-author of multiple technical papers and publications, including 18 publications developed over the last six years.

**S.R. Grattan, Ph.D.**

Dr. Grattan is a professor at the University of California, Davis, where he serves as the plant-water relations specialist in the Department of Land, Air, and Water Resources, Hydrologic Science Division. His research areas include irrigation management with saline water; plant response in saline environments; uptake of nutrients and trace elements by plants in saline environments; and crop water use. He also performs international consulting work with the World Bank, USDA/OICD, and USAID, and has previously served as a research assistant with the University of California, Riverside, and as a research plant physiologist at the USDA/ARS Salinity Laboratory. Dr. Grattan received his Ph.D. in Soil Science from the University of California, Riverside; M.S. in Soil Science from the University of California, Riverside; B.S. Soil and Water Science from the University of California, Davis. He is the author and coauthor of 15 technical proceedings/presentations, 74 refereed publications, and over 100 reports.

**John Letey, Jr. Ph.D.**

Dr. Letey is Professor Emeritus of Soil Science, Soil and Water Sciences Unit, University of California, Riverside and Director of the Center for Water Resources, University of California, Riverside. He has also served as the Chair, Department of Soil and Environmental Sciences; Director, University of California Kearney Foundation of Soil Science; Associate Director, University of California Water Resources Center; California State Water Quality Coordinator; and Director, University of California Salinity/Drainage Program. His research areas include irrigation, salinity, drainage, and plant-water relationships. He received his Ph.D. in Soil Science from the University of Illinois, and his B.S. in Agronomy from Colorado State University, and has served on numerous state, federal and international advisory committees; University of California and Soil Science Society of America task

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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forces and committees; and editorial boards. He is the author and co-author of over 80 international presentations, technical papers, publications and reports.

Darrell H. Nelson, B.S.

Mr. Nelson is a consultant with Fruit Growers Laboratory, and a farm operations manager and farmer in Ventura County. He is the former President and Laboratory Director of the Santa Paula and Stockton Fruit Growers Laboratory. He received his B.S. in Soil and Water Science from the University of California, Davis, and has made presentations on the use of scientific information to implement best management practices and the use of nutrient budgets. He has also been active in the appraisal of drinking water quality for regulatory purposes and irrigation water for suitability to specific crops. He has advised the Los Angeles Regional Water Quality Control Board on Best Management Practices and the use of Nutrient Budgets as they relate to Total Maximum Daily Loads (TMDLs), and is currently serving on the California Avocado Commission Research Committee as co-chairman of the management and physiology sub committee.

Kenneth K. Tanji, Sc.D.

Dr. Tanji is Professor Emeritus of Hydrology, Department of Land, Air and Water Resources, University of California, Davis. He has also served as the Senior and Principal Laboratory Technician, Department of Irrigation; Lecturer in Water Science, Department of Water Science and Engineering; Professor of Water Science, Department of Land, Air and Water Resources; Vice Chair and Chair, Department of Land, Air and Water Resources; and Professor of Hydrology, Department of Land, Air and Water Resources. He has more than 45 years of research experience dealing with salinity in agricultural lands in California, the Western U.S. and foreign countries, and is currently involved with developing a salinity management guide for irrigation of landscapes using recycled water. Dr. Tanji received his Sc.D. in Agricultural Science-Irrigation, Drainage and Hydrological Engineering from Kyoto University; M.S. in Soil Science-Soil Chemistry from the University of California, Davis; B.S. in Chemistry from the University of Hawaii. He is the author and co-author of 6 books, 28 book chapters, 158 papers, and more than 200 technical reports and proceedings.

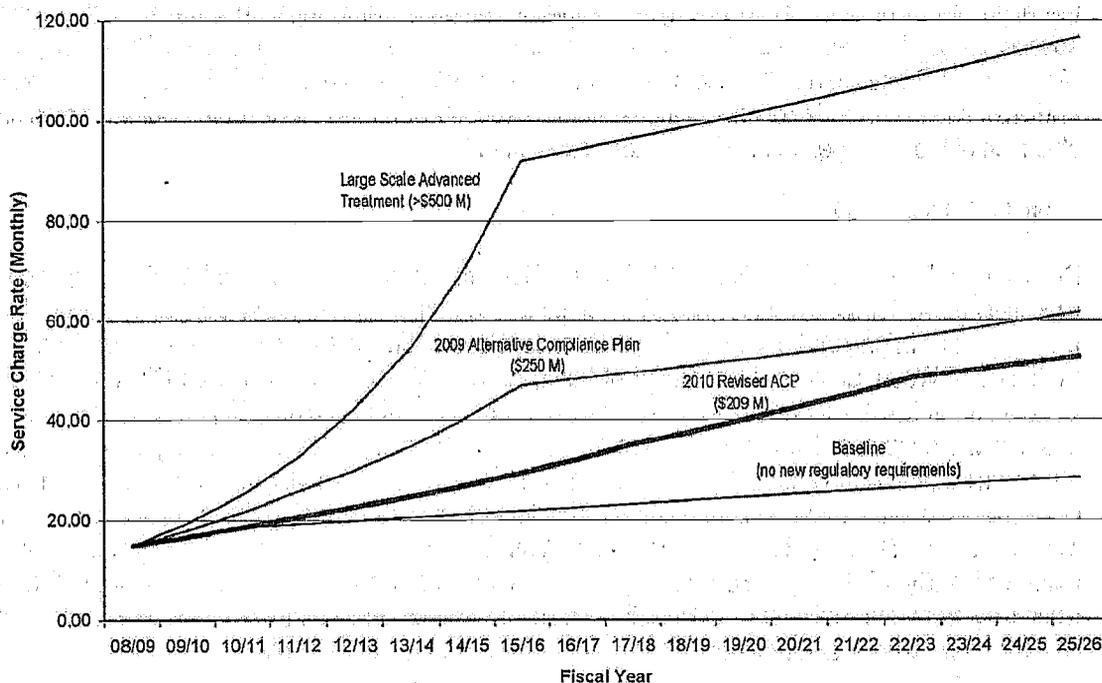
The studies also looked at what additional field studies could be done to further assess the protective range. It was determined that site-specific field studies were not appropriate to pursue, since they would have taken years to implement, would have cost millions of dollars, and might have had inconclusive results (due to confounding factors that could not be controlled, such as unusual frost or other events).

(S-7) There have been numerous letters and reports from the Sanitation District between 2008 through 2010 that has various information about the wide range of costs for compliance and how much chloride is being contributed by softeners. Why are there such discrepancies? Why is there such a sway in numbers?

As described in our May 18, 2010 letter to the City Council, the difference between what was proposed in 2009 and what is now proposed in 2010 is related to the direction received from the Sanitation District Board to reduce project costs, and the ongoing negotiations with the RWQCB. Over the past year, in response to Board direction, Sanitation District's staff and the RWQCB have been discussing a phased approach to the construction of required facilities that would spread project costs over a longer time. This approach has the advantage of minimizing the impact to ratepayers and allows additional time to solicit grant funding; however,

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this approach is contingent on the RWQCB approving (1) a significant extension of the compliance schedule and (2) further revision of the downstream chloride standard during drought conditions, which would result in additional cost savings of approximately \$41 million. This revision, if granted by the RWQCB, would reduce the cost of the Alternative Compliance Plan to approximately \$210 million. The combination of schedule relief and chloride standard revision, if approved by the RWQCB, together with some level of grant funding assistance, would result in the significantly smaller rate increase currently proposed than was proposed last year. A comparison of estimated service charge rates needed for the original and revised Alternative Compliance Plan implementation, as well as the project needed to comply with the original standard (large scale advanced treatment) is shown in the figure below.



It should be noted that the proposed service charge rate increases over the next four years will cover the costs for environmental and facilities planning and preliminary design. The projected service rates for the 2010 Revised Alternative Compliance Plan, as described above, were based on preliminary engineering estimates, and will be refined once construction bids are received and all funding sources needed for the full implementation of the revised Alternative Compliance Plan are better known.

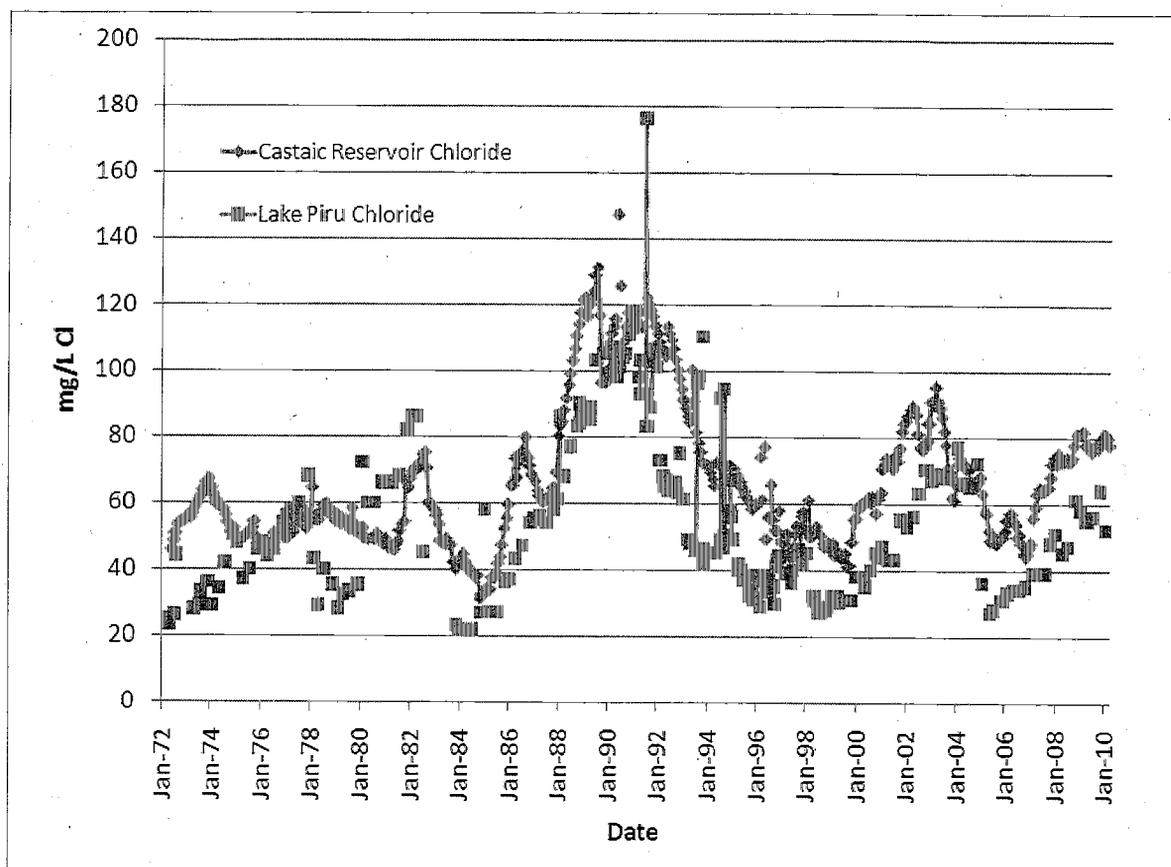
With respect to the differences between the contribution from self-regenerating water softeners as reported in 2008 versus as recently reported in the May 18, 2010 letter to the City Council, the community should be commended for approving Measure S (the 2008 ballot initiative to discontinue the use of self-regenerating water softeners) and taking out all self-regenerating water softeners, as this action saved the Sanitation District service area over \$70 million in facility costs. In November 2008, the Sanitation District reported that there were approximately 3,900 self-regenerating water softeners, contributing 30 mg/L of chloride to treatment plant dischargers. Post Measure-S, the contribution from self-regenerating water softeners has been reduced to about 5 mg/L of chloride to treatment plant dischargers, as reported in the May 18, 2010 letter to the City Council.

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

(S-8) Isn't it true that the water stored behind Piru Dam and released to the Santa Clara River is the same imported water stored in Castaic Lake? Why isn't this being regulated by the RWQCB?

It is true that imported water that is conveyed and stored in Pyramid Lake eventually is conveyed and stored in Lake Piru and the Castaic Lake Reservoir. However, there is significant natural inflow from tributaries to Lake Piru that reduces the chloride levels associated with the imported water flows stored behind the Lake. In general, chloride levels in Piru are lower than Castaic Lake, as shown below, and are well below 100 mg/L standard. Water transfers (including releases by water agencies from reservoirs) are not subject to regulation under NPDES permits by the RWQCB.

**Chloride Levels in Lake Piru and Castaic Reservoir**



(S-9) What is the Alternative Compliance Plan? What are the salt management facilities? Why do farmers get all the benefits? What are the benefits to SCV residents?

The Alternative Compliance Plan is a greener, watershed-based alternative approach to reduce chloride levels in the Santa Clara River and underlying groundwater basins, as compared to large scale advanced treatment facilities needed to comply with the original standard. The major elements of the Alternative Compliance Plan include: (1) self-regenerating water softener removals, (2) a small-scale advanced treatment plant to remove salt at the Valencia WRP, (3) regulatory relief to expand water recycling, (4) salt management facilities to mitigate and protect groundwater resources from salt build-up, and (5) consideration of other facility upgrades

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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or mitigation measures, as necessary, to reduce chloride levels in the river. The RWQCB was willing to conditionally revise the chloride limits, contingent upon the Alternative Compliance Plan project being undertaken. These relaxed limits provided regulatory relief to reduce the cost of compliance from over \$500 million (for large scale advanced treatment to meet original standards) to \$250 million (for the Alternative Compliance Plan facilities to meet relaxed standards). The Sanitation District is pursuing additional regulatory relief, through slightly higher limits during drought conditions, which would reduce the projected cost of compliance to \$209 million. More details on the Alternative Compliance Plan can be found at our website [www.lacsd.org](http://www.lacsd.org)

See response to question W-4, related to the purpose of the salt management facilities as it relates to managing salinity in groundwater, and providing ancillary water supply benefits to Ventura County.

There are significant benefits of the Alternative Compliance Plan to residents of the Santa Clarita Valley. First, the Alternative Compliance Plan is the lowest cost option that complies with the State and Federal mandate for chloride. Secondly, it provides regulatory compliance and cost certainty needed for future economic development in the Santa Clarita Valley. Thirdly, it provides substantial regulatory relief to ensure the expansion of recycled water projects throughout the Santa Clarita Valley, without which, these recycled water projects would be required to comply with 100 mg/L, making it cost prohibitive as a supplemental water resource for the Santa Clarita Valley water supply portfolio. Fourth, in accordance with a RWQCB finding, the Alternative Compliance Plan could be deemed a salinity management plan for the watershed, as required by the SWRCB, since it would provide for (1) watershed-wide monitoring, (2) determination of all sources, loading, fate and transport of salts, (3) salt management measures and implementation, (4) an antidegradation analysis; and (5) water recycling goals and objectives.

**(S-10) The Sanitation District told us that if we get all the softeners out we would solve the problem? Why do we still have to pay for costly treatment plant upgrades?**

Some of the Sanitation District's ratepayers have indicated that they were under the belief that the removal of automatic water softeners from the community through Measure S would be allow the Sanitation District to achieve compliance with the chloride standards.

The impact of self-regenerating water softeners was evaluated and it was determined that approximately one third of the overall chloride loading in the treated wastewater could be eliminated through the removal of these units, reducing rate increases tied to wastewater treatment. Santa Clarita Valley residents who have removed their self-regenerating water softeners and passed Measure S (the 2008 ballot initiative requiring the removal of all Automatic Water Softeners in the community) must be commended for their role in keeping rate as low as possible, saving over \$70 million in project facility costs. Although the self-regenerating water softeners ban made major strides in lowering chloride levels in the treatment plant discharge, it was not sufficient to bring the plants into full compliance. Full compliance, without the need for advanced treatment, would have required significantly higher chloride limits during drought conditions, which the Sanitation District fought so hard to get, but that the RWQCB was not willing to grant.

Because users in the Santa Clarita Valley still contribute a significant amount of chloride to the treated wastewater effluent, through everyday activities such as doing dishes, washing clothes and taking showers, in order to comply with the standard, the community must reduce a portion of the chloride in the treated wastewater, originating from its use of the water. The Alternative Compliance Plan, the compromise solution

**Response to Questions Raised at May 25, 2010 City of Santa Clarita Council Meeting**

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developed collaboratively by the Sanitation District, RWQCB and Santa Clara River stakeholders in Los Angeles and Ventura County, is the most cost effective way complying with the chloride standards. The estimated cost of the Alternative Compliance Plan is approximately \$250 million; however, the cost to comply with the standards originally developed by the RWQCB would have been in excess of \$500 million even with removal of automatic water softeners.

(S-11) Won't the peripheral canal fix the chloride problem? Why not wait for this to be constructed in 15-20 years, so that community doesn't have to pay for treatment that will be no longer needed, when the peripheral canal is finished.

See response to question M-8

(S-12) How is brine from the small-scale advanced treatment plant going to be disposed? What are the requirements for deep well injection and how is this regulated?

The proposed method to dispose of brine from small-scale advanced treatment is through deep well injection, in local abandoned oil formations and/or subsurface areas. Deep well injection to dispose of brine is an environmentally and technically sound waste disposal method. The suitability of this technology for a specific location depends on the presence of geologic formations which have the natural capability to store and confine the wastes. Historically, deep well injection has been widely used in the Santa Clarita Valley for the disposal of waste brine generated during oil production, which is of worse quality than the brine produced by reverse osmosis treatment of recycled water.

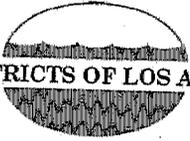
The US EPA's Underground Injection Control Program has developed minimum federal requirements for injection practices that protect public health by preventing injection wells from contaminating underground sources of drinking water. The US EPA has developed several different types, or 'classes,' of injection wells. Disposal of waste brine from oil field operations requires a Class II injection well and is regulated by the California Division of Oil, Gas and Geothermal Resources. The disposal of brine waste from reverse osmosis treatment would require permitting as a Class I injection well and would require a permit from the US EPA. Class I wells allow injection of reverse osmosis brine wastes into deep, isolated formations, below the lowermost underground sources of drinking water and separated by impermeable layers.

An extensive evaluation of brine disposal options will be conducted as part of the facilities planning. The potential environmental impacts will be described in an associated Environmental Impact Report and, if any potentially significant impacts are identified, mitigation measures would be implemented.

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# **ATTACHMENT 77**



  
SANITATION DISTRICTS OF LOS ANGELES COUNTY

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**SANTA CLARITA VALLEY SANITATION DISTRICT  
OF LOS ANGELES COUNTY**

**Response to Questions from  
June 2, 2010 Board Meeting**

**City of Santa Clarita, CA  
City Hall Council Chambers**

**June 10, 2010**

DOC # 1594249

**1682**

CSD001803

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DOC # 1594249

**(Speaker-1) What is the basis of the standard to protect agriculture. The LRE indicates there is not enough evidence to propose an absolute chloride threshold.**

The Agricultural Chloride Threshold Study identified a conservative protective range of 100 – 117 milligrams per liter of chloride. This protective range was affirmed by an independent Technical Advisor Panel (TAP) comprised of local experts and academia, indicating the 117 milligrams per liter (mg/L) number came from a study characterized as the “most rigorous effort in developing irrigation water guidelines in crops.” These experts also found that water quality that does not impact avocados is not likely to impact strawberry or nursery crops.

In 2006, the Los Angeles Regional Water Quality Control Board (RWQCB) found that the “Completion of the first Special Study, the Literature Review and Evaluation (LRE), provided a scientifically defensible baseline to support a Water Quality Objective (WQO) that is protective of agricultural supply beneficial use. The LRE established a chloride guideline concentration of 100-117 milligrams per liter. The chloride guideline concentration established by the LRE may be further refined through extended agricultural studies, which may take decades to complete.” For more information, see question M-7 in the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*, available on the Sanitation District’s website.

The studies also looked at what extended agricultural studies could be done to further assess the protective range. It was determined that site-specific field studies were not appropriate to pursue, since they would have taken years to implement, would have cost millions of dollars, and might have had inconclusive results (due to confounding factors that could not be controlled in the field).

**What is the make up of the Technical Advisor’s Panel?**

The Technical Advisory Panel (TAP) members were nominated by the TMDL Technical Working Group (TWG), which included stakeholders in Los Angeles and Ventura County, and were approved by the Regional Board. A list of each TAP member, including a summary of their qualifications, is provided in question S-6 of the document, *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*, available on the Sanitation District’s website.

**(Speaker-2) Can we look at trying to recycle more of the water?**

The Alternative Compliance Plan provides for the implementation of Castaic Lake Water Agency’s recycled water master plan to use 17,000 acre feet, approximately half of the water produced at the treatment plants. Recycling of all the treatment plant effluent produced by the Sanitation District would leave the river substantially drier and could adversely affect the environmental and social value of the river to the community, and would likely not be permitted by the RWQCB, State Water Resources Control Board, the California Department of Fish & Game or the U.S. Fish & Wildlife Service due to the threatened and endangered species that may occur in the river or in the adjacent riparian habitat.

Further, recycling 100% of the treatment plants' effluent is not a viable option because there is not enough demand for recycled water all of the time, particularly during cold and rainy winter weather. Without significant amounts of seasonal storage capacity, which is impractical in an urban setting, this results in the need to still discharge significant amounts of water to the river and meet the standard.

**Can we follow the example of other cities along the river of not putting water back in the river to limit our liability?**

There are several communities along the Santa Clara River that are facing chloride requirements similar to those faced by the Sanitation District. Please see the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*, available on the Sanitation District's website, for specific information on what these agencies are doing to comply, including source control and changes in discharge.

Several significant differences between these communities and the Sanitation District allow them more options to comply with their requirements. In general these agencies have significantly smaller volumes of treated wastewater to manage, ranging from 2.5% to 13% of the volume of the Sanitation District's treated wastewater, which allow them to cease discharge to the river without substantially affecting flow and habitat in the river. As described above, these options are not available to the Sanitation District due to the magnitude of our discharges. Further, many of these communities are pursuing the removal of automatic water softeners, following the example set by the Santa Clarita Valley community. Because the water supply in some of these areas is primarily local groundwater with low levels of chloride, these actions are expected to allow these communities to comply with their chloride limits.

**(Speaker-3) We must determine if in fact avocados and strawberries are being affected.**

The RWQCB has the authority to establish water quality standards whether or not an effect is demonstrated to occur. Both the State's Porter-Cologne Act and the Federal Clean Water Act require that water quality standards be established to protect existing and potential beneficial uses supported by surface water and/or groundwater resources in the State. As part of the State's Basin Planning process, in 1975, the RWQCB established beneficial uses for the Santa Clara River Watershed, which includes the Agricultural (AGR) beneficial use. Once these beneficial uses have been designated, water quality objectives are required to protect the entire spectrum of uses that fall under this category.

As indicated in the response to Speaker 1, the Regional Board found that the LRE established a protective range for chloride of 100-117 mg/L and that further studies would have taken years to implement, would have cost millions of dollars, and might have had inconclusive results.

**Isn't the obvious solution a new Delta water conveyance project?**

With respect to fixing the State Water Project's delta conveyance facilities, the Sanitation District has no jurisdiction over the State Water Project. There is no guarantee as to the timing of the long-proposed peripheral canal to allow the Sanitation District to comply with the discharge limits and the chloride TMDL schedule.

The Sanitation District is required to comply with the requirements of the chloride TMDL by 2015. Unless there was a guarantee that the long-awaited fix to the State Water Project would be built in a similar timeframe and would result in compliance, it is difficult to see how the Regional Board would accept it as a compliance alternative. As such, the prospect that it may be built does not preclude the need for the Sanitation District to comply with the RWQCB's requirements by May 2015.

**(Speaker-4) Shouldn't new connections to the wastewater treatment system pay for the Alternative Compliance Plan since they are the reason we need to import State Water Project Water?**

Connection fees are not dedicated for potential treatment upgrade costs, only for future incremental expansion of the existing treatment system to accommodate greater flows. Existing users must bear the cost of any modification or upgrades not related to building additional capacity. Any future expansions (chloride related or not) will be accounted for in the future connection fee rates.

Notwithstanding, new connections over the past 15 years have contributed to the increased water demand in the Santa Clarita Valley. In response to the increased demand, Castaic Lake Water Agency has had to steadily increase the amount of imported State Water Project water as a potable water supply source in the Santa Clarita Valley. While chloride levels in the imported State Water Project water have ranged from 40 mg/L to over 140 mg/L, chloride levels in the local groundwater have also ranged from 40 mg/L to nearly 100 mg/L. Santa Clarita Valley community use of the water adds approximately 50 mg/L of chloride which would result in the discharges from the treatment plant exceeding the existing 100 mg/L standard even without the imported State Project Water.

**Why was money borrowed from the CIF (Connection Fees) and why should we pay it back?**

New users of the sewerage system or those existing users who significantly increase their discharge are required to pay connection fees in order to fund the future expansion of the system. These fees are placed into a Capital Improvement Fund (CIF) dedicated for expansion of the existing system and are withdrawn as necessary to pay for expansion-related facilities. In order to minimize spikes in the service charge rates, money was borrowed from the CIF to help fund the rehabilitation/repair of existing facilities in the near term (e.g. a sewer under the Santa Clara River that was damaged by a severe winter storm). Because CIF monies are dedicated for expansion (i.e. building more capacity) of the existing system, the borrowed funds must be paid back by existing users – out of the operating funds

– so that the CIF monies are available when needed to accommodate needed expansion projects.

**(Speaker-5) The proposed service charge increase is in violation of Proposition 13, Proposition 218, and the State Constitution. Why should we pay this tax?**

Unfortunately, the speaker did not elaborate or provide any specifics as to why he believes the service charge increase to be in violation of existing law. Hence, it is difficult to provide a direct response to those charges since the Sanitation District believes the service charge program to be in full compliance with the law.

As Proposition 13 primarily deals with property taxes, there may be some confusion since the service charge is collected as a separate line item on the property tax bill. The service charge rates proposed are not taxes. They are charges for wastewater management services that the District is authorized to impose under Health and Safety Code Section 5471. Under authority provided in Health and Safety Code section 5473, the Sanitation District is authorized to collect its fees and charges on the tax rolls. The service charge is billed on the property tax bill as the most cost-effective means of collection. The County currently charges us 25¢ per parcel for this service, with a very low rate of delinquency. If the Sanitation District were to do the billing and collection on its own, this cost would be substantially higher with a significantly higher rate of delinquency. This added cost would all come back to the existing users in the form of higher service charges. As discussed below, the service charge is based on usage of the sewer system and is not related in any way to property values (i.e. a property tax).

In relation to Proposition 218, Article 13D of the state constitution provides specific guidance as to the criteria for a fee/charge. Specifically, it states that (1) the fee shall not exceed the cost to provide the service, (2) the fee shall not be used for any other purpose, (3) the fee shall not exceed the proportional cost of the service, and (4) the fee shall not be imposed unless the service is used by the property owner. In the case of the District's service charge, the charges are necessary to bring the treatment facilities into compliance with the currently adopted discharge standards (i.e. the cost of service). The charges are not used for any other purpose and are not diverted to any type of general fund. The charges are proportioned to each user based on actual usage as measured in terms of flow and strength. The charges are only imposed on parcels that are connected to the sewer system; parcels not connected (e.g. utilizing septic tanks) do not get charged. As such, the District's service charge clearly meets all of the criteria for fees/charges.

Pursuant to Proposition 218, the District is in the process of mailing out individual notices to every property owner that will be impacted by the proposed increase. The notice includes information on the amount of the charge, the basis for the charge, the reason for the charge, and the schedule for the public hearing, all in accordance with the law. In fact, the notice goes beyond the requirements of the law by providing information on how parcel owners may protest and provides a form for doing so. The public hearing is scheduled to be held 45 days later in Santa Clarita, again in accordance with the law.

Failure to approve the proposed rate increase would impair the Sanitation District's planned and budgeted operation and maintenance facilities that provide an essential public service and could result in the imposition of significant fines, possibly greater than the cost of the project, and potentially a much more expensive project than what is currently recommended.

**(Speaker-6) There is a lot of misinformation about the sources of chloride added by the community?**

Based on current conditions, the breakdown on sources of chloride in treatment plant discharges is estimated as follows:

<u>Sector</u>	<u>Chloride Contribution</u>	<u>% Contribution</u>
Water Supply (groundwater and imported surface water)	80 mg/L	61%
Residential	28 mg/L	22%
Treatment Plant (Disinfection)	12 mg/L	9%
Commercial & Industrial	10 mg/L	8%
Total	130 mg/L	100%

The water supply that comes from local groundwater and imported water stored in Castaic Lake has chloride levels currently near 80 mg/L. Residents who consume this water for indoor uses (toilets, showers, dishwashing, cooking, washing clothes, etc.) and discharge to the sewer add about **28 mg/L** of chloride, or 22% of the total chloride in treatment plant discharges. Commercial and Industrial sectors that consume this water and then discharge to the sewer add 10 mg/L of chloride. When wastewater is treated, it must be adequately disinfected with chlorine before discharge to the river, which adds another 12 mg/L to the treatment plant discharges.

In total the municipal use of water (i.e., the residential, commercial, industrial and treatment plant disinfection contribution) adds about **50 mg/L** of chloride to the chloride already in the water supply. On a per sewage unit (equal to the discharge from a single family home) basis, Residential and Commercial and Industrial users contribute approximately the same amount of chloride to wastewater. All users within the Sanitation District's service area pay a proportional share of the cost for treatment of the wastewater based on the quantity and quality of their contribution relative to a single family home.

**These fines are against Sanitation District not against the City. What happens if the Sanitation District declares bankruptcy?**

RWQCB fines and penalties can be collected under Water Code section 13328, which provides that after the time for judicial review of the RWQCB's order imposing fines or penalties expires, the RWQCB may apply to the court for a judgment. The court must enter a judgment in conformity with the RWQCB's order. Public agencies have a duty to pay judgments, and this duty is enforceable by court order. Local agencies are required to include in their budgets a provision to provide funds sufficient to pay all judgments.

While municipalities may, under rare circumstances, file petitions in bankruptcy under Chapter 9, it is highly unlikely that the District would be allowed to use bankruptcy as a means to avoid RWQCB fines. Under Chapter 9, a debtor can obtain a restructuring, but not a discharge from its debts. The policy of the Bankruptcy Act does not generally favor the discharge of government-imposed restitution, fines, and penalties, which are classified as non-dischargeable debts under Chapter 7. In summary, filing for bankruptcy will not provide relief from fines and penalties imposed by the RWQCB.

**(Speaker-7) Why wasn't the June 2, 2010 meeting properly noticed?**

The June 2, 2010 was a properly noticed adjourned meeting of the Sanitation District's Board of Directors. Public notice for Sanitation District's Board Meetings is posted at least 72 hours prior to the meeting at the Sanitation District's office, in accordance with the Ralph M. Brown Act. As an additional courtesy to the public, the meeting agenda was also posted on the Sanitation District's website, [www.lacsd.org](http://www.lacsd.org), on Monday, May 31, 2010. The City of Santa Clarita was also given the public notice and posted the agenda for the meeting at Santa Clarita City Hall and on the City website.

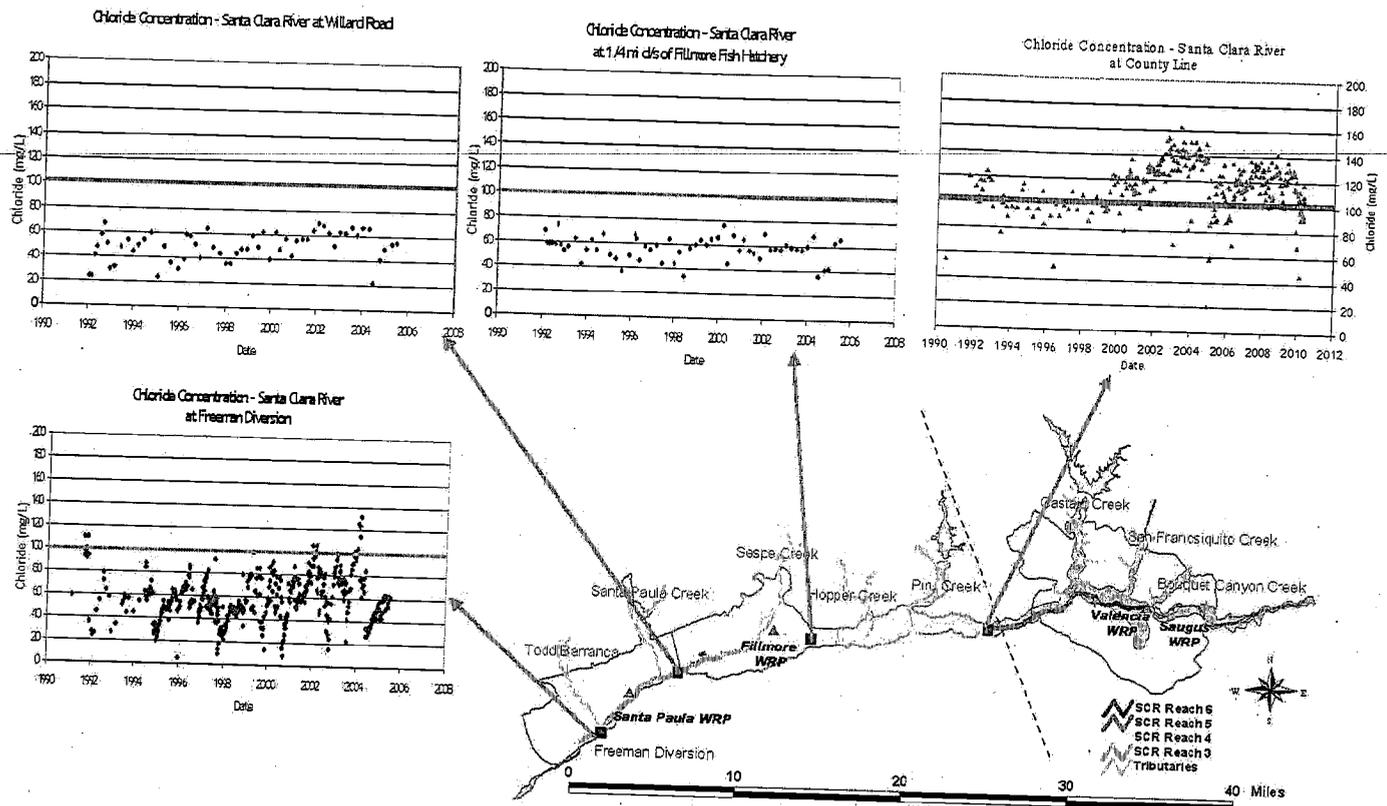
**The cost to businesses also needs to be addressed.**

All users within the Sanitation District's service area pay a proportional share of the cost for treatment of the wastewater based on the quantity and strength of their contribution relative to a single family home. New businesses connecting to the sewer system would also be required to pay a connection fee based on the type and size of business. For a new 1,000 square foot restaurant, the current connection fee would be \$26,182 and the service charge would be \$1,763 per year, under the new proposed rates, the connection fee would be \$37,895 and the service charge would be \$2,623 per year in FY 13-14, at the end of the proposed four-year rate increase period.

**There is no information about the chloride levels along the length of the Santa Clara River in the administrative record to determine the actual sources.**

As part of the TMDL Implementation Plan, the Regional Board required the development of a groundwater/surface water interaction model to determine the interaction between surface water and groundwater and its linkage to surface water quality and groundwater quality with respect to chloride. This study was conducted in a public process, directed by the Regional Board, which included stakeholders within Los Angeles and Ventura County.

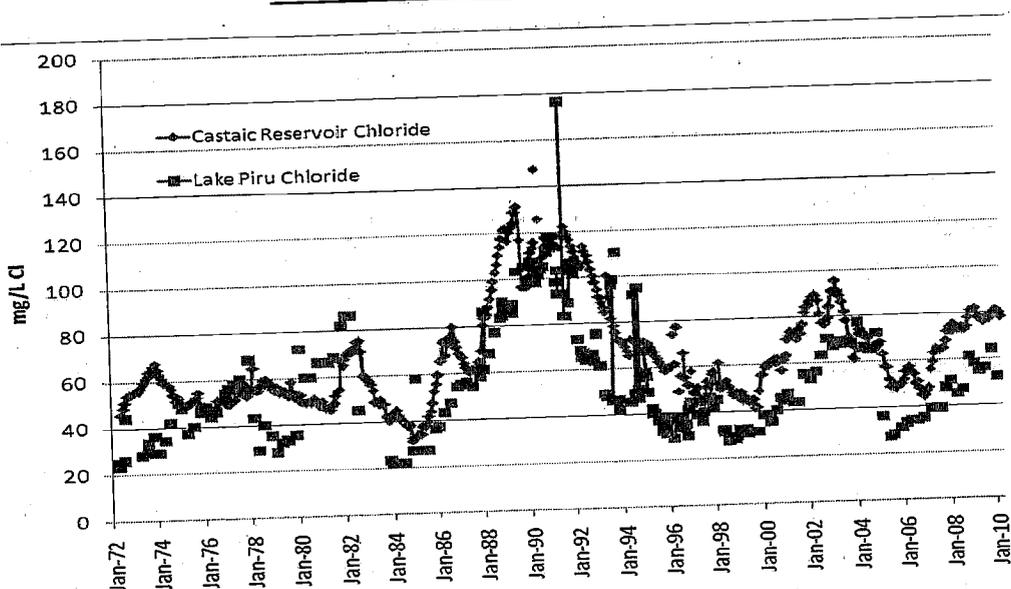
In addition, the Sanitation District has conducted extensive monitoring of the Santa Clara River in Los Angeles County. The United Water Conservation District is the Ventura County water agency that monitors the surface water and groundwater conditions for the Santa Clara River Watershed in Ventura County. Chloride levels at key locations along the Santa Clara River are shown in the figure below.



**Why doesn't the water coming from Piru creek need to be cleaned up if it is the same water that comes from Castaic Lake (i.e. imported State Water Project water).**

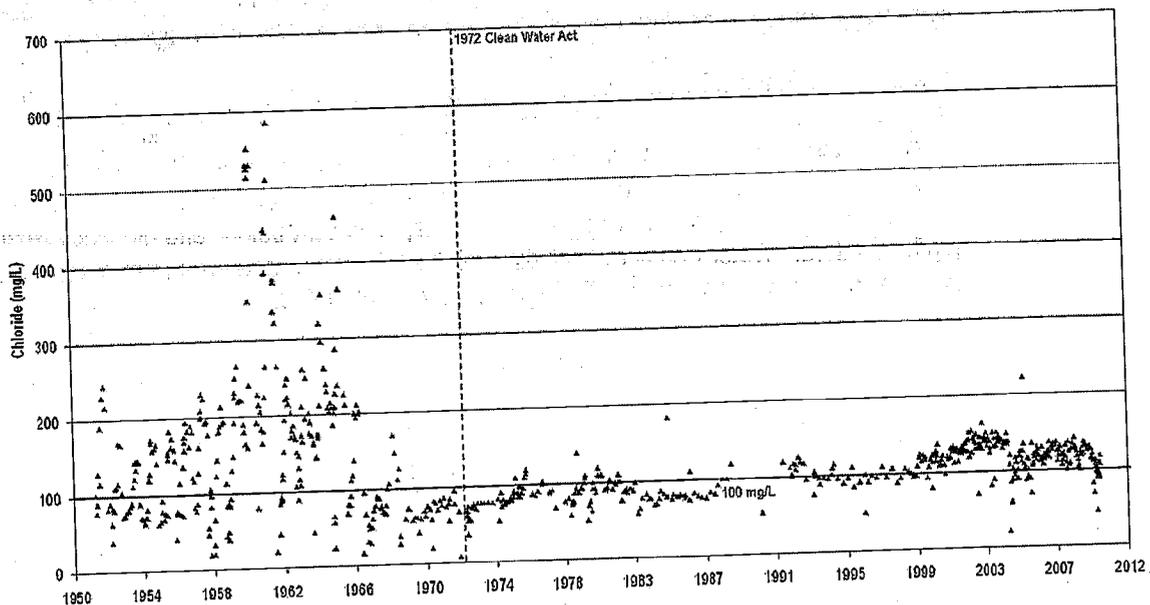
It is true that imported State Water Project water that is conveyed and stored in Pyramid Lake eventually is conveyed and stored in Lake Piru and the Castaic Lake Reservoir. However, there is significant natural inflow from tributaries to Lake Piru that reduces the chloride levels associated with the imported water flows stored in the Lake. In general, chloride levels in Piru are lower than Castaic Lake, as shown below, and are well below 100 mg/L standard. Water transfers (including releases by water agencies from reservoirs) are not subject to regulation under NPDES permits by the RWQCB.

### Chloride Levels in Lake Piru and Castaic Reservoir



**(Speaker-8) Is it true that in the 1960s chloride levels were much higher?**

The figure below contains the historical chloride levels in the river crossing the Los Angeles and Ventura County line since the early 1950s. Elevated chloride levels in the river during the 1950s and 1960s, as much as approximately 600 mg/L, are primarily due to the discharge of brine waste from oil operations in the Santa Clarita Valley directly to the river, before enactment of the Federal Clean Water Act in the 1972. This practice is no longer permitted.



**Why doesn't farmer rip out avocados and put back a crop that is not affected by chloride?**

As indicated in the response to Speaker 3, as part of the State's Basin Planning process in 1975, the RWQCB established beneficial uses for the Santa Clara River Watershed, which includes the Agricultural (AGR) beneficial use. Once these beneficial uses have been designated, water quality objectives are required to protect the entire spectrum of uses that fall under this category. Since salt sensitive crops such as avocado and strawberry are an existing use, the use must be protected under the Clean Water Act.

**(Speaker-9) How will information be provided to the community?**

Public notices regarding the proposed sewer service charge rate increase were sent to every property owner within the Sanitation District service area in accordance with Proposition 218. These notices provide property owners basic information about the Sanitation District, the regulatory mandates that resulted in the chloride limits, the efforts by the Sanitation District to develop the most cost effective approach to complying with the chloride limit including the Alternative Compliance Plan, and the proposed rate increases for the next four years which are to support the continued operation of the existing facilities along with the planning and design work for facilities required to meet the current regulatory requirements provided they are not revised. The notice also directs people to the Sanitation District's website for more detailed information, including links to relevant technical studies. Contact information for the Sanitation District, including a toll free telephone number, and the information on the process for protesting the proposed rate increase were also provided.

The public notice will also provide information on dates and times for six planned workshops to be held at the Santa Clarita City Hall and two Town Council Meetings, West Ranch and Castaic Area. Staff will also be working closely with City of Santa Clarita staff to respond to requests for additional information from the community.

**How can resident's protest the proposed service charge rate increase?**

In accordance with Proposition 218, residents can submit written protest to the proposed service charge rate increase. Information is provided on the Prop 218 notice that is being sent to every property owner within the Sanitation District service area. Under the provisions of Prop. 218, the Sanitation District Board of Directors can take no action on the proposed rates if written protests are submitted by more than 50% of the owners of the impacted parcels.

If sufficient protests are not submitted, then the Sanitation District Board of Directors, at a public hearing, will consider the proposal along with all of the public input.

**We voted to get rid of AWS but many people still have them, who checks?**

With the passage of Measure S in 2008, the vast majority of Santa Clarita Valley residents have complied with the Sanitation District's ordinance and contacted the Sanitation District to

have their automatic water softeners removed. As of June 2010, the Sanitation District has removed approximately 6,900 automatic water softeners from service. Based on recent sampling of the wastewater entering the treatment plant, the Sanitation District estimates several hundred automatic water softeners remain in service in the community.

The Sanitation District will continue to work cooperatively with residents who are still voluntarily complying with the ordinance to remove their water softeners, with more than 150 applications for rebates still being processed. In addition, the Sanitation District has worked with local retailers, asking them to voluntarily remove from their shelves the salt tablets that are primarily used in automatic water softeners. If necessary, the next phase of the Sanitation District's program will involve additional sampling and site inspections, as well as possible administrative enforcement actions. The Sanitation District believes that the majority of residents will continue to voluntarily comply with the ordinance, saving the ratepayers the costs of additional enforcement.

**(Speaker-10) What are the impacts to public schools?**

Please see response to question Board-3 below.

**(Speaker-11) Why can't we clean up the source water before it goes to residents in the Santa Clarita Valley?**

The Sanitation District has not conducted a formal cost estimate of treating all of the State Water Project water as an alternative to large scale advanced treatment of wastewater because it is believed this alternative would be significantly more expensive. Treating the water supply was thought to be a more expensive option because only a fraction of the imported water is used for indoor residential, industrial and commercial use which ends up in the local sewer system; the larger portion of the potable water supply is used for outdoor irrigation, which does not reach the sewer system. In 2008, Castaic Lake Water Agency reported the potable water supply consisted of approximately 42,000 AFY of SWP water and 34,000 AFY of local groundwater, or 76,000 AFY of water supply for potable uses. In comparison, the Sanitation District discharged approximately 20 MGD or 23,000 AF of recycled water to the Santa Clara River in 2008, representing about 1/3 of the potable water supply utilized in the Santa Clarita Valley. Removing chlorides from the source water would increase the volume of water to be treated three times over the current proposal.

In addition, approximately 11,000 AFY (10 MGD) of the potable water treated would be wasted in the form of the brine generated by the reverse osmosis treatment process. In order to make up the water supply lost, additional water resources would need to be developed to meet the full water demand of the Santa Clarita Valley. Hence, both on a cost-basis and a water resource basis, an upstream desalination plant to treat the State Water Project water is not a feasible alternative for compliance with the TMDL.

**Board-1** *Are we currently meeting the standard? Why can't we pursue drought relief?*

Neither the treatment plant discharges nor chloride in the river meet the 100 mg/L standard, which is current standard for chloride. The revised standards for chloride approved by the RWQCB in December 2008 will only be in effect if the Sanitation District implements the Alternative-Compliance Plan. When comparing more recent water quality conditions to the revised standards, the treatment plant discharges are achieving the revised 150 mg/L standard, and the river has generally met revised 117 mg/L standard over the last few months. Compliance with the 117 mg/L river objective during drier periods will require some desalinated water from the proposed advanced treatment plant upgrade proposed in the Alternative Compliance Plan. The revised standards include drought relief in the form of higher chloride standards, 130 mg/L, for the river during critically dry conditions defined in the TMDL as when the imported State Water Project water is equal to or greater than 80 mg/L.

The Sanitation District is seeking additional relief during these critically dry periods to raise the 130 mg/L river limit during drought to 150 mg/L, which would avoid the need to purchase supplemental water for the river to mitigate high chloride levels in drought times. This additional drought relief would reduce costs by an estimated \$41 million.

**Board-2** *Who appoints the Regional Board?*

The SWRCB consists of five full-time salaried Members, each filling a different specialty position. Each board member is appointed to a four-year term by the Governor and confirmed by the Senate. The mission of the SWRCB is to ensure the highest reasonable quality for waters of the State, while allocating those waters to achieve the optimum balance of beneficial uses.

There are nine Regional Water Quality Control Boards (RWQCBs). The mission of the RWQCBs is to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the State's waters, recognizing local differences in climate, topography, geology and hydrology. Each RWQCB has nine part-time Members also appointed by the Governor and confirmed by the Senate. RWQCBs develop "basin plans" for their hydrologic areas, govern requirements/issue waste discharge permits, take enforcement action against violators, and monitor water quality.

Overall, the RWQCB members must by law be selected to represent the following categories: water supply, conservation, and production (1 member); irrigated agriculture (1 member); industrial water use (1 member); municipal government (1 member); county government (1 member); a responsible nongovernmental organization association with recreation, fish, or wildlife (1 member); and 3 members not associated with any of the above categories, 2 of whom have special competence in areas related to water quality.

**Board-3**

***Are any public agencies exempt from the connection fees and service charge?  
Specially, are public schools and hospitals exempt?***

Local government-owned parcels that are located within the District, used solely for governmental as opposed to proprietary functions, and not subject to industrial wastewater treatment surcharges pursuant to the wastewater ordinance are exempt from paying service charges and connection fees. Public schools, governmental administration buildings (e.g. City Hall), local parks and community centers are typically considered to be local government parcels and are exempt.

Government owned parcels that are used for a proprietary interest (i.e. rental properties or redeveloped commercial lots) or for the benefit of a specific group or single class of people, are not exempt. Hospitals – even publicly operated - are not exempt. Hospitals pay for sewer service through the District's surcharge program based on number of beds and/or size of facility.

# **ATTACHMENT 78**





## SANTA CLARITA VALLEY SANITATION DISTRICT

1955 Workman Mill Road, P.O. Box 4000, Whittier, CA 90607-4000  
Telephone: (800) 388-4602  
www.lacsd.org

June 11, 2010

John and Mary Smith  
1234 Main Street  
Santa Clarita, CA 91310

### ATTENTION

This notice contains important information about a proposed increase in rates for wastewater service.

Please read.

### NOTICE OF PUBLIC HEARING SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY REGARDING A PROPOSED SEWER SERVICE CHARGE RATE INCREASE TO THE OWNER OF RECORD OF

Assessor's Parcel No. 1234-567-890  
1234 Main Street, Santa Clarita, CA 91310

Notice is hereby given that the Santa Clarita Valley Sanitation District will conduct a public hearing on July 27, 2010, at 6:30 p.m. in the Santa Clarita City Council Chambers, 23920 Valencia Boulevard to consider public input on the proposed increase in sewer service charge rates.

#### Important Dates

##### Information Meetings:

Location	Date	Time(s)
Santa Clarita City Hall	June 29	7:00 pm
West Ranch Town Council Meeting	July 7	7:00 pm
Santa Clarita City Hall	July 8	1:00 pm and 7:00 pm
Santa Clarita City Hall	July 14	1:00 pm and 7:00 pm
Santa Clarita City Hall	July 19	7:00 pm
Castaic Area Town Council Meeting	July 21	7:00 pm

##### Public Hearing:

Location	Date	Time
Santa Clarita City Hall	July 27	6:30 pm

#### Protest Procedure

##### How To Protest The Proposed Rates

Under Proposition 218, the owner of record for a parcel that is subject to the proposed increase can submit a written protest against the proposed rate increases to the District at or before the time set for the public hearing. If a majority of affected property owners submit written protests, the proposed rate increases will not go into effect.

The written protest must identify the parcel(s) in which the party signing the protest has an interest. The best means of identifying the parcel(s) is by the Assessor's Parcel Number (APN), shown above. If the party signing the protest is not shown on the last equalized assessment roll of Los Angeles County as the owner of the parcel(s) (e.g. if you recently bought the parcel), the protest must contain or be accompanied by written evidence that such party is the owner of the parcel(s).

Using the enclosed envelope and form on page 3, please mail written protests to:

Secretary of the Board  
Santa Clarita Valley Sanitation District  
P.O. Box 4000  
Whittier, CA 90607

**Basis for the Rates\***

	Current	Proposed			
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Existing Facilities	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$19.17 / month (\$230 / year)	\$19.83 / month (\$238 / year)	\$20.50 / month (\$246 / year)
Chloride - Related Efforts	\$0 / month (\$0 / year)	\$0 / month (\$0 / year)	\$1.33 / month (\$16 / year)	\$2.75 / month (\$33 / year)	\$4.17 / month (\$50 / year)
Total Rate	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$20.50 / month (\$246 / year)	\$22.58 / month (\$271 / year)	\$24.67 / month (\$296 / year)

\* Rate per sewage unit (equivalent to the discharge from one single family home).

**Total Charge for Your Parcel\***

	Current	Proposed			
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Your Charge	\$16.58 / month (\$199 / year)	\$18.50 / month (\$222 / year)	\$20.50 / month (\$246 / year)	\$22.58 / month (\$271 / year)	\$24.67 / month (\$296 / year)

\* The District offers a sewer service charge rebate program for parcels that have low water usage. Details of this program, including claim forms, are available on the District's website ([www.lacsd.org](http://www.lacsd.org)).

**Background Information**

- This notice is about a proposal to increase your wastewater service charge over the next four years as shown above.
- Santa Clarita Valley Sanitation District is the public agency responsible for managing the wastewater that is generated on your parcel.
- Approximately half of the proposed increase is for the continued operation of the existing treatment facilities. The other half is for planning and design efforts related to the facilities that are needed to comply with state-mandated chloride limits.

**Regulatory Issues (Chlorides)**

- In 2002, the Regional Water Quality Control Board (state regulatory agency) adopted a chloride standard that would have necessitated the construction of large-scale advanced treatment facilities costing over \$500 million.
- The District appealed that decision and, in 2004, the Regional Board agreed to allow additional studies to assess the correctness of the chloride standard as adopted.
- In 2006, the Regional Board halted the studies after the first study's conclusion supported their position and took action to reaffirm the chloride standard as adopted.
- In 2008, after lengthy negotiations, the Regional Board agreed to relax the standard in exchange for the District implementing an alternative project that included the removal of water softeners, much smaller advanced treatment facilities, and salt management facilities. The estimated cost of this alternative project is \$250 million.
- In 2008, the community took the initiative to pass Measure S to discontinue the use of self-regenerating water softeners.
- In 2009, the District's Board of Directors instructed staff to work with the Regional Board with the goal of further lowering the cost of the project.

- Based upon this direction, District's staff developed a phased approach to the project that would spread the cost of the project over significantly more years and would provide some additional relief during drought conditions, reducing the total project cost to approximately \$209 million, if ultimately approved by the Regional Board.

### **Recommendation**

- After opposing the strict standards for over ten years, negotiating with the Regional Board, exploring all technical alternatives, and considering potential large fines and penalties for non-compliance, the Sanitation District staff is recommending the proposed increases as the lowest cost of all viable options that will allow for compliance with the adopted chloride standards.
- While the recommendation is for a four-year rate increase that will keep the District on the path to compliance, we will continue to work with the regulators to revise the adopted chloride limits and grant additional regulatory relief during drought conditions, to work with state and federal legislatures for regulatory relief during these tough economic times, and to pursue all state and federal grant funding opportunities.
- Please note that the proposed recommendation will only fund the facilities planning and design support work. Additional service charge rate increases related to compliance with the chloride standards beginning in fiscal year 2014-15 through fiscal year 2022-23 will be necessary if the project is approved and proceeds to construction.

### **Protest Process**

- You may file a protest against the proposed rate increase following the procedure outlined on the first page. Pursuant to Proposition 218, the protest must be submitted in writing and must be received by the District prior to or at the public hearing on July 27, 2010. For your convenience, you may submit your protest using the enclosed self-addressed envelope and the form at the bottom of this page.
- Protesting the proposed rates does not negate the District's responsibility to comply with all legally adopted discharge standards. Consequently, failure to adequately fund the necessary facilities could result in the District (and, ultimately, you the ratepayer) being subject to significant fines and penalties, and potentially a much more expensive project than what is currently recommended.

### **More Information / Contact Us**

- Telephone: (800) 388-4602 (toll free)
- Regular Mail: P.O. Box 4000  
Whittier, CA 90607-4000
- E-mail: rates@lacsds.org
- Internet: www.lacsds.org
- Please include your name, address, telephone number, and Assessor's Parcel Number (shown just under the title of this notice) with any correspondence to help us promptly and accurately respond. Normal business hours are Monday through Friday, 7:30 am to 4:00 pm.
- Para información en español por favor de mirar el reverso.

(cut here)

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### **PROTEST FORM**

Assessor's Parcel No.: 1234-567-890

Property Location: 1234 Main Street, Santa Clarita, CA 91310

As the owner of record of the above-identified parcel, I hereby officially protest the proposed rate increase.

\_\_\_\_\_  
Owner of Record (print name)

\_\_\_\_\_  
Owner of Record (signature)

\_\_\_\_\_  
Date

**Para Información en Español**

**¿Acerca de qué es este aviso?**

El Distrito Sanitario Santa Clarita Valley del Condado de Los Angeles propone aumentar la tasa por Cargo de Servicio de alcantarillado y tratamiento de aguas residuales. Este aviso discute las razones y la cantidad del aumento propuesto. Además, se le notifica que se conducirá una Audiencia Pública el día 27 de Julio del 2010 a las 6:30 p.m. en la Cámara de Consejo de la Ciudad de Santa Clarita, que se encuentra localizada en la siguiente dirección 23920 Valencia Boulevard, para considerar los aumentos que se proponen. Si usted recibió este aviso, los aumentos propuestos de Cargo de Servicio son aplicables a su propiedad. ¡Favor de notar que ESTO NO ES UN COBRO! ¡No mande dinero!

¿Si usted desea recibir este aviso y más información en español, por favor llame a los Distritos Sanitarios al teléfono (800) 388-4602. También usted nos puede visitar en nuestra pagina en la Internet en [www.lacsd.org](http://www.lacsd.org).

# **ATTACHMENT 79**



## LACSD Website

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

The Santa Clarita Valley Sanitation District (District) is the public agency that takes care of sewage generated in most of the City of Santa Clarita and some of the adjacent unincorporated county area. The District's Board of Directors is being asked to consider a proposal to increase the rates over the next three years to provide, solely, for the continued operation and maintenance of existing facilities and Board-directed activities. Increasingly more restrictive options for the management of biosolids (the solid matter removed from the wastewater) have caused operational costs to grow at a pace faster than that of normal inflation. Upgrades to the existing power distribution system are needed to replace outdated equipment and to help insure operational reliability at the water reclamation plants (WRPs). Likewise, improvements are being made to the existing pumping plant to provide facilities that will minimize the chances of a spill from the sewer system. Lastly, in accordance with the direction of the District's Board of Directors, the District has initiated activities related to compliance with Measure S. Board-directed activities to work toward a resolution of the chlorides TMDL issue include: test claim for State reimbursement of unfunded mandates, legislative relief efforts, evaluation of the potential use of ultra-violet disinfection technology at the WRPs, studies of water supply options, and continued negotiations with State regulators to develop a workable solution for the Santa Clarita community. None of the proposed rate increase is being budgeted for the development of facilities to control chloride in the Santa Clara River. Any rate increases that may be necessary to support a chloride solution will not be proposed until an acceptable plan is developed.

It is important that residents of the City of Santa Clarita and the surrounding communities have a good understanding of the financial factors necessitating the proposed rate increases. To help answer questions and provide interested parties with more background, there will be a series of information meetings in the community as well as tours of the Valencia Water Reclamation Plant as shown below. All of this is to lead up to a public hearing to be held on **Thursday, April 14, 2011 at 6:00 p.m.** at the Santa Clarita City Hall when the District's Board of Directors will consider public input before deciding on whether to enact the proposed rates.

A Proposition 218 notice was mailed to property owners on Friday, February 25, 2011. For a generic copy of the Proposition 218 notice, which shows the charge for a single family home, please click [here](#) (for Spanish click [here](#)).

**Information Meetings:**

Location	Date	Time(s)
Castaic Area Town Council Meeting	March 16	7:00 p.m.
Santa Clarita City Hall	March 23	7:00 p.m.
Santa Clarita City Hall	March 29	1:00 p.m. and 7:00 p.m.
Santa Clarita City Hall	April 4	7:00 p.m.
West Ranch Town Council Meeting	April 6	7:00 p.m.

**Public Tour of Valencia Water Reclamation Plant:**

Location	Date	Time(s)
Valencia WRP	March 19	9:00 a.m. and 11:00 a.m.

LACSD Website - Proposed Sewer Service Charge Increase

Due to safety considerations, each tour will be limited to 30 people, so you must make a reservation prior to attending. Please RSVP for a tour by telephone at (562) 908-4288, extension 2300, or by email at [nmadigan@lacs.org](mailto:nmadigan@lacs.org). If more people than can be accommodated sign up, additional tours will be scheduled. Click [here](#) for the tour flyer.

**Public Hearing:**

Location	Date	Time(s)
Santa Clarita City Hall	April 14	6:00 p.m.

**SCVSD Current and Proposed Rates per Single Family Home:**

	Proposed			
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Existing Facilities Only	\$16.58 / month (\$199/year)	\$17.92 / month (\$215/year)	\$19.25 / month (\$231/year)	\$20.58 / month (\$247/year)

As shown in the table below, even with the proposed rate increases, the service charge rate in the District in the fourth year will be less than what other similar wastewater agencies are currently charging.

**Service Charge Rates Comparison:**

COMMUNITY	SERVICE CHARGE	
	\$/month	\$/year
Santa Clarita <sup>a</sup> (2013-14)	\$ 20.58	\$ 247.00
Ventura (current)	\$ 25.00	\$ 300.00
Glendale (current)	\$ 33.70	\$ 404.40
Los Angeles (current)	\$ 35.24	\$ 422.83
Dist. 14 <sup>b</sup> (Lancaster) (2014-15)	\$ 39.00	\$ 468.00
Dist. 20 <sup>c</sup> (Palmdale) (2014-15)	\$ 44.58	\$ 535.00
Ojai (2010-11)	\$ 52.07	\$ 624.84
Santa Paula (current)	\$ 77.21	\$ 926.52
Fillmore (current)	\$ 82.00	\$ 984.00

<sup>a</sup>The Sanitation District also receives \$5.69 per month of ad valorem taxes. The County Department of Public Works charges \$3.38 per month of local sewer maintenance.

<sup>b</sup>In addition, the District also receives \$1.80 per month of ad valorem (property) taxes and the City of Lancaster charges residents \$6.50 per month for local sewer maintenance.

<sup>c</sup>In addition, the District also receives \$2.14 per month of ad valorem (property) taxes and the City of Palmdale charges residents \$8.64 per month for local sewer maintenance.

**How To Protest The Proposed Rates**

You may file a protest against the proposed rate increase. Pursuant to Proposition 218, **the protest must be submitted in writing and must be received by the District prior to or at the public hearing on April 14, 2011.**

Protesting the proposed rates does not negate the District's responsibility to comply with all legally adopted discharge standards. Consequently, failure to adequately fund the necessary facilities could result in the District (and, ultimately, you the ratepayer) being subject to significant fines and

penalties.

**FOR MORE INFORMATION PLEASE CONTACT THE SANITATION DISTRICT'S FINANCIAL  
MANAGEMENT DEPARTMENT AT 1-888-808-1118 OR (562) 908-4871 OR AT  
RATES@LACSD.ORG.**





**SANITATION DISTRICTS OF LOS ANGELES COUNTY**

1955 Workman Mill Road, P.O. Box 4000, Whittier, CA 90607-4000  
 Telephone: (888) 808-1118  
 or (562) 908-4871

**NOTICE OF PUBLIC HEARING  
 SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY  
 REGARDING A PROPOSED SEWER SERVICE CHARGE RATE INCREASE  
 TO THE OWNER OF RECORD OF**

Assessor's Parcel No. 1234567890  
 12345 CALYPSO LN, SANTA CLARITA, CA 91351

You are receiving this official notice because the sewage generated on your property is discharged to the local sewer system for treatment and disposal by the Santa Clarita Valley Sanitation District. The District is responsible for properly treating and managing the wastewater generated in most of the City of Santa Clarita and some of the adjacent unincorporated county area. Your wastewater is first collected in the local sewer in front of your property and then transported by large regional trunk sewers to one of two regional treatment facilities, either the Saugus or Valencia Water Reclamation Plant (WRP). These two facilities treat approximately 20 million gallons of wastewater each day. The cost of operating the regional system is proportioned to each property owner based on the amount and strength of wastewater discharged from that parcel. The District works closely with members of your community and the surrounding area to ensure that all of your wastewater is managed in a safe, environmentally friendly, and cost-effective manner.

Operational costs and capital projects required to maintain the existing level of service show that a service charge rate increase is needed in the District. Increasingly more restrictive options for the management of biosolids (the solid matter removed from the wastewater) have caused operational costs to grow at a pace faster than that of normal inflation. Upgrades to the existing power distribution system are needed to replace outdated equipment and to help insure operational reliability at the WRPs. Likewise, improvements are being made to the existing pumping plant to provide facilities that will minimize the chances of a spill from the sewer system. Lastly, in accordance with the direction of the District's Board of Directors, the District has initiated activities related to compliance with Measure S. Accordingly, the District is proposing three years of sewerage service charge rate increases solely for the continued operation and maintenance of the sewers, pumping plants, and water reclamation plants in the most cost-efficient means available.

**None of this increase will fund development of facilities to control chlorides in the Santa Clara River.** While District staff will continue to work with the regulators, pursuant to Board Direction, to resolve the chloride issue in the most cost-effective and reasonable manner possible, no rate increase to support chloride-related facilities will be proposed until an acceptable plan is developed.

The cost of operating and maintaining the District's facilities and repaying the internal loans must be borne by existing users of the system. All property owners pay for use of the wastewater system based on the amount and strength of wastewater discharged. The current service charge rate is \$16.58 per month (\$199.00 per year) per sewage unit (a sewage unit is equal to the average discharge from a single-family home). In order to adequately plan and budget for the District's annual financial obligations, the service charge rate will need to increase over the next three years. The recommended increase is \$1.33 per month (\$16.00 per year) per sewage unit each year for three years. As shown in the table below, even with the proposed rate increases, the service charge rate in the District will still be considerably less than what other similar wastewater agencies are currently charging. It should be noted that, in an effort to smooth rate increases in the near term to adjust to the full cost of service, the District has borrowed internally from restricted funds that were collected from new users of the sewerage system to pay for future expansions, with additional borrowing projected for next fiscal year. While this internal borrowing will allow the District meet budgetary expenditures in the near term, the borrowed funds will ultimately have to be paid back.

**Service Charge Rate Comparison**  
 (For comparable communities)

Community	Service Charge	
	\$ per month	\$ per year
Santa Clarita Valley <sup>a</sup>	20.58	247.00
Ventura <sup>b</sup>	25.00	300.00
Dist. 14 (Lancaster) <sup>c</sup>	30.00	360.00
Dist. 20 (Palmdale) <sup>d</sup>	31.75	381.00
Glendale <sup>b</sup>	33.70	404.40
City of Los Angeles <sup>b</sup>	35.24	422.83
Ojai <sup>b</sup>	52.07	624.84
Santa Paula <sup>b</sup>	77.21	926.52
Fillmore <sup>b</sup>	82.00	984.00

<sup>a</sup> Fiscal year 2013-14. District also receives \$5.69 per month of ad valorem taxes. The County Department of Public Works charges \$3.38 per month for local sewer maintenance.

<sup>b</sup> Fiscal year 2010-11.

<sup>c</sup> Fiscal year 2010-11. District also receives \$1.80 per month of ad valorem taxes. The City of Lancaster charges \$6.50 per month for local sewer maintenance.

<sup>d</sup> Fiscal year 2010-11. District also receives \$2.14 per month of ad valorem taxes. The City of Palmdale charges \$8.64 per month for local sewer maintenance.

You are currently paying \$16.58 per month (\$199.00 per year) for the wastewater you discharge from your property. If the proposed rate increase is approved, your charges in fiscal years 2011-12, 2012-13 and 2013-14 will be \$17.92 per month (\$215.00 per year), \$19.25 per month (\$231.00 per year), and \$20.58 per month (\$247.00 per year) respectively.

The District's Board of Directors (the mayor of Santa Clarita, a second member of the Santa Clarita City Council, and the chairperson of the County Board of Supervisors) will hold a public hearing on April 14, 2011, to consider public input on the proposed sewer service charge rates. The hearing will be held at 6:00 p.m. in the Santa Clarita City Council Chambers, 23920 Valencia Boulevard, Santa Clarita. Written comments may also be submitted through the mail to the District at P.O. Box 4000, Whittier, CA 90607-4000 and must be received prior to the hearing. You may also call Districts staff at (888) 808-1118 or (562) 908-4871 with questions and comments.

Additionally, in order to provide you with more information and to answer questions you may have, information meetings will be held in the Santa Clarita City Hall on March 23 (7 pm), March 29 (1 pm and 7 pm), and April 4 (7 pm). Presentations will also be made at the Castaic Area Town Council Meeting (March 16) and the West Ranch Town Council meeting (April 6). Lastly, walking tours of the Valencia WRP will be held on March 19 (9 am and 11 am). Please see the reverse side of this notice for more details on signing up for the tour.

Si usted desea recibir este aviso y más información en español, por favor llame a los Distritos Sanitarios al teléfono (888) 808-1118 o al (562) 908-4871. También nos puede visitar en nuestra página en el Internet [www.lacsd.org](http://www.lacsd.org).

COUNTY SANITATION DISTRICTS OF  
LOS ANGELES COUNTY  
P.O. BOX 4000  
WHITTIER, CA 90607-4000

Proposition 218  
Notice Regarding  
Proposed Sewer  
Service Charges

SMITH, JOHN AND MARY  
12345 DEARBORN ST  
NORTH HILLS, CA 91343

We know you probably have questions and we've tried to answer some general ones below. But if you have other questions or want more information, you can call us toll free at (888) 808-1118 or (562) 908-4871 between 7:30 am and 4:00 pm Monday through Friday, contact us by e-mail at [RATES@lacsds.org](mailto:RATES@lacsds.org), or write to us at P.O. Box 4000, Whittier, CA 90607-4000. Please include your name, address, telephone number, and Assessor's Parcel Number (shown on the reverse side) with any correspondence to help us promptly respond.

#### QUESTIONS & ANSWERS

##### **Will any portion of the proposed rate increase be used for chlorides removal and/or Ventura County facilities?**

No. None of this increase will fund development of facilities to control chlorides in the Santa Clara River, nor facilities to improve groundwater in Ventura County. No rate increases to support chloride-related facilities will be proposed until an acceptable plan is developed.

##### **How can I obtain more information?**

In addition to directly contacting us, you can visit our Internet web site ([www.lacsds.org](http://www.lacsds.org)), which contains general information about the Sanitation Districts, specific information about the service charge program, and information about the issues impacting the Santa Clarita Valley Sanitation District's revenue programs. Also, information meetings will be held on March 23, 2011 (7 pm), March 29 (1 and 7 pm), and April 4 (7 pm) in the Santa Clarita City Hall. Information will also be presented at the Castaic Area Town Council meeting on March 16 and at the West Ranch Town Council meeting on April 6. In addition, walking tours of the Valencia Water Reclamation Plant (VWRP) will be given on March 19 at 9 am and 11 am. Due to safety considerations each tour will be limited to 30 people, so you must make a reservation prior to attending. Please RSVP for a tour by phone at (562) 908-4288 extension 2300 or by e-mail at [nmadigan@lacsds.org](mailto:nmadigan@lacsds.org). If more people than can be accommodated sign up, additional tours will be scheduled. Tours will start at the VWRP at 28185 The Old Road, Valencia, CA 91355. For non-tour related questions, please call (888) 808-1118 or (562) 908-4871.

##### **What is a service charge? How is it calculated?**

The cost of operating, maintaining, and upgrading the sewerage system is distributed proportionately among all users of the system based on their wastewater discharge. The resulting charge, after taking all other sources of revenue into consideration, is called the service charge. Although the service charge is a fee for services rendered and not a tax, it is collected annually on the property tax bill as the simplest and most cost effective means of collection. The wastewater discharge for a given parcel is estimated based on the type and size of the structures located on the parcel. For residential properties, use is based on the number of dwelling units (e.g., single-family home, apartments, etc.). For commercial parcels, use is primarily based on square footage although other measures may be used in limited cases (e.g., rooms in hotels). Information on the type and size of your property is obtained from the County Assessor's Office, and the service charge is calculated based on established rates for that type of property.

##### **I use a septic system. Do I need to pay this charge?**

No. Parcels that use a septic system are exempt from the District's service charges. If you are on a septic system and you received this notice, please send the District a completed Claim for Service Charge Refund and proof that your property is on a septic system to the District at P.O. Box 4000, Whittier, CA 90607-4000. The claim form is available on our web site ([www.lacsds.org](http://www.lacsds.org)) or you can call us and we'll mail you a copy. Once we receive your completed form, we'll do the rest to make sure you don't get charged in the future and to refund any charges you've paid in the past.

##### **My water use is low. Can my service charge be reduced?**

Single-family homes that have a substantially lower water consumption rate than an average single-family home may be eligible for a reduced charge. If your water usage is less than or equal to 123 hcf (hundred cubic feet) per year (252 gallons per day), you may qualify. If you believe you qualify, please send a completed Claim Form, Water Consumption Form for Rebate, and copies of your water bills showing your water consumption in the last completed fiscal year (July 1st through June 30th period) to the address above. We will review and notify you of your qualification. Once you qualify, the reduced rate will stay in effect until you sell your property. You may download these forms from the Districts' Internet web site ([www.lacsds.org](http://www.lacsds.org)) or you may contact the District and we will mail you a copy.

##### **Do existing users of the system subsidize new users?**

No. New users, as well as users who significantly increase their use of the system, pay a one time fee called the connection fee. These monies are used to pay for the expansion of facilities needed to treat the new wastewater. Once they are connected to the sewerage system, the new users will begin to pay the annual service charge.

##### **What have you done to control the costs that impact the service charge?**

The District continues to strive for cost-efficient operation and maintenance of the sewerage system. Through a joint agreement with the other sanitation districts in Los Angeles County that provides a single administrative and management staff, the District only pays a fraction of the administrative costs it would otherwise encounter with a staff dedicated exclusively to the District affairs. When cash flow projections indicate a financial need for large project development and funding, the District will continue to pursue low-interest loans from the State and/or sell bonds in order to spread the project cost over a greater number of years.

##### **¿Acerca de qué es este aviso?**

El Distrito Sanitario Santa Clarita Valley del Condado de Los Angeles propone aumentar la tasa de Cargo al Servicio de alcantarillado y tratamiento de aguas residuales. Este aviso discute las razones y la cantidad del aumento propuesto. Además, se le notifica que se conducirán Audiencias Pública el 14 de Abril del 2011 a la 6:00 pm en la Cámara de Consejo de la Ciudad de Santa Clarita, que se encuentra localizada en la siguiente dirección 23920 Valencia Boulevard, para considerar los aumentos que se proponen. Si usted recibió este aviso, los aumentos propuestos de Cargo de Servicio son aplicables a su propiedad. ¡Favor de notar que ESTO NO ES UN COBRO! ¡No mande dinero!

# **ATTACHMENT 80**



## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

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### Frequently Asked Questions.

- What is a Sanitation District?
- What services does the Sanitation District provide?
- What is a service charge? How is it calculated?
- My water use is low. Can my service charge be reduced?
- I use a septic system. Do I need to pay a service charge?
- Do existing users of the system subsidize new users?
- What have you done to control the costs that impact the service charge?
- What is the Proposition 218 process?
- What will the proposed Service Charge Increase pay for?
- Is outside funding available to reduce the cost to the community?
- How can we protest the proposed rate increase?
- What is the cost to businesses?
- Are any public agencies exempt from the connections fees and service charge?
- Why do we need to remove chloride from the Santa Clara River?
- Who is the Los Angeles Regional Water Quality Control Board?
- How can the Los Angeles Regional Water Quality Control Board require us to remove chloride?
- What is the State standard for chloride for the Santa Clara River?
- What is the scientific basis for the chloride Standard?
- Where can I get more information on the studies supporting the chloride Standard?
- What are the sources of chloride in the treatment plant discharges?
- What are the chloride levels in the imported water?
- What are other communities along the Santa Clara River doing?
- What is the Alternative Compliance Plan?
- Didn't removing Automatic Water Softeners through Measure S solve the problem?
- Won't the new Delta water conveyance project solve the problem?
- Can we try to recycle more of the water?
- Why can't we clean the source water before it goes to residents?
- When can the Los Angeles Regional Water Quality Control Board impose fines?

### What is a Sanitation District?

A Sanitation District is a special district charged with the responsibility of collecting, treating, and disposing of wastewater (sewage) and industrial waste. It is a public agency, separate from county or city government, established under the State Health and Safety Code to provide sewerage service to a specific geographic area.

### What services does the Sanitation District provide?

The sewage generated on your property is collected in local sewers. These local collector sewers then discharge the sewage into trunk sewers owned by the Sanitation District, which in turn convey it to wastewater treatment facilities. At the wastewater treatment facilities, owned and operated by the Sanitation District, the sewage is treated to a level by which the water can be discharged to receiving waters, i.e. the Santa Clara River.

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

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### **What is a service charge? How is it calculated?**

The cost of operating, maintaining, and upgrading the sewerage system is distributed proportionately among all users of the system based on their wastewater discharge. The resulting charge, after taking all other sources of revenue into consideration, is called the service charge. Although the service charge is a fee for services rendered and not a tax, it is collected annually on the property tax bill as the simplest and most cost effective means of collection. The wastewater discharge for a given parcel is estimated based on the type and size of the structures located on the parcel. For residential properties, use is based on the number of dwelling units (e.g., single-family home, apartments, etc.). For commercial parcels, use is primarily based on square footage although other measures may be used in limited cases (e.g., rooms in hotels). Information on the type and size of your property is obtained from the County Assessor's Office, and the service charge is calculated based on established rates for that type of property.

### **My water use is low. Can my service charge be reduced?**

The District offers a rebate program on the sewer service charge for parcels that have low water usage. Details of this program, including claim forms, are available by clicking [here](#).

### **I use a septic system. Do I need to pay a service charge?**

No. Parcels that use a septic system are exempt from the District's service charges. If you are on a septic system and you received this notice, please send the District a completed *Claim for Service Charge Refund* and proof that your property is on septic system. Once we receive your completed form, we'll do the rest to make sure you don't get charged in the future and to refund any charges you've paid in the past.

### **Do existing users of the system subsidize new users?**

No. New users, as well as users who significantly increase their use of the system, pay a one time fee called the connection fee. These monies are used to pay for the expansion of facilities needed to treat the new wastewater. Once they are connected to the sewerage system, the new users will begin to pay the annual service charge.

### **What have you done to control the costs that impact the service charge?**

The District continues to strive for cost-efficient operation and maintenance of the sewerage system. Through a joint agreement with the other sanitation districts in Los Angeles County that provides a single administrative and management staff, the District only pays a fraction of the administrative costs it would otherwise encounter with a staff dedicated exclusively to the District affairs. When cash flow projections indicate a financial need for large project development and funding, the District will continue to pursue low-interest loans from the State and/or sell bonds in order to spread the project cost over a greater number of years. The Sanitation District also has aggressively pursued outside sources of federal and state funding for such projects to minimize the financial impact to ratepayers.

SANTA CLARITA VALLEY SANITATION DISTRICT  
PROPOSED SEWER SERVICE CHARGE RATE INCREASE

**What is the Proposition 218 process?**

Implementation of rates under Prop. 218 is a multi-step process involving individual noticing, a public hearing, and then introduction and adoption of the implementing ordinances. See question M-4 of the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting* for detailed information on the process.

**What will the proposed Service Charge Increase pay for?**

Approximately half of the proposed increase is for the continued operation of the existing treatment facilities. The other half is for planning and design efforts related to the facilities that are needed to comply with state-mandated chloride limits.

**Is outside funding available to reduce the cost to the community?**

In response to the Sanitation District Board's direction in 2009 and in order to minimize the impact of implementing the Alternative Compliance Plan to the ratepayers, the Sanitation District has aggressively pursued outside sources of federal and state funding. Over the long-term, the Sanitation District estimates that up to \$10,000,000 in state and federal funds would be available for implementation of the Alternative Compliance Plan by 2020. See question W-11 of the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting* for more detailed information on the status of the Sanitation District's efforts to procure state and federal funding.

**How can we protest the proposed rate increase?**

In accordance with Proposition 218, residents can submit written protests to the proposed service charge rate increase. Information is provided on the Prop. 218 notice that has been sent to every property owner within the Sanitation District service area. Under the provisions of Prop. 218, the Sanitation District Board of Directors can take no action on the proposed rates if written protests are submitted by more than 50% of the owners of the impacted parcels.

If sufficient protests are not submitted, then the Sanitation District Board of Directors, at a public hearing, will consider the proposal along with all of the public input.

**What is the cost to businesses?**

All users within the Sanitation District's service area pay a proportional share of the cost for treatment of the wastewater based on the quantity and quality of their contribution relative to a single family home. New businesses connecting to the sewer system are required to pay a connection fee based on the type and size (square footage) of the business. For a new 1,000 square foot restaurant, the current connection fee would be \$26,182 and the service charge would be \$1,763 per year, under the new proposed rates, the connection fee would be \$37,895 and the service charge would be \$2,623 per year in FY 13-14, at the end of the proposed four-year rate increase period.

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

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### **Are any public agencies exempt from the connections fees and service charge?**

Local government owned parcels that are located within the District, used solely for governmental as opposed to proprietary functions, and not subject to wastewater treatment surcharges pursuant to the wastewater ordinance are exempt from paying service charges and connection fees. Public schools, governmental administration buildings (e.g. City Hall), local parks and community centers are typically considered to be local government parcels and are exempt.

Government owned parcels that are used for a proprietary interest (i.e. rental properties or redeveloped commercial lots) or for the benefit of a specific group or single class of people, are not exempt. Hospitals – even publicly operated - are not exempt. Hospitals pay for sewer service through the District's surcharge program based on number of beds and/or size of facility.

### **Why do we need to remove chloride from the Santa Clara River?**

In 1978, the Los Angeles Regional Water Quality Control Board (RWQCB) established a 100 milligram per liter (mg/L) standard for chloride for the Santa Clara River to protect the agricultural supply use and to reflect the background water quality conditions at that time. Subsequently, in 1989, discharge permits were adopted for the Saugus and Valencia Water Reclamation Plants that included discharge limits for chloride at 100 mg/L, which were unattainable with the existing treatment system. In 2002, because the Santa Clara River was not attaining water quality standards, the RWQCB, as required by the Clean Water Act, adopted a Total Maximum Daily Load prescribing a compliance schedule for the Saugus and Valencia Water Reclamation Plants to achieve a 100 mg/L discharge limit.

### **Who is the Los Angeles Regional Water Quality Control Board?**

The Los Angeles Regional Water Quality Control Board (RWQCB), one of nine RWQCB's within the state, implements the requirements of the Clean Water Act and state law for our local waters. They do this through issuing discharge permits and implementing Total Maximum Daily Loads for impaired water bodies. Additional information on the RWQCB is available online at <http://www.waterboards.ca.gov/losangeles>.

### **How can the Los Angeles Regional Water Quality Control Board require us to remove chloride?**

The Santa Clara River was listed as impaired for chloride, so the Los Angeles Regional Water Quality Control Board, in 2002, adopted a Total Maximum Daily Load prescribing a compliance schedule to achieve 100 mg/L in the river and treatment plant discharges. For more details, see response to question W-1 of the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*.

### **What is the State standard for chloride for the Santa Clara River?**

The original water quality objective (standard) for chloride in the Santa Clara River is 100 milligrams per liter (mg/L). In December 2008, the Los Angeles Regional Water Quality Control Board (RWQCB) was willing to conditionally revise the chloride limits, contingent upon the Alternative Compliance Plan project being undertaken. The conditional revised standards are 150 mg/L at the treatment plant discharges and 117 mg/L at the Los Angeles / Ventura County line.

SANTA CLARITA VALLEY SANITATION DISTRICT  
 PROPOSED SEWER SERVICE CHARGE RATE INCREASE

The RWQCB also granted conditional drought relief in the form of a more relaxed standard of 130 mg/L at the Los Angeles / Ventura County line during periods of critically dry weather. These relaxed limits would provide regulatory relief to reduce the cost of compliance from over \$500 million (for large scale advanced treatment to meet original standards) to \$250 million (for the Alternative Compliance Plan facilities to meet relaxed standards).

The Sanitation District is seeking additional relief to raise the 130 mg/L river limit during drought to 150 mg/L, which would further reduce the cost of complying with the State standards to \$209 million.

**What is the scientific basis for the chloride Standard?**

The Agricultural Chloride Threshold Study identified a conservative protective range of 100 – 117 milligrams per liter (mg/L) of chloride. This protective range was affirmed by an independent Technical Advisor Panel comprised experts in the field, indicating the 117 mg/L number came from a study characterized as the “most rigorous effort in developing irrigation water guidelines in crops.” These experts also found that water quality that does not impact avocados is not likely to impact strawberry or nursery crops.

**Where can I get more information on the studies supporting the chloride Standard?**

Additional information on the chloride Total Maximum Daily Load and reports from the special studies conducted as part of the chloride Total Maximum Daily Load are available on the project website, [www.santaclarariver.org](http://www.santaclarariver.org).

**What are the sources of chloride in the treatment plant discharges?**

The water supply that comes from local groundwater and imported water stored in Castaic Lake has chloride levels currently near 80 milligrams per liter (mg/L). Residents who consume this water for indoor uses (toilets, showers, dishwashing, cooking, washing clothes, remaining automatic water softeners, etc.) and discharge to the sewer add about 28 mg/L of chloride, or 22% of the total chloride in treatment plant discharges. Commercial and Industrial sectors who consume this water and then discharge to the sewer add 10 mg/l of chloride. When wastewater is treated, it must be adequately disinfected with chlorine before discharge to the river, which adds another 12 mg/L to the treatment plant discharges.

<u>Sector</u>	<u>Chloride Contribution</u>	<u>% Contribution</u>
Water Supply (groundwater and imported surface water)	80 mg/L	61%
Residential	28 mg/L	22%
Treatment Plant (Disinfection)	12 mg/L	9%
Commercial & Industrial	10 mg/L	8%
<b>Total</b>	<b>130 mg/L</b>	<b>100%</b>

In total the municipal use of water (i.e., the residential, commercial, industrial, and treatment plant disinfection contribution) adds 50 mg/L of chloride to the chloride already in the water supply. On a per sewage unit (equal to the discharge from a single family home) basis, Residential and

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

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Commercial and Industrial users contribute approximately the same amount of chloride to wastewater. All users within the Sanitation District's service area pay a proportional share of the cost for treatment of the wastewater based on the quantity and quality of their contribution relative to a single family home.

### **What are the chloride levels in the imported water?**

Chloride levels in water coming from the State Water Project vary depending on hydrological conditions in Northern California and have historically fluctuated from 50 milligrams per liter (mg/L) to over 100 mg/L, and during extreme drought have gone over 140 mg/L. Castaic Lake Water Agency provides treatment of the state water, adding a small amount of chloride (about 2-3 mg/L), before it is delivered to local water purveyors (users).

While chloride levels in the imported water brought into the Santa Clarita Valley do contribute to the salinity problems, imported water would actually meet the chloride standards for discharge to the river except in periods of severe drought. Approximately 40% of the chloride in treatment plant discharges is added by the Santa Clarita Valley community through municipal uses. The ratepayers of the Santa Clarita Valley have taken great steps to reduce their chloride burden by removing automatic water softeners. Further reductions through source control are likely not practical and therefore additional treatment to remove the chloride added by municipal uses is necessary. Under federal law, the Santa Clarita Valley ratepayers must pay to reduce a portion of the chloride in treatment plant discharges originating from their use of the water.

### **What are other communities along the Santa Clara River doing?**

See question W-5 of the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*.

### **What is the Alternative Compliance Plan?**

The Alternative Compliance Plan is a greener, watershed-based alternative approach to reduce chloride levels in the Santa Clara River and underlying groundwater basins, as compared to large scale advanced treatment facilities needed to comply with the original standard. The major elements of the Alternative Compliance Plan include: (1) self-regenerating water softener removals, (2) a small-scale advanced treatment plant to remove salt at the Valencia Water Reclamation Plant, (3) regulatory relief to expand water recycling, (4) salt management facilities to mitigate and protect groundwater resources from salt build-up, and (5) consideration of other facility upgrades or mitigation measures, as necessary, to reduce chloride levels in the river. For additional information, see the document *Background Information on Need for Service Charge Rate Increase* and question S-9 of the document *Response to Questions Raised at the May 25, 2010 City of Santa Clarita Council Meeting*.

### **Didn't removing Automatic Water Softeners through Measure S solve the problem?**

The impact of self-regenerating water softeners was evaluated and it was determined that approximately one third of the overall chloride loading in the treated wastewater could be eliminated through the removal of these units, reducing rate increases tied to wastewater

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

treatment. Santa Clarita Valley residents who have removed their Automatic Water Softeners and passed Measure S (the 2008 ballot initiative requiring the removal of all Automatic Water Softeners in the community) must be commended for their role in keeping service charge rates as low as possible, saving over \$70 million in project facility costs. Although the Automatic Water Softener ban made major strides in lowering chloride levels in the treatment plant discharge, it was not sufficient to bring the plants into full compliance. Full compliance, without the need for advanced treatment, would have required significantly higher chloride limits during drought conditions, which the Sanitation District fought so hard to get, but that the Los Angeles Regional Water Quality Control Board was not willing to grant.

### **Won't the new Delta water conveyance project solve the problem?**

With respect to fixing the State Water Project's delta conveyance facilities, the Sanitation District has no jurisdiction over the State Water Project. There is no guarantee as to the timing of the long-proposed peripheral canal to allow the Sanitation District to comply with the chloride discharge limits and the chloride Total Maximum Daily Load schedule of 2015. Unless there is a guarantee that the long-awaited fix to the State Water Project would be built in a similar timeframe and would result in compliance, it is difficult to see how the Los Angeles Regional Water Quality Control Board (RWQCB) would accept it as a compliance alternative. As such, the mere prospect that it may be built does not preclude the need for the Sanitation District to comply with the RWQCB's requirements by May 2015.

### **Can we try to recycle more of the water?**

Recycling of all the treatment plant effluent produced by the Sanitation District would leave the river substantially drier and adversely affect the environmental and social value of the river to the community, and would likely not be permitted by the Los Angeles Regional Water Quality Control Board, State Water Resources Control Board, the California Department of Fish & Game, or the U.S. Fish & Wildlife Service due to the threatened & endangered species that may occur in the river or in the adjacent riparian habitat.

Further, recycling 100% of the treatment plants' effluent is not a viable option because there is not enough demand for recycled water all of the time, particularly during cold and rainy winter weather, resulting in the need to still discharge significant amounts of water to river and meet the standard. In fact, Castaic Lake Water Agency's regional recycled water master plan identifies demand for only approximately 50% of the recycled water to be produced by the Sanitation District, with the distribution system planned to be built over the next 20 years. Currently only 2% of the available treatment plant discharges are recycled.

### **Why can't we clean the source water before it goes to residents?**

Treating the water supply was thought to be a more expensive option because only a fraction of the imported water is used for indoor residential, industrial and commercial use which ends up in the local sewer system, the larger portion of the potable water supply is used for outdoor irrigation, which does not reach to the sewer system. See response to Speaker 11 of the document *Response to Questions from June 2, 2010 Board Hearing*.

## SANTA CLARITA VALLEY SANITATION DISTRICT PROPOSED SEWER SERVICE CHARGE RATE INCREASE

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### **When can the Los Angeles Regional Water Quality Control Board impose fines?**

The Los Angeles Regional Water Quality Control Board is authorized to take enforcement action against the Sanitation District if and when the Sanitation District is in violation of its permit requirements. The current compliance schedule requires completion of the Alternative Compliance Plan project by 2015. The permit also requires that the District undertake interim activities, including planning and design, commencing in November 2010.

# **ATTACHMENT 81**





## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400  
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www.lacsd.org

STEPHEN R. MAGUIN  
*Chief Engineer and General Manager*

October 14, 2010

Mr. Samuel Unger, PE  
Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Dear Mr. Unger:

### Upper Santa Clara River Chloride TMDL Implementation

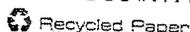
The Santa Clarita Valley Sanitation District (SCVSD) is in receipt of your letter dated September 29, 2010 requesting an update on SCVSD's implementation of the Upper Santa Clara River Chloride TMDL, and also requesting effluent, receiving water, and groundwater chloride data for the past 12 months.

With regard to the status of several of the specific tasks for which you requested an update, as you are aware, ratepayers in the SCVSD have expressed very strong concerns at many public meetings about the justification for, and the cost of, the chloride TMDL compliance programs proposed by SCVSD staff. In light of the very strong public opposition and the current deep economic recession, the Board of Directors of the SCVSD declined to approve the large service charge rate increases that were proposed by District staff to implement the compliance programs in May, 2009 and again in July, 2010, pending further analysis of an alternative, more cost-effective means of compliance.

We have made significant progress on an internal evaluation of alternative project components and will soon be ready to brief the SCVSD Board of Directors, and to begin working with your office and stakeholders to develop a solution that will allow us to move forward to compliance.

The current status of each specified TMDL implementation task identified in your letter is shown on Attachment I.

DOC #1714753



Mr. Samuel Unger, PE

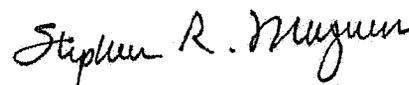
-2-

October 14, 2010

The requested effluent, receiving water and groundwater chloride data for the past 12 months, with an accompanying analysis, are enclosed as Attachment 2.

I hope this satisfactorily addresses your request for an update on Upper Santa Clarita River Chloride TMDL implementation status. Please contact me directly or have staff contact Phil Friess at 562-908-4288, extension 2501 or at [pfriess@lacsdsd.org](mailto:pfriess@lacsdsd.org) if you have any questions.

Very truly yours,



Stephen R. Maguin

SRM:PLF:tdm  
Attachments

cc: SCVSD Directors

ATTACHMENT 1

Upper Santa Clara River Chloride TMDL Compliance Schedule Task Status

<u>Description</u>	<u>Task Number</u>	<u>Status</u>
Chloride, TDS and Sulfate Trend Monitoring Plan	11	Completed and hand delivered to the Board offices on May 4, 2009 (see attached transmittal letter)
Preliminary planning and feasibility analysis	15.a) (3)	Submitted to Regional Board in annual Status Report of Activities dated May 6, 2010. Planning for new TMDL compliance proposal now underway.
Project Notice of Preparation/ Notice of Intent	15.a) (4)	Specified tasks are on hold pending identification of a more cost-effective project.
Draft Facilities Plan and Programmatic Environmental Impact Report	15.a) (5)	
Public review and comment period For Draft Environmental Impact Report	15.a) (6)	
Final Facilities Plan and Programmatic Environmental Impact Report	15.a) (7)	
Public review and certification of Final Environmental Impact Report	15.a) (8)	
Notice of Determination and Record of Decision	15.a) (9)	
Schedule of Planning Tasks and Subtasks	15.b)	To be updated in next semi-annual progress report



# COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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www.lacsd.org

STEPHEN R. MAGUIN  
Chief Engineer and General Manager

May 4, 2009  
File No. 31-370.40.4A

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2009 MAY 4 PM 2 53  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

Ms. Tracy Egoscue, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

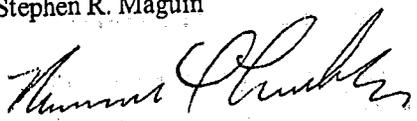
Dear Ms. Egoscue:

### Submittal of Upper Santa Clara River Chloride TMDL Task 11 Report

The Santa Clarita Valley Sanitation District of Los Angeles County (Sanitation District) submits the enclosed report, *Upper Santa Clara River Chloride TMDL Task 11 Report: Surface Water/ Groundwater Monitoring Plan - Santa Clara River Reaches 4b, 5, and 6*, in compliance with requirements of the Upper Santa Clara River Chloride TMDL. Resolution R4-2008-012, adopted on December 11, 2008, requires the Sanitation District to submit a monitoring plan to conduct chloride, TDS, and sulfate trend monitoring to the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) by May 04, 2009.

If you have any questions or need further information, please feel free to contact the undersigned at the above listed telephone number, extension 2502.

Very truly yours,  
Stephen R. Maguin

  
Ray Tremblay  
Assistant Department Head  
Technical Services

RT:FG:nm  
Enclosure

cc: Samuel Unger, LARWQCB  
Jenny Newman, LARWQCB

DOC# 1258708



**ATTACHMENT 2**  
 Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
 2009 – 2010

The Regional Water Quality Control Board – Los Angeles Region has requested a compilation and analysis of the past 12 months of chloride in effluent, receiving water, and groundwater data.

**Effluent Chloride**

The Sanitation District reports monthly chloride levels for the Saugus and Valencia Water Reclamation Plant (WRP) final effluent. A significant portion of the chloride in the WRP final effluent is attributable to chloride levels in the local water supply, which is approximately 55% imported State Water Project (SWP) water and 45% local groundwater. Chloride data for the SWP water is provided by Castaic Lake Water Agency and chloride data for local groundwater is provided by Valencia Water Company, Newhall County Water District, and Santa Clarita Water Division. The Sanitation District estimates a combined chloride level for the blended local water supply based on this information. The following Table 1 and Figure 1 present the WRP final effluent chloride and estimated local water supply chloride levels for the years 2009 and 2010.

**Table 1**  
**SCV Water Supply and WRP Chloride levels 2009-2010**

Date	Estimated Water Supply Chloride (mg/L)	Valencia WRP FE Cl (mg/L)	Saugus WRP FE Cl (mg/L)
Jan-09	79	143	145
Feb-09	79	151	147
Mar-09	80	134	145
Apr-09	77	144	147
May-09	78	138	144
Jun-09	77	137	140
Jul-09	76	139	141
Aug-09	76	138	138
Sep-09	76	131	131
Oct-09	77	130	131
Nov-09	78	129	128
Dec-09	78	132	132
Jan-10	80	129	132
Feb-10	79	130	141
Mar-10	79	126	129
Apr-10	78	127	131
May-10	77	125	121
Jun-10	77	123	124
Jul-10	76	130	130
Aug-10	76	133	123
Sep-10	74	135	127

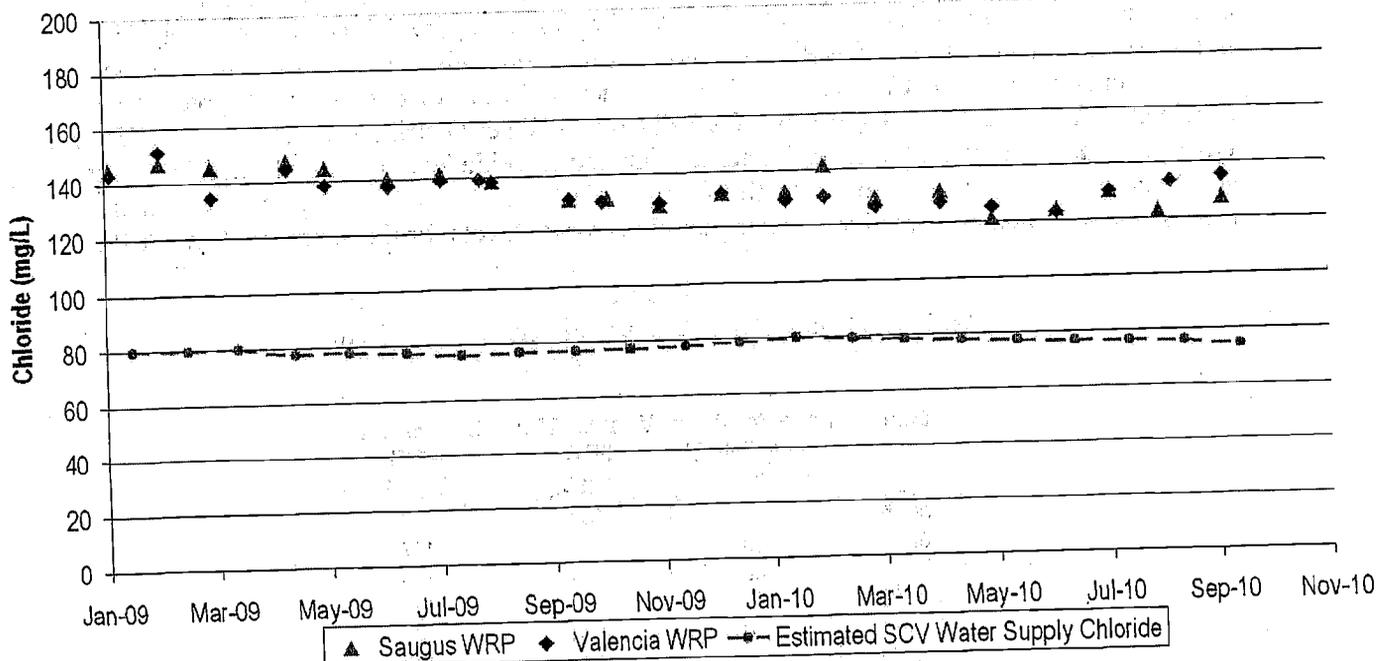
Chloride levels in the Saugus and Valencia WRP final effluent have decreased from an average of 139 mg/L at the Saugus WRP and 137 at the Valencia WRP mg/L in 2009 down to an average of 129 mg/L at both the Saugus and Valencia WRPs in 2010. During the same period, the estimated water supply chloride remained relatively constant, from an annual average of 78 mg/L in 2009 to an average of 77 mg/L in 2010. Therefore, the Sanitation District believes the main reason for this decrease in final effluent chloride from 2009 to 2010 is the removal of Automatic Water Softeners from the community pursuant to the 2008 Santa Clarita Valley Chloride

DOC # 1706257

**ATTACHMENT 2**  
 Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
 2009 – 2010

Reduction Ordinance, which was approved by voters in the Santa Clara Valley in 2008 and became effective January 1, 2009.

**Figure 1**  
**Saugus and Valencia WRP Effluent and SCV Water Supply Chloride**



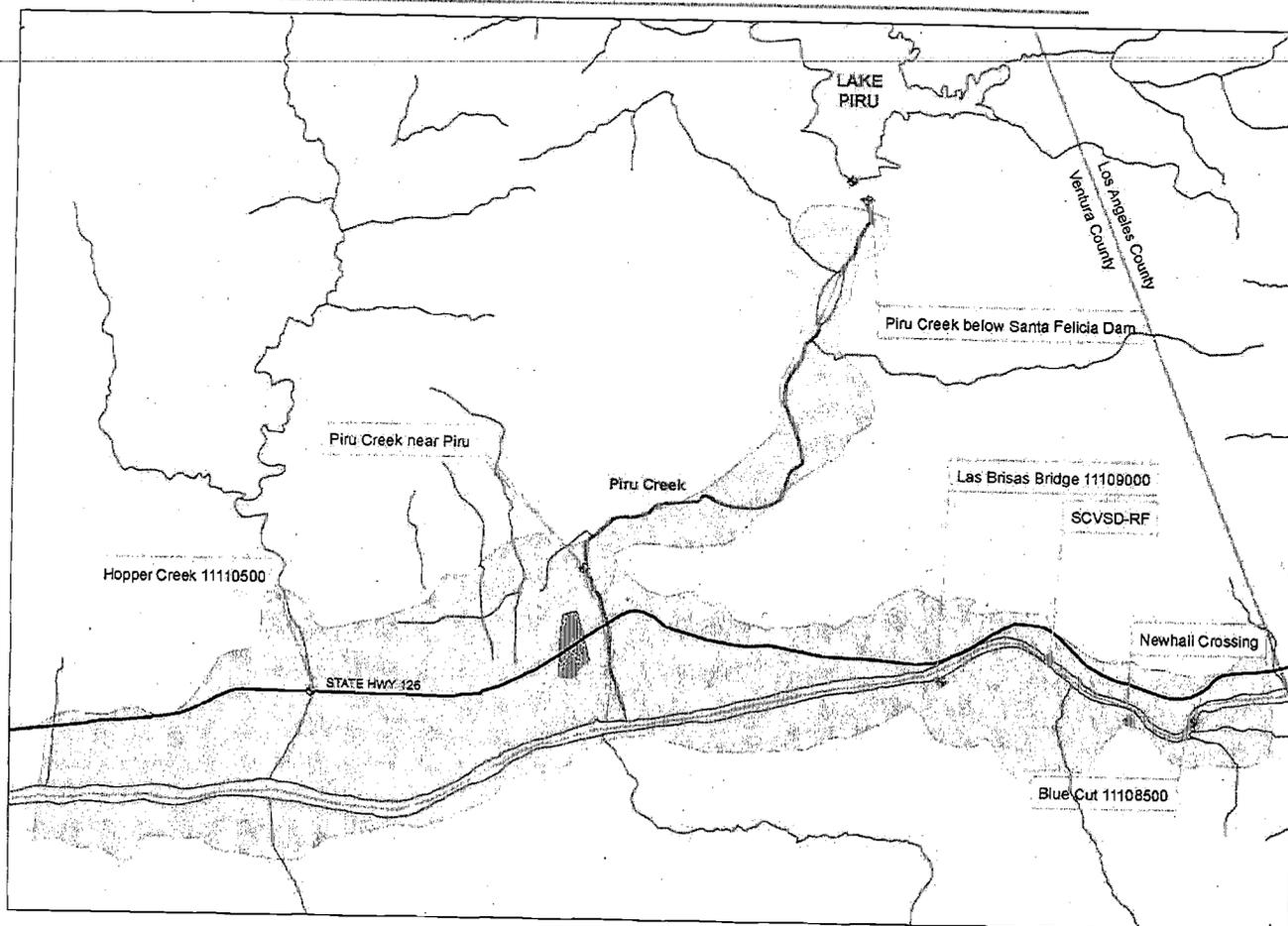
**Receiving Water Chloride**

Historically, surface water monitoring was conducted at the USGS Station 11108500 Santa Clara River at L.A.-Ventura Co. Line (Blue Cut) until approximately 2003 when the gaging station was discontinued and relocated to the Las Brisas Bridge gaging station. Since approximately 2003, UWCD established a new monitoring station and conducts monthly surface water monitoring in the Santa Clara River at Newhall Crossing. The SCVSD has also conducted monthly monitoring at its receiving water monitoring station RF, located approximately ¼ mile downstream of Blue Cut (Figure 2).

Chloride levels in the Santa Clara River near the Los Angeles/Ventura County line since 2009, represented by the average of data from the Newhall Crossing and RF monitoring stations, are presented in Table 2 and Figure 3. As shown, chloride levels in surface water near the Los Angeles – Ventura County line vary seasonally, with higher chloride levels during the summer periods. Lower chloride levels observed during winter months coincide with increased rainfall and reduced evapotranspiration during the period and releases from Castaic Reservoir according to United Water Conservation District.

**ATTACHMENT 2**  
 Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
 2009 – 2010

**Figure 2**  
 Santa Clara River Receiving Water Monitoring Locations – Ventura County

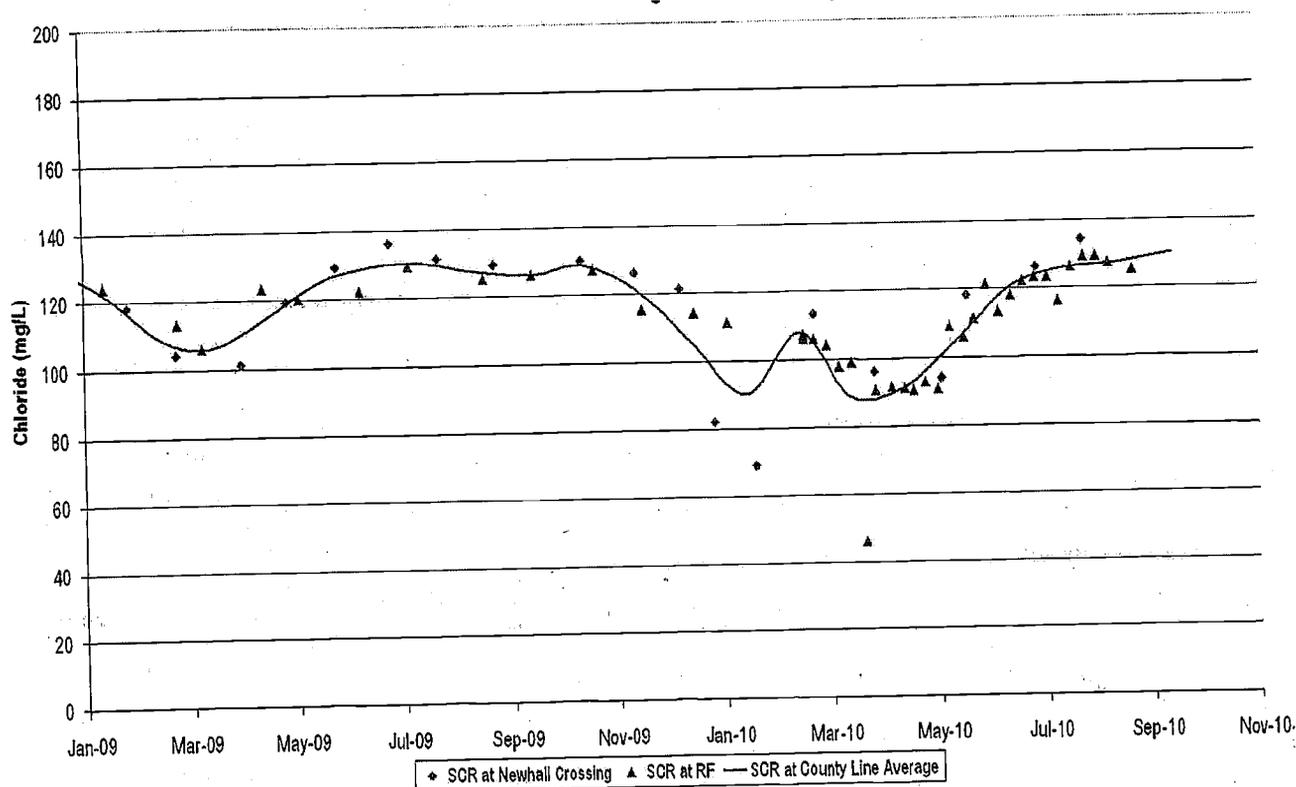


**Table 2**  
 SCR Receiving Water Chloride near LA/Ventura County Line

Date	2009 Santa Clara River near LA/Ventura County Line (mg/L)	Date	2010 Santa Clara River near LA/Ventura County Line (mg/L)
Jan-09	121	Jan-10	90
Feb-09	109	Feb-10	108
Mar-09	106	Mar-10	89
Apr-09	114	Apr-10	91
May-09	125	May-10	105
Jun-09	129	Jun-10	121
Jul-09	130	Jul-10	126
Aug-09	127	Aug-10	127
Sep-09	126	Sep-10	130
Oct-09	129		
Nov-09	121		
Dec-09	106		

**ATTACHMENT 2**  
 Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
 2009 – 2010

**Figure 3**  
 Santa Clara River Receiving Water Chloride near LA/Ventura County Line



**Groundwater Chloride**

*East Piru Basin*

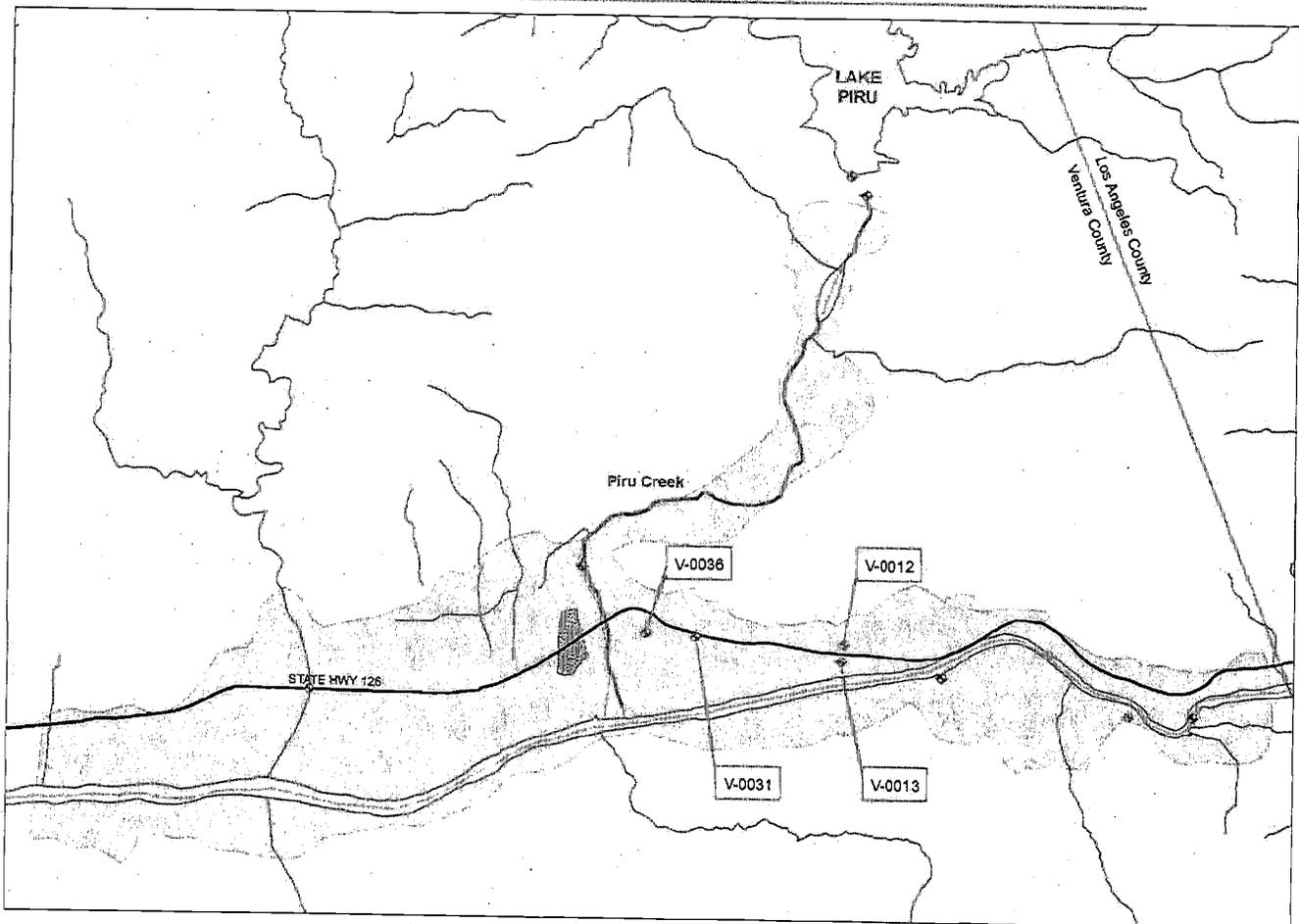
There are a limited number of groundwater supply wells, used primarily for agricultural supply, located in the eastern portion of the Piru Subbasin along Reach 4B of the SCR. These wells extract groundwater from the San Pedro Formation and from the younger river alluvium of the eastern portion of the Piru Subbasin (Figure 4). Groundwater quality data is currently collected on a semi-annual basis by the UWCD under agreement with the well owner and shown on Table 3 and Figure 5. Although data was requested for only the previous 12 months, data over a longer period of time is provided due to the limited monitoring data available from UWCD. As shown in the figure, chloride levels vary between wells, with some wells decreasing slightly over the last 4-5 years (V-0036), while others are increasing over a similar period (V-0012). It should be noted that WRP discharge levels over that period have decreased from approximately 195 mg/L in 2004 to 129 mg/L in 2010.

The Sanitation District has proposed quarterly groundwater monitoring in the East Piru Basin in the Upper Santa Clara River Chloride TMDL Task 11 Report: Surface Water/Groundwater Sampling and Monitoring Plan, submitted to the Regional Board. The Sanitation District will

**ATTACHMENT 2**  
Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
2009 – 2010

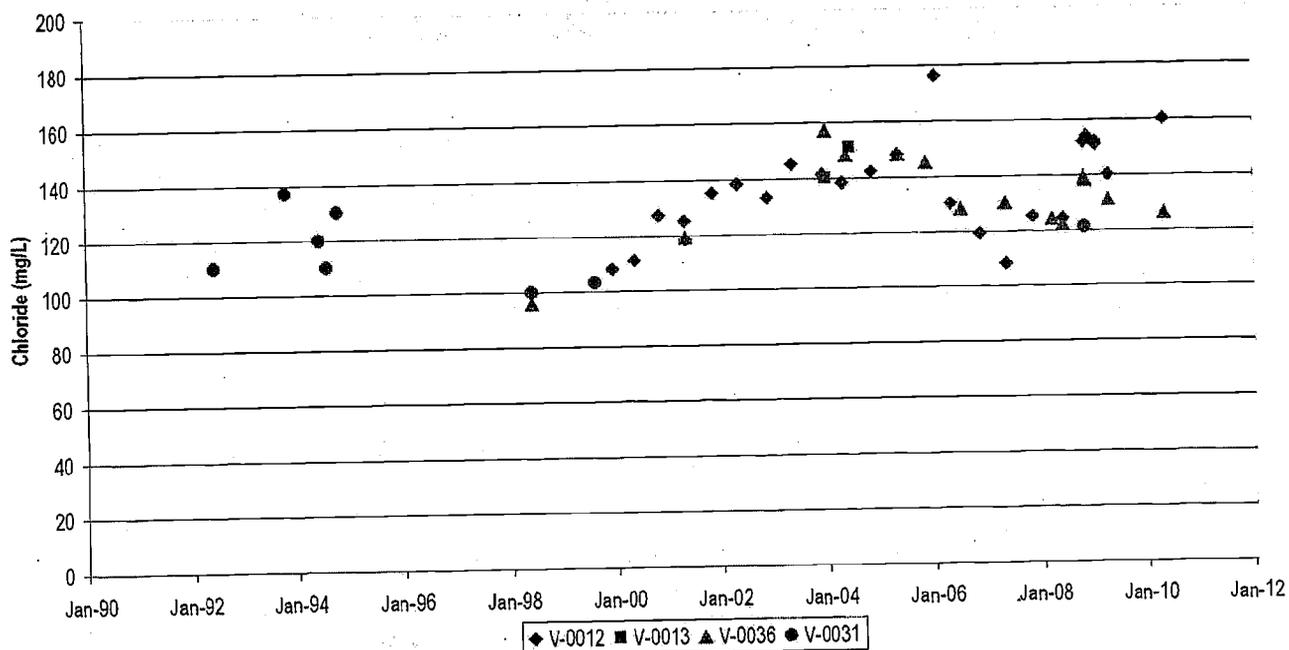
implement the plan and begin working on the necessary access agreements with the well owners upon approval of the plan by the Regional Board.

**Figure 4**  
**East Piru Groundwater Monitoring Locations**



**ATTACHMENT 2**  
 Upper Santa Clara River Surface Water and Groundwater Chloride Analysis  
 2009 – 2010

**Figure 5**  
 East Piru Groundwater Chloride Data



**Table 3**  
 East Piru Groundwater Chloride Data

Year	Average Annual Chloride Levels				All Wells
	V-0012	V-0013	V-0031	V-0036	
1992			110		110
1993			137		137
1994			120		120
1998			100	96	98
1999	108		103		106
2000	119				119
2001	126			119	124
2002	136				136
2003	143				143
2004	140	146		153	146
2005	148			147	147
2006	142			128	138
2007	117			130	121
2008	143		121	131	134
2009	148			131	144
2010	160			126	143

# **ATTACHMENT 82**





## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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STEPHEN R. MAGUIN  
Chief Engineer and General Manager

November 4, 2010

Mr. Samuel Unger, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

Dear Mr. Unger:

**Upper Santa Clara River Chloride TMDL Resolution No. R4-2008-012**  
**Task 15 Semi-annual Status Report of Planning Activities, November 2010**

The Santa Clara Valley Sanitation District of Los Angeles County (Sanitation District) submits this report and the attached schedule pursuant to the reporting requirements of Task 15 of the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL), Board Resolution No R4-2008-012, adopted by the California Regional Water Quality Control Board, Los Angeles Region on December 11, 2008.

Task 15 of the TMDL Implementation Plan requires the Sanitation District to submit a report of planning activities and a schedule of related tasks to the Regional Board by May 4, 2010 and semi-annually thereafter until completion of the Final Facilities Plan and its Environmental Impact Report (EIR). This report satisfies the requirements of Task 15 for the November 4, 2010 semi-annual report.

With regard to the status of the specific tasks in the TMDL, the Sanitation District's ratepayers have expressed very strong concerns at many public meetings about the justification for, and the cost of, the chloride TMDL compliance programs proposed by the Sanitation District's staff. In light of the very strong public opposition and the current deep economic recession, the Board of Directors of the Sanitation District declined to approve the large service charge rate increases that were proposed by staff to implement the compliance programs in May 2009 and again in July 2010, pending further analysis of an alternative, more cost-effective means of compliance.

The Sanitation District recently conducted an initial briefing of potential alternative project components with the Regional Board and will continue with additional meetings and briefings with stakeholders, the Regional Board, and the Sanitation District's Board of Directors to develop a solution that will allow us to move forward to compliance. The Sanitation District is open to direction from the Regional Board as to the structure and schedule for this continuing process. The Sanitation District believes the circumstances described above provide justification to utilize the reopener clause under Task 16 of the current TMDL implementation plan for the Regional Board to establish a revised TMDL implementation schedule.

DOC# 1726059

Mr. Samuel Unger, Executive Officer

-2-

November 4, 2010

The current status of each of the reporting requirements is addressed individually below.

Schedule (Task 15b)

The original project schedule is shown in Attachment 1 and contains the major facilities planning and CEQA tasks and milestones. As indicated in the Task 15 Semi-annual Status Report, submitted to the Regional Board in May 2010, release of the NOP and subsequent EIR activities have been postponed as a result of the Sanitation District Board's direction to evaluate an alternative, more cost-effective means of compliance.

A revised planning schedule will be prepared upon reaching agreement on an alternate solution to the TMDL with the Regional Board and stakeholders and approval from the Sanitation District's Board of Directors.

Task 15a (i) - Lead State/ Federal Agency

The Sanitation District will serve as the state lead agency for CEQA purposes. To date, a federal nexus to trigger an environmental analysis under the National Environmental Policy Act (NEPA) has not been identified and is not expected. Thus, there is no need for a federal lead agency.

Task 15a (ii) - Procurement of Facilities Plan and EIR Consultants

On August 19, 2008, the Sanitation District released a Request for Proposals for "Services Relating to the Preparation of a Facilities Plan for the Santa Clarita Valley." The Sanitation District received two proposals on September 22, 2008. On November 12, 2008, the Sanitation District awarded a contract for preparation of the Santa Clarita Valley Sanitation District Chloride TMDL Facilities Plan to a consulting team led by MWH. Notice to Proceed was given on December 1, 2008.

In September 2008, the Sanitation District released a Request for Proposals for "Services Relating to the Preparation of Environmental Documents for the Santa Clarita Valley Sanitation District Facilities Plan." The Sanitation District received five proposals and interviewed two of the consulting firms as part of the competitive selection process. On January 14, 2009, the Sanitation District awarded a contract for preparation of the Santa Clarita Valley Chloride TMDL Environmental Impact Report to a consulting team led by Environmental Science Associates (ESA). Notice to Proceed was given on January 28, 2009.

Task 15a (iii) - Preliminary Planning and Feasibility Analyses

During the reporting period, Sanitation District staff proposed new sewer service charge rate increases necessary to implement TMDL compliance programs. Due to the very strong public opposition and the current economic recession, the Sanitation District Board declined to approve the increases pending further analysis of alternative, more cost-effective compliance options.

Nevertheless, the Sanitation District Board did authorize staff to proceed with a program to remove the remaining Automatic Water Softeners (AWS) in the Sanitation District's service area. The Sanitation District's AWS Rebate Program has been very successful in reducing chloride levels coming into the Valencia and Saugus Water Reclamation Plants. As of July 2010, approximately 7,000 AWS have been removed from the Sanitation District's service area.

Mr. Samuel Unger, Executive Officer

-3-

November 4, 2010

resulting in a cost-effective and significant reduction in the amount of chloride discharged from the treatment plants to the Santa Clara River, a decrease of approximately 50 mg/L. The Sanitation District estimates there are approximately 400-500 AWS remaining in operation in the Sanitation District's service area. The Sanitation District will continue the program to remove the remaining AWS, which includes continued sampling, ongoing public outreach, rebates, household inspections and enforcement, as a cost-effective means of compliance with the chloride TMDL.

The Sanitation District continues to evaluate additional chloride TMDL compliance project alternatives, including conversion from chlorination to ultraviolet light (UV) disinfection and revised water supply management strategies. As previously noted, the Sanitation District staff will next initiate meetings and briefings with stakeholders, the Regional Board, and the Sanitation District Board of Directors to develop agreement on a new TMDL compliance program.

Task 15a (iv) - CEQA Notice of Preparation (NOP)

As noted above, the CEQA process begins with release of a NOP. The original schedule called for the NOP to be released on August 3, 2009. However, release of the NOP has been postponed as a result of the Sanitation District Board's direction to evaluate alternative, more cost-effective means of compliance.

Task 15a (v) - Draft Facilities Plan and EIR

As noted above, the formal CEQA effort has not begun due to the postponement of the NOP.

Task 15a (vi) - Public Review and Comment Periods

The public review and comment period will begin once the draft Facilities Plan and EIR are released and will run for at least 45 calendar days. As noted in the schedule discussion, a revised date for the release is not available at this time.

Task 15a (vii) - Final Facilities Plan and EIR

The Sanitation District will respond to comments from the public comment period and prepare the Final Facilities Plan and EIR after the public comment period closes.

Task 15a (viii) - EIR Certification

The Sanitation District will prepare CEQA findings, a mitigation monitoring and reporting program, and, potentially, a statement of overriding consideration after completion of the Final Facilities Plan and EIR. The entire package will be sent to the Sanitation District Board for approval of the Facilities Plan and its recommended project and certification of the Final EIR.

Task 15a (ix) - Notice of Determination

Upon certification of the Final EIR, the Sanitation District will file a Notice of Determination with the County Clerk and State Clearinghouse.

Mr. Samuel Unger, Executive Officer

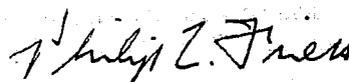
-4-

November 4, 2010

In summary, the Sanitation District is making a good faith effort to advance the project and meet compliance deadlines while carrying out the direction of the Sanitation District's Board to work further with the Regional Board to reduce project costs.

If you have any questions regarding this report, please contact me at (562) 908-4288, extension 2501 or at pfriess@lacsdsd.org.

Very truly yours,  
Stephen R. Maguin



Philip L. Friess  
Department Head  
Technical Services

PLF:lmb  
Enclosure

cc: Jenny Newman, LARWQCB





# **ATTACHMENT 83**



**FINAL REPORT**

**COST IMPACTS FOR COMPLIANCE WITH A 100 MG/L  
INSTANTANEOUS CHLORIDE DISCHARGE LIMIT AT THE  
SANTA CLARITA VALLEY WATER RECLAMATION PLANTS**

Prepared for  
**County Sanitation Districts of Los Angeles County**

Prepared by  
**MWH**

October 2002



8-346

1742

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## SECTION 1 INTRODUCTON AND BACKGROUND

The County Sanitation Districts of Los Angeles County (CSDLAC) provide sewerage services to the Santa Clarita Valley, which is located in the northwest portion of Los Angeles County, California. CSDLAC owns and operates a regional wastewater collection, treatment and disposal system referred to as the Santa Clarita Valley Joint Sewerage System (SCVJSS). The SCVJSS service area consists of the City of Santa Clarita and a portion of unincorporated Los Angeles County. The SCVJSS is made up of an interconnected network of more than thirty miles of trunk sewers, one pumping plant, and two interconnected water reclamation plants (WRPs)<sup>1</sup>, the Saugus WRP and the Valencia WRP. Present design capacity is 6.5 MGD for Saugus and 12.6 MGD for Valencia. The Valencia WRP is presently undergoing expansion to 21.6 MGD and upgrade for nitrogen removal (nitrification/denitrification - NdN) using the modified Ludzack Ettinger (MLE) process in completion of Stage 5 of the facility master plan. Stage 6, anticipated for completion in 2015 will expand the WRP design capacity to 27.6 MGD and will result in build-out of the facility to the property boundaries. The Saugus WRP site is severely constrained on four acres with no plans for future expansion. Process schematics for the two facilities are provided in Figure 1-1 and Figure 1-2. Both WRPs consist of comminutors, pumping, grit chambers, primary sedimentation, flow equalization, activated sludge aeration, secondary sedimentation, dual-media pressure filtration, and chlorine disinfection with discharge of the final effluent to the Santa Clara River. All sludges generated are anaerobically digested and dewatered at the Valencia WRP.

The Santa Clara River (SCR) is the largest of two remaining river systems in Southern California remaining in relatively natural states. Beginning in the San Gabriel Mountains east of Santa Clarita, the SCR flows approximately 84 miles westward to the Pacific Ocean at the City of Ventura. In the Upper SCR (LA County Portion of the SCR), water flow in the stream canyons is considered to be ephemeral and diminishes rapidly after most rainfall events. The river's surface flow typically occurs during the rainy season or snowmelt season; however, portions of the river have surface flow year round. Natural "rising water," reclaimed water from the Saugus and Valencia WRPs, agricultural runoff, and other miscellaneous flows contribute to this year round flow. Without effluent from the Saugus and Valencia WRPs, the river would likely be ephemeral (that is, normally dry) in portions of the urban reach flowing through Santa Clarita and the downstream agricultural reach. Typically the river is dry (except during heavy rainfall events) upstream of the Saugus WRP outfall, located near the Bouquet Canyon Bridge.

Site locations of the Valencia and Saugus WRPs relative to the Santa Clara River are provided in Figure 1-3. Reach 3 in Ventura County and Reaches 7 and 8 in Los Angeles

<sup>1</sup> The two plants are interconnected by interceptors that allow a portion of the raw wastewater generated in the Saugus WRP service area to be conveyed for subsequent treatment at the Valencia WRP. In addition, wastewater solids generated at the Saugus WRP are conveyed by trunk sewer or a waste activated sludge force main to the Valencia WRP for treatment.

County were identified as impaired due to chloride and placed on the 1998 303(d) List by the Los Angeles Regional Water Quality Control Board (Regional Board). All three reaches were listed for chloride and given a medium priority ranking for the development of chloride waste load allocations (WLAs).<sup>2</sup> The Regional Board has released final WLAs for the Santa Clarita WRPs, which are 100 mg/L as an instantaneous maximum for both the Saugus and Valencia WRPs, to protect downstream agricultural beneficial uses. Water from the Santa Clara River recharges the Piru, Fillmore, and Santa Paula Basins and growers in the Santa Clara River watershed primarily utilize the groundwater for irrigation of salt sensitive crops such as avocados and strawberries. Two farmers, located just west of the LA/Ventura County Line, are known to divert surface water for irrigation purposes.

The Valencia and Saugus WRPs do not have the ability to consistently meet the proposed total maximum daily load (TMDL) chloride WLA as an end-of-pipe limit without the addition of demineralization facilities. Wastewater treatment processes are not designed for the removal of dissolved salts and the chloride levels in the WRP treated effluents can change significantly over both short and long term periods of time due to variability in the WRP influent concentration levels. Short-term influent chloride concentration variability is believed due to the extensive residential use of water softeners that results in as much as a five-fold increase in average influent chloride levels during early morning hours when these systems automatically regenerate. Long-term variability is dependent upon weather patterns with drought conditions resulting in higher chloride levels due to reliance upon imported water supplies. These sources of long-term and short-term variation lie outside of CSDLAC's jurisdiction, resulting in the need for demineralization facilities in order to reliably control the chloride concentration (i.e. comply with the proposed 100 mg/L WLA) in the Valencia and Saugus WRP effluent discharge to the Santa Clara River.

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<sup>2</sup> On December 7, 2000, the Regional Board approved a revision to the chloride water quality objective for Reach 3. The objective was revised from 80 to 100 mg/L and Reach 3 was found to no longer be impaired to the 100 mg/L chloride objective. Consequently Reach 3 was removed from the 303(d) list.



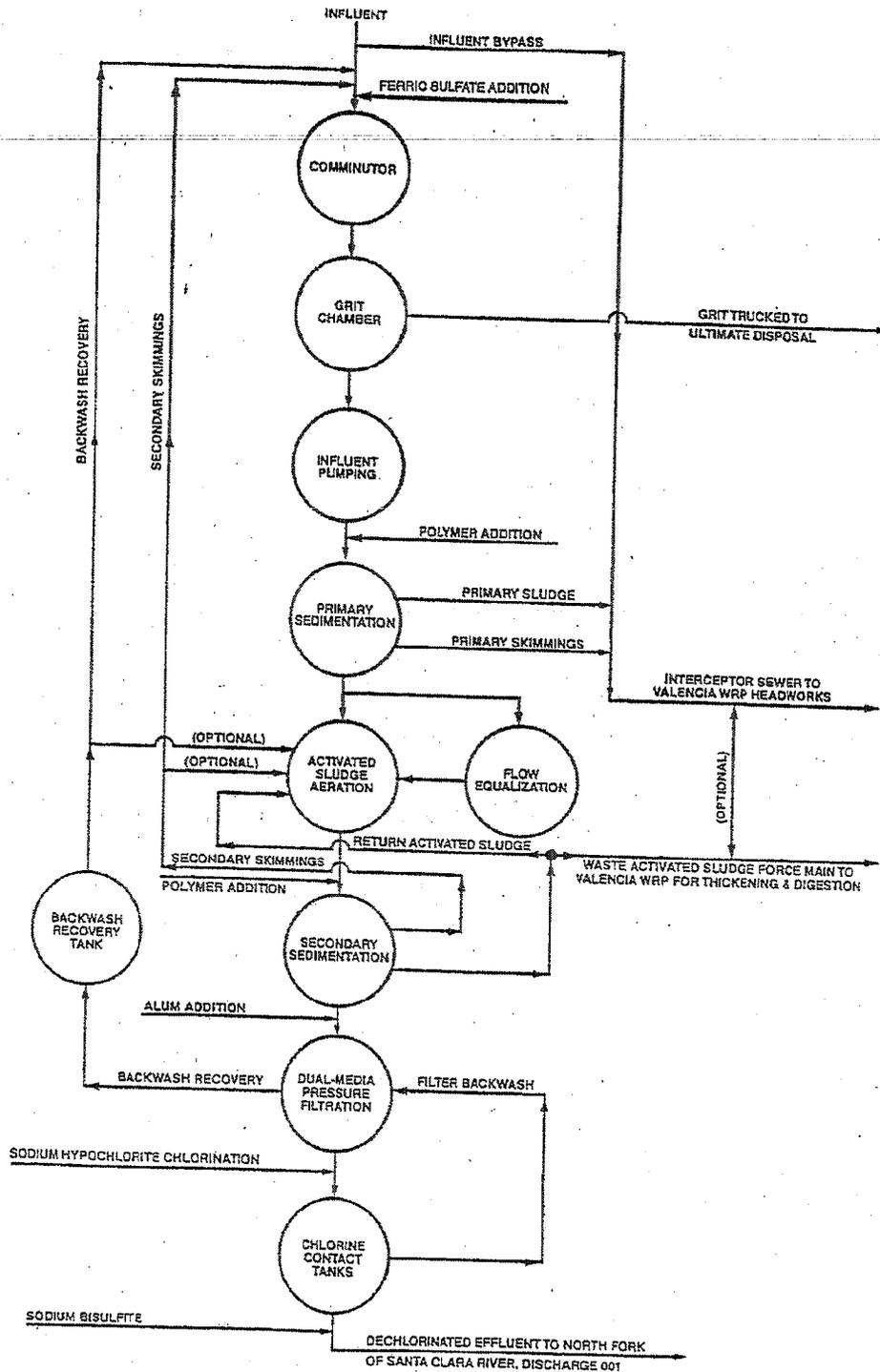


Figure 1-2 Saugus WRP Process Schematic

MARCH 2001

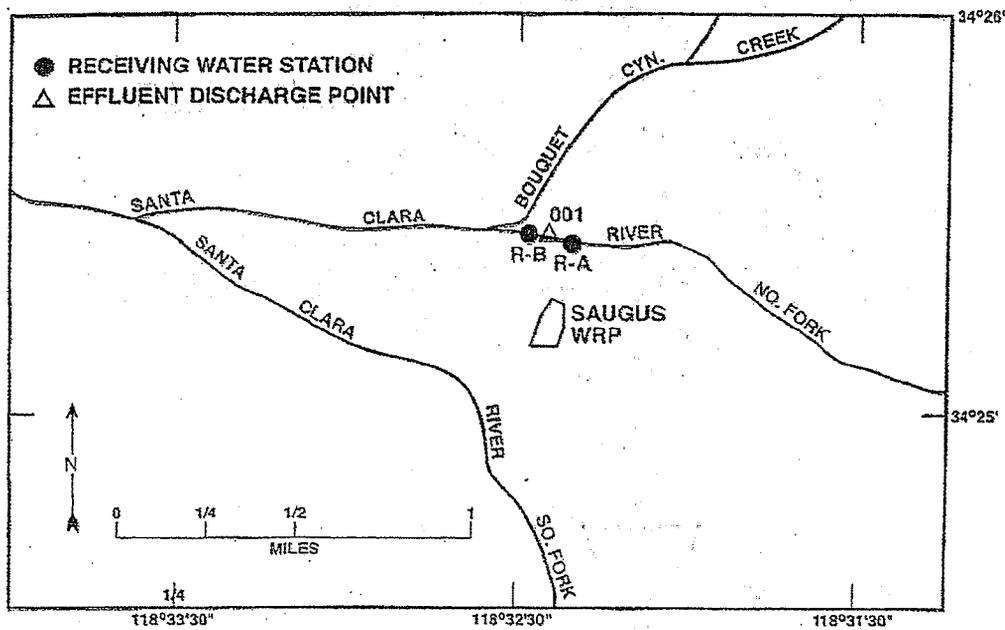
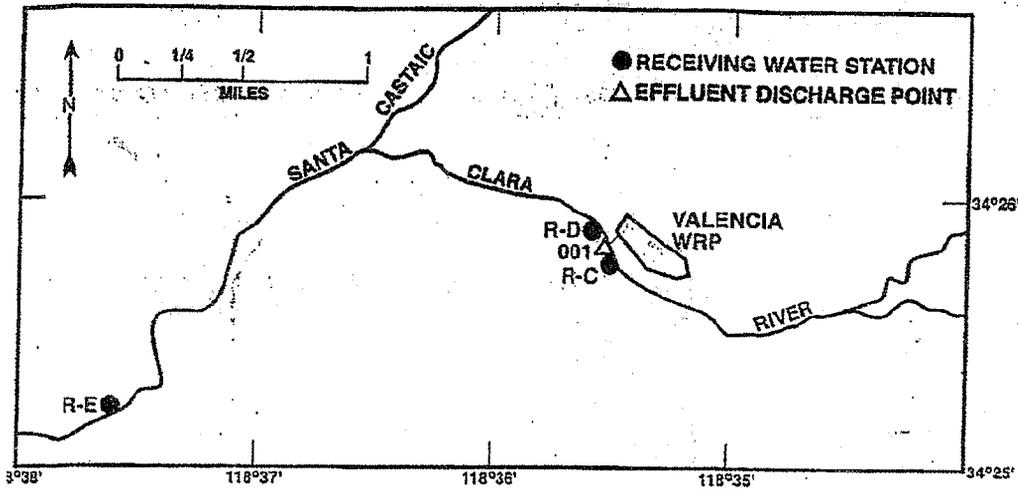


Figure 1-3 Valencia WRP (Upper Figure) and Saugus WRP (Lower Figure)  
Locations Relative to the Santa Clara River

## SECTION 2 SAUGUS AND VALENCIA CHLORIDE LEVELS AND FLOWS

The demineralization capacity needed to achieve the anticipated TMDL waste load allocations (WLA) will be a function of the wastewater plant effluent flow rate and the chloride reduction requirement. This section presents existing and projected WRP chloride levels and existing and projected flow data for the Valencia and Saugus WRPs. The chloride and flow data are evaluated and worst-case chloride and flow conditions are identified. These worst-case conditions will form the basis for the sizing of demineralization facilities required at each plant to ensure compliance to the chloride WLA.

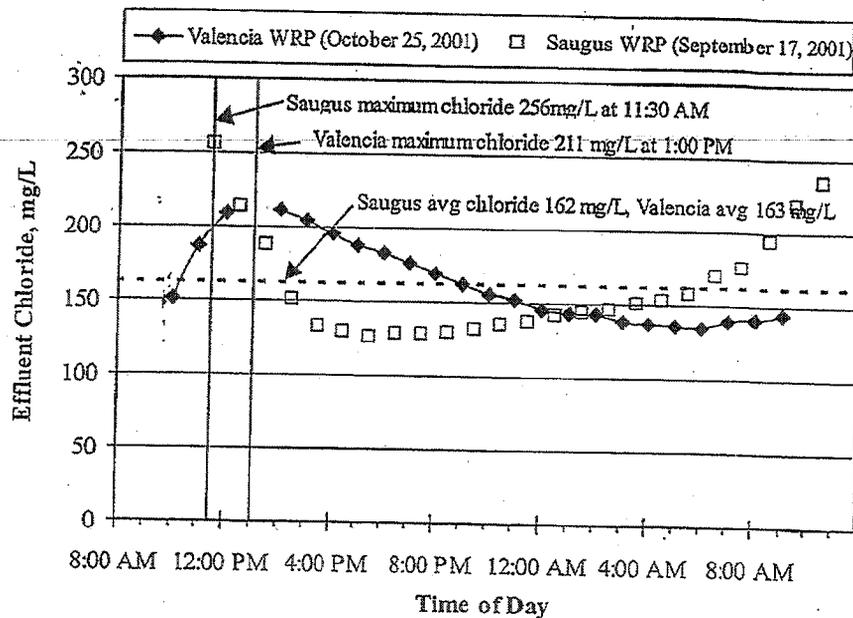
### CHLORIDE LEVELS

An anticipated chloride TMDL requirement of 100 mg/L as an instantaneous maximum at both the Saugus and Valencia WRPs is used in this report as the basis for sizing demineralization facilities. In addition to the discharge requirement, the demineralization facility size requirements are a function of the worst-case instantaneous effluent chloride concentration at each WRP and the WRP effluent flow. This approach will ensure compliance with the proposed WLA. A discussion of chloride data related to the instantaneous effluent chloride TMDL requirement follows.

#### Instantaneous Effluent Chloride

Under the anticipated instantaneous effluent chloride TMDL, chloride levels observed in grab samples collected from river (and WRP effluents) should not exceed 100 mg/L. To determine the daily variations in chloride concentrations, hourly grab samples were collected from both the WRP influents and effluents. Figure 2-1 shows influent chloride concentration, based on hourly grab samples, over two 48-hour periods, at the Saugus WRP.





**Figure 2-2 Hourly Effluent Chloride Profile at Saugus and Valencia WRPs**

Figure 2-2 shows a peak hourly effluent chloride concentration of 256 mg/L at the Saugus WRP, which was 1.6 times higher than the average effluent chloride concentration of 162 mg/L. The Valencia peak hourly effluent chloride of 211 mg/L was 1.3 times higher than the average concentration of 163 mg/L.

WRP flows during the hourly effluent sampling periods were typical, with 5.7 MGD effluent flow on the day of Saugus sampling and 11 MGD effluent flow on the day of Valencia sampling. Both WRPs have off-line equalization of influent flow, but flows are not diverted to equalization tanks when these chloride spikes arrive at the WRPs.<sup>3</sup> The flow equalization capacity at Valencia is 4.4 million gallons and the flow equalization capacity at Saugus is 1 million gallons.

#### Flow-weighted 24-Hour Composite Chloride

24-hour flow-weighted composite chloride samples are collected from each WRP effluent on one day each month. The samples are obtained by collecting effluent every fifteen minutes over six intervals of 4-hour duration each day. The 24-hour flow weighted composite is obtained by determining the percent of total flow contributed during each 4-hour period and using these percentages to determine the percentage of the composite sample contributed from each 4-hour sampling interval. Thus, the 24-hour composite

<sup>3</sup> A portion of the primary effluent flow is typically diverted to the flow equalization basin (FEB) during peak flow conditions. The diverted flow stored in the FEB is then discharged to secondary treatment during low flow periods (e.g. in early morning period of the following day).

chloride concentration, when multiplied by the average daily flow, is representative of the total mass of chloride discharged that day.

Figure 2-3 shows historical flow weighted 24-hour composite effluent chloride concentrations at Saugus and Valencia WRPs covering the time period from approximately 1970 through 2001.

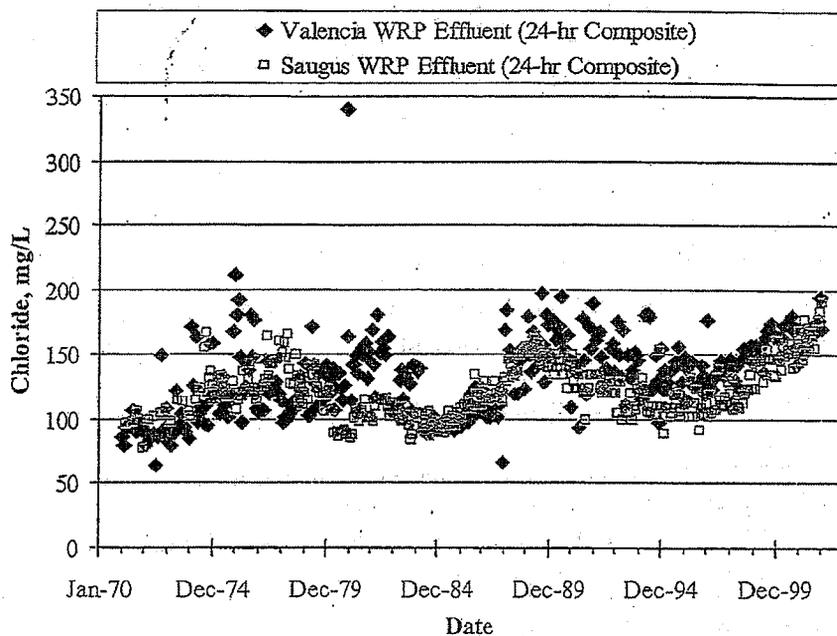


Figure 2-3 Historical Flow-Weighted 24-hour Composite Chloride Concentration (Sampled Monthly)

Figure 2-3 shows an overall variability in chloride concentrations at each WRP. The figure shows a cyclic variation in the chloride concentrations at each WRP, with local minimums in chloride concentration occurring approximately every 10 to 12 years. This variability appears to be related to weather patterns, as the local minimum in chloride occurring in 1984-1985 corresponds with a local maximum in 5-year moving average annual rainfall presented in Figure 2-4. Likewise, increases in chloride from 1984-1989 and 1995-2001 correspond with decreases in annual rainfall over the same time periods.

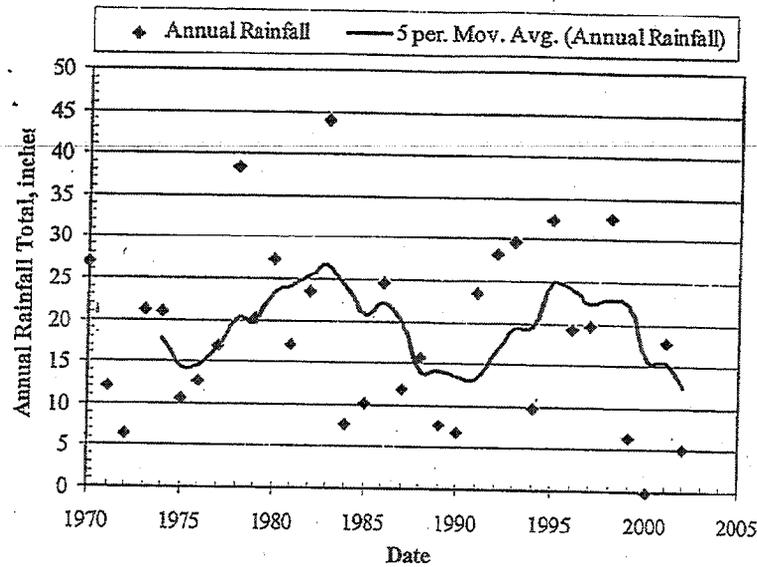


Figure 2-4 Annual Rainfall Totals at California Irrigation Management Information System Weather Station #101, Piru California

Figure 2-5 presents a probability plot of the flow-weighted 24-hour composite chloride data presented in Figure 2-3.

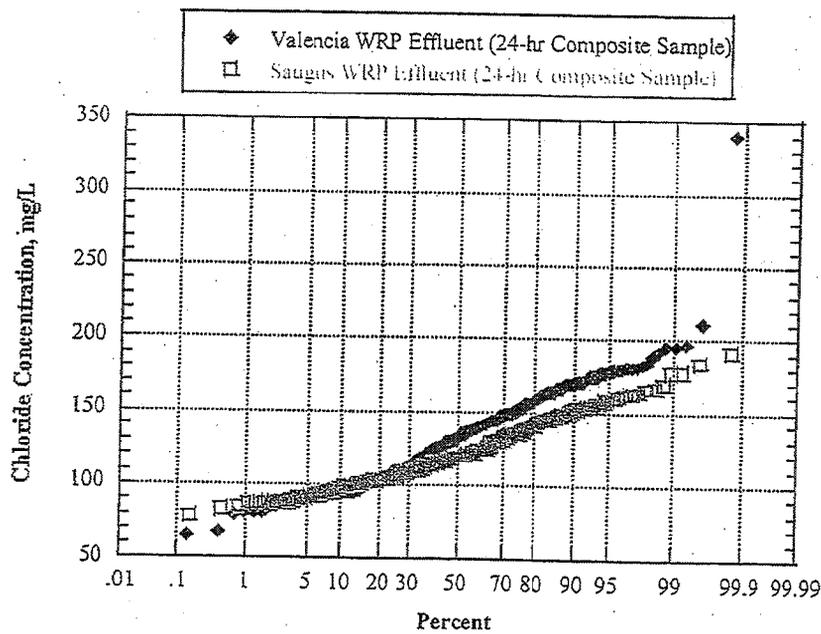


Figure 2-5 Probability Plot of Historical Flow-Weighted 24-hour Composite Chloride Concentration

To estimate historical instantaneous maximum chloride concentrations, the chloride peaking factors based on Figure 2-2 (1.6 for Saugus WRP and 1.3 for Valencia WRP) were applied to the data of Figure 2-5. These estimated instantaneous chloride concentrations are presented in Figure 2-6.

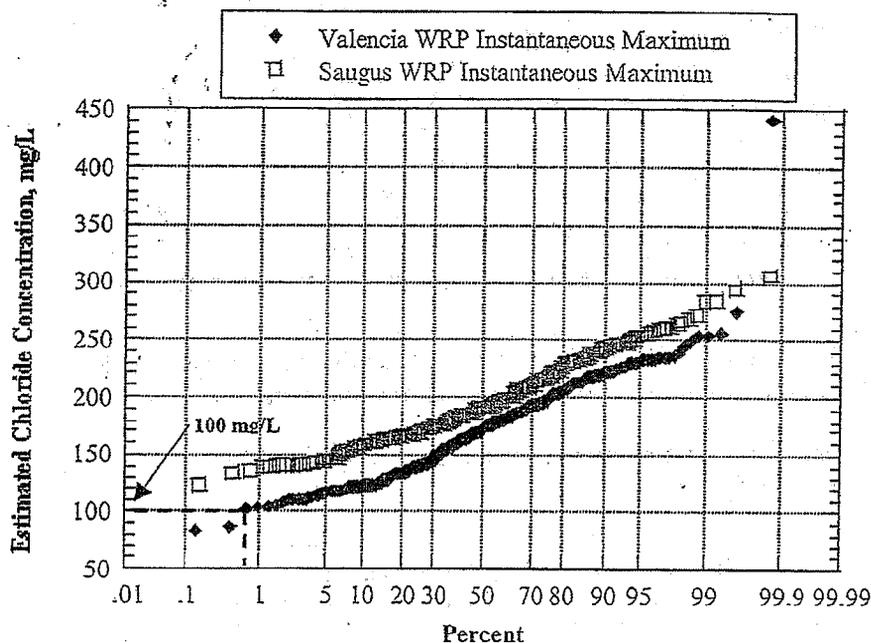


Figure 2-6 Probability Plot of Projected Instantaneous Chloride Concentration

Figure 2-6 shows that the instantaneous chloride discharge limit of 100 mg/L would be exceeded 100 percent of times at Saugus and over 99 percent of times at Valencia, based on the previous 30 years of composite chloride data and the limited peaking factor data from 2001. With the 99.9 percentile estimated historical instantaneous chloride levels at approximately 310 mg/L at both WRPs, a 68 percent reduction in instantaneous chloride peaks would be required to achieve the 100 mg/L instantaneous discharge limit. The Valencia data point at approximately 450 mg/L was considered an outlier and was not included in this analysis.

#### Comparison of Saugus and Valencia Chloride Concentrations

The historical effluent chloride concentrations presented in Figure 2-3 show that chloride concentrations in Valencia effluent tended to be higher than Saugus effluent. More recent data collected in year 2001 demonstrate that this is no longer the case. Table 2-1 presents average annual 24-hour composite effluent chloride at Saugus and Valencia for 1999, 2000 and 2001. The table shows chloride levels were the same at both WRPs during 2001. This was likely due to a change in plant operations from the use of ferric chloride to ferric sulfate. The change from ferric chloride to ferric sulfate occurred in

May 2000 at the Saugus WRP and in November 2000 at the Valencia WRP. Since then, sodium hypochlorite has been the only chemical contributing chloride at the two WRPs. During 2001, the incremental chloride contribution from this source was on average 6.5 mg/L at Valencia and 5.5 mg/L at Saugus.

**Table 2-1 Annual Average 24-hour Composite Chloride**

	Year 1999	Year 2000	Year 2001
Saugus WRP	141 mg/L	152 mg/L	168 mg/L
Valencia WRP	160 mg/L	167 mg/L	168 mg/L

**Projected Chloride Levels**

The CSDLAC recently conducted a chloride source study for the SCVJSS to determine the current contribution of chloride loads from the industrial, commercial, liquid waste disposal and residential sources tributary to the Saugus and Valencia WRPs. In the chloride source study, the Districts also estimated future annual chloride concentrations for the SCVJSS assuming the current rate of increase in chloride loading to the Saugus and Valencia WRPs (e.g. no prohibition of self-regenerating water softeners). Based on these projections, and assuming a blended water supply chloride concentration of 55 mg/L (i.e. non-drought conditions), the Districts estimate the projected future annual average chloride concentrations in 2010, 2015 and 2050 to be 200, 215 and 245 mg/L, respectively.<sup>4</sup>

Worst-case WRP effluent instantaneous chloride levels were then estimated based on SCVJSS annual chloride projections for the years 2010, 2015 and 2050 under drought conditions, assuming that the blended water supply chloride concentration increases to 150 mg/L.<sup>5</sup> The adjustment applied to SCVJSS annual projections to obtain future worst-case instantaneous chloride was derived from variations observed in approximately 30 years of historical 24-hour composite effluent chloride data from each WRP. The following procedure was used. First, the median and 99.9 percentile from the historical chloride data was calculated for each year from 1971 to 2001 at both WRPs. A variability factor was then calculated for each year, at each WRP, by dividing the 99.9 percentile chloride by median chloride. The data were sorted by median chloride concentration for each WRP and the upper quartile (8 years with the highest median chloride) were selected. The maximum variability factor was determined for each WRP (from the 8 years with highest median chloride), and then a combined flow-weighted variability factor was calculated based on these maximum factors and the respective plant flows for the years 2010, 2015 and 2050. This variability factor of 1.23 was then applied to SCVJSS projections, resulting in estimates of future 24-hour composite chloride. Finally,

<sup>4</sup> Los Angeles County Sanitation Districts, *Santa Clarita Valley Joint Sewerage System Chloride Source Study, October, 2002.*

<sup>5</sup> During the last major drought between 1987 and 1991, the imported water supply chloride concentrations were measured as high as 150 mg/L.

the worst-case instantaneous chloride was estimated from these results by multiplying them by the hourly effluent peaking factors determined from Figure 2-2 (1.3 for Valencia and 1.6 for Saugus).

The SCVJSS projected annual average chloride concentrations (assuming drought conditions) for years 2010, 2015 and 2050 are presented in Table 2-2, below, along with the estimated worst case instantaneous maximum WRP effluent chloride concentrations calculated as described above.

**Table 2-2 Projected WRP Effluent Chloride Concentrations**

	Year 2010	Year 2015	Year 2050
SCVJSS-based 24-hour Composite Estimates	341 mg/L	359 mg/L	397 mg/L
Saugus WRP Worst-case Instantaneous Max	545 mg/L	575 mg/L	634 mg/L
Valencia WRP Worst-case Instantaneous Max	443 mg/L	467 mg/L	516 mg/L

**Chloride Levels Used in Demineralization Facility Sizing**

In order to assure the ability of the Santa Clarita WRPs to meet TMDL chloride discharge requirements, the demineralization facilities at each WRP must be sized to remove instantaneous chloride concentrations encountered under worst case conditions. These worst case chloride conditions would result from a combination of chloride increases due to a drought cycle and increased salt loading from new housing.

This report will use the projected worst-case instantaneous maximum chloride concentrations from Table 2-2 for the year 2015 as the basis for sizing the demineralization facilities. These estimates may be high if an extended period of high annual rainfalls is encountered and if, as in the past, chloride levels begin to decrease for an extended period of time. Conversely these estimates may be low if the imported water supply chloride concentrations increase due to extended dry conditions which cause poor salinity conditions in the Bay-Delta region near where the imported water originates.

**WRP FLOWS**

- The Saugus and Valencia WRPs will be required to meet the instantaneous maximum chloride discharge requirement under all flow conditions. If worst-case chloride conditions can occur at high flow conditions, the demineralization facilities must be sized to treat these flows.

### Correlations Between Flow and Chloride

Figure 2-7 presents 24-hour flow weighted composite chloride based on monthly samples over the period approximately 1970 through 2001 as a function of daily flow at the Valencia WRP. The figure shows there is no correlation between flow and chloride and that the highest chloride levels have occurred under high flow conditions at this WRP. As a result, the demineralization facilities at the Valencia WRP will have to be sized to remove the highest levels of chloride under the highest flow conditions.

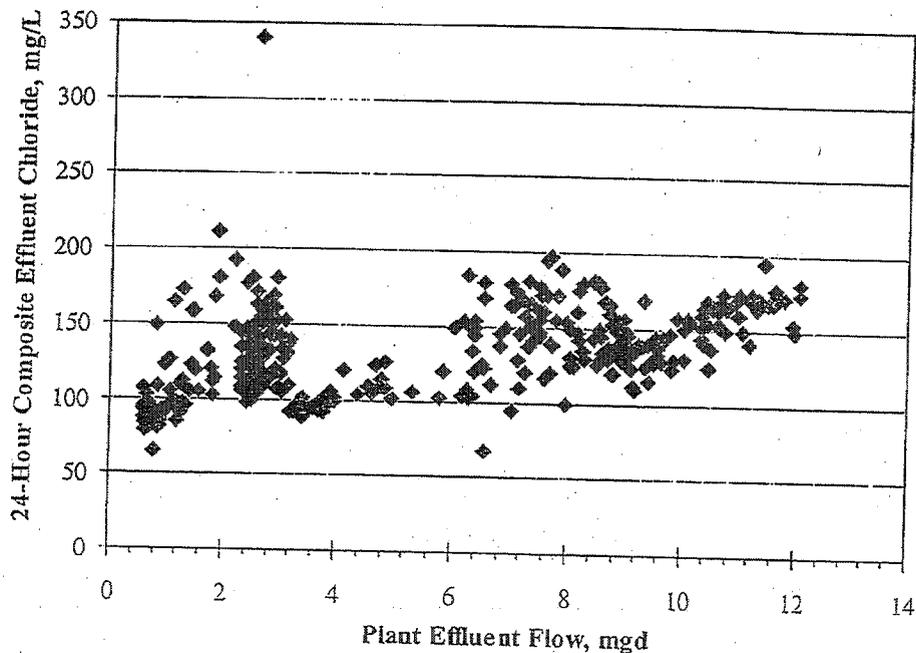
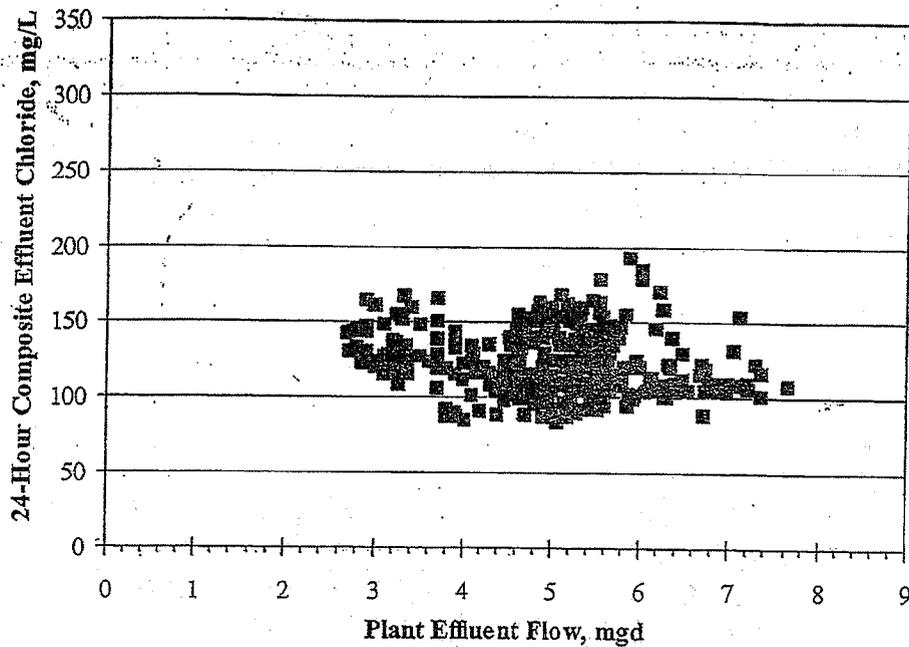


Figure 2-7 Correlation Between Flow and Chloride for Valencia WRP

Figure 2-8 presents 24-hour flow weighted composite chloride based on monthly samples over the period approximately 1970 through 2001 as a function of daily flow at the Saugus WRP. This figure shows there is no correlation between flow and chloride level at the Saugus WRP. As a result, the demineralization capacity at the Saugus WRP must also be sized to remove the highest levels of chloride under the highest flow conditions.



**Figure 2-8 Correlation Between Flow and Chloride for Saugus WRP**

#### **Historical Flows**

Figure 2-9 presents historical average daily effluent flows for the Saugus and Valencia WRPs. These flows correspond to days of monthly composite chloride sampling and cover the time period from approximately 1970 through 2001.

The figure shows a steady increase in effluent flows at the Valencia WRP to near current influent design capacity of 12.6 MGD. Based on the linear regression through Valencia historical effluent flow data, the flows are increasing at a rate of 0.37 MGD per year. The Saugus effluent flows have been at or near the design capacity flow of 6.5 MGD since approximately 1994. It should be noted that portions of the flow tributary to the Saugus WRP can be also diverted to the Valencia WRP for treatment.

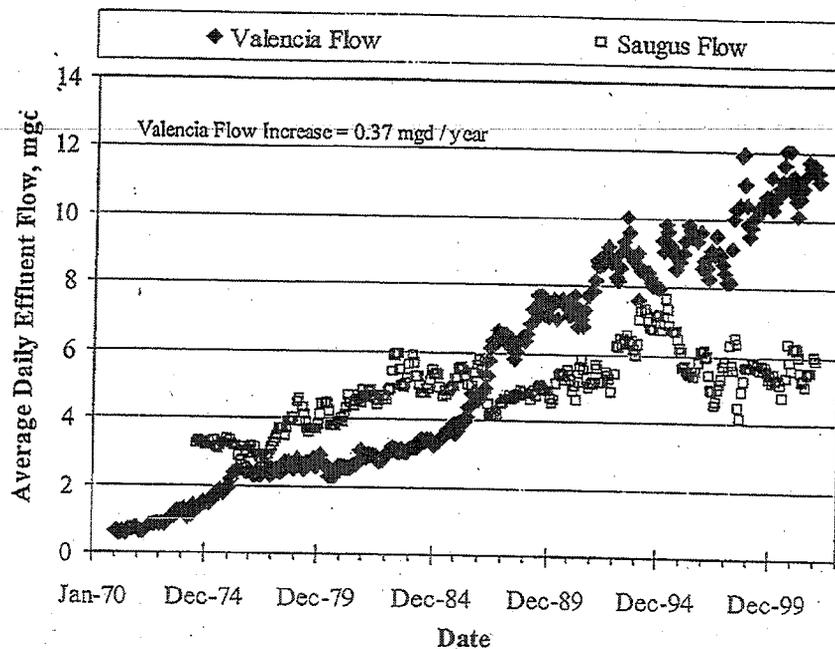


Figure 2-9 Historical Flows at Saugus and Valencia WRPs

#### Daily Influent and Effluent Flow Profiles

Figures 2-10 through 2-13 show Valencia WRP influent flow profiles (before equalization) and effluent flow profiles on recent normal and rain days. The influent flow profiles presented in Figures 2-10 and 2-11 show a relatively consistent influent flow from approximately 10 AM to 12 midnight each day with periods of decreased flow from midnight to 10 AM. The Valencia WRP effluent flow profiles, for normal and rain days, presented in Figures 2-12 and 2-13 show a consistent flow rate with the exception of low flow conditions from approximately 7 AM to 11 AM. The intermittent decreases in the effluent flow profiles are caused by the diversion of a portion of the effluent flow for backwashing the media filters. The peak effluent flows from the Valencia WRP were the same on both normal and rain days, but the average flow was lower on the non-rain day.

Figures 2-14 through 2-17 show Saugus WRP influent flow profile (before equalization) and effluent flow profiles on recent normal and rain days. The influent flow profiles presented in Figures 2-14 and 2-15 show a morning peak in influent flow with a period of decreased flows following. High flow rates are maintained for a greater portion of the rain day. The Saugus WRP effluent flow profiles, for normal and rain days, presented in Figures 2-16 and 2-17 show a relatively consistent flow rate with a period of low flow beginning in the early morning hours. The peak effluent flow from the Saugus WRP was actually higher on the normal day than on the rain day.

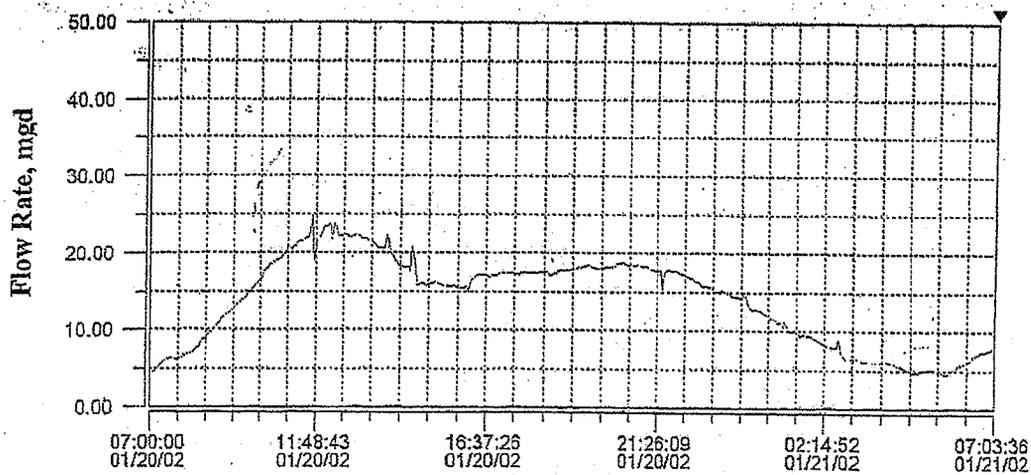


Figure 2-10 Valencia WRP Influent Flow (Normal Day)

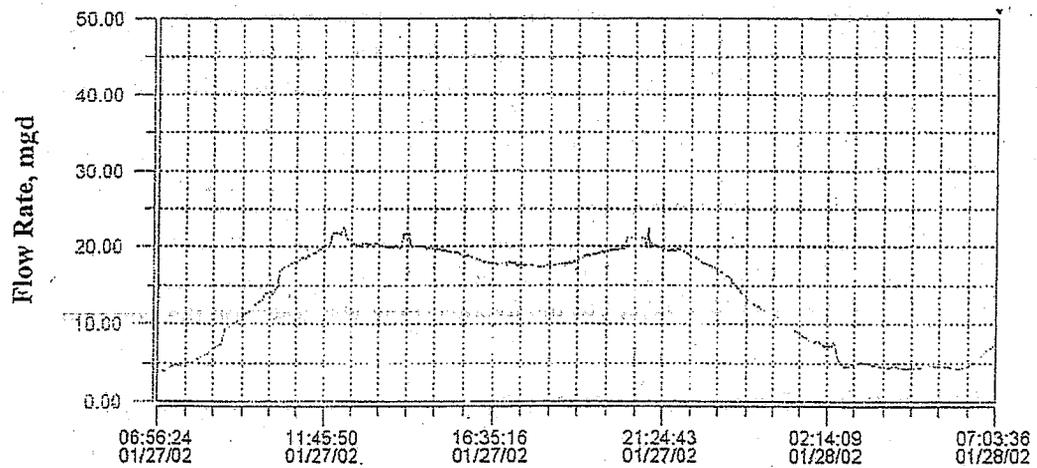


Figure 2-11 Valencia WRP Influent Flow (Rain Day)

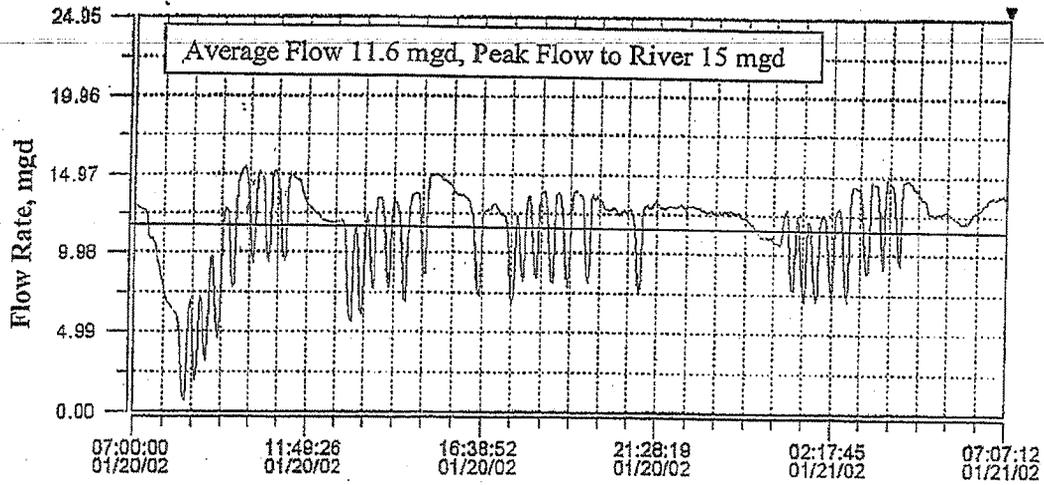


Figure 2-12 Valencia WRP Flow Into River (Normal Day)

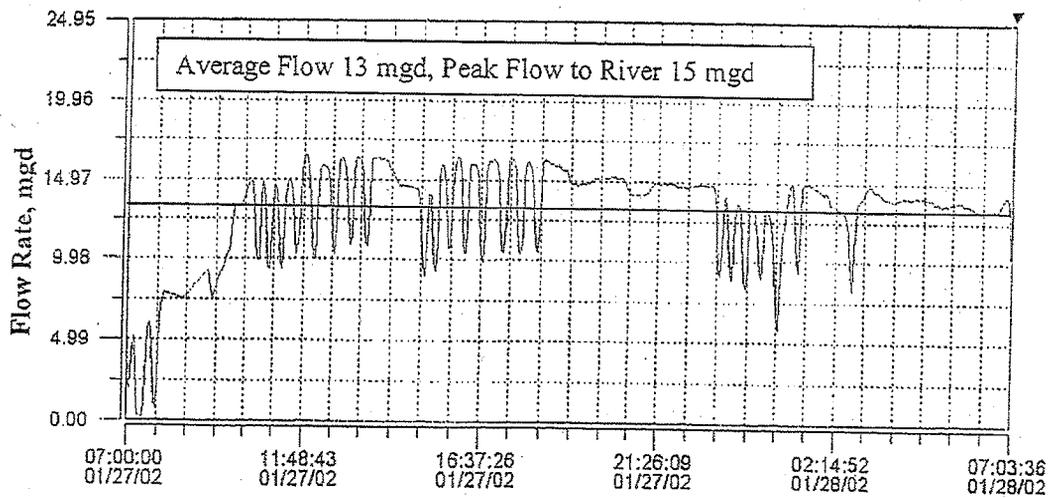


Figure 2-13 Valencia WRP Flow Into River (Rain Day)

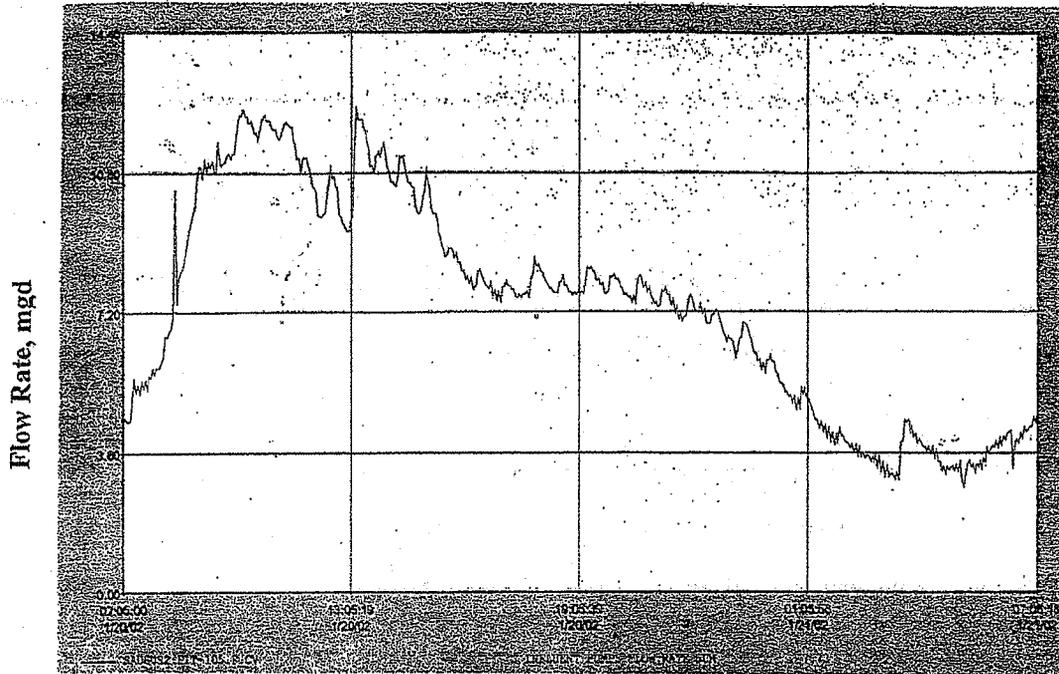


Figure 2-14 Saugus WRP Influent Flow (Normal Day)

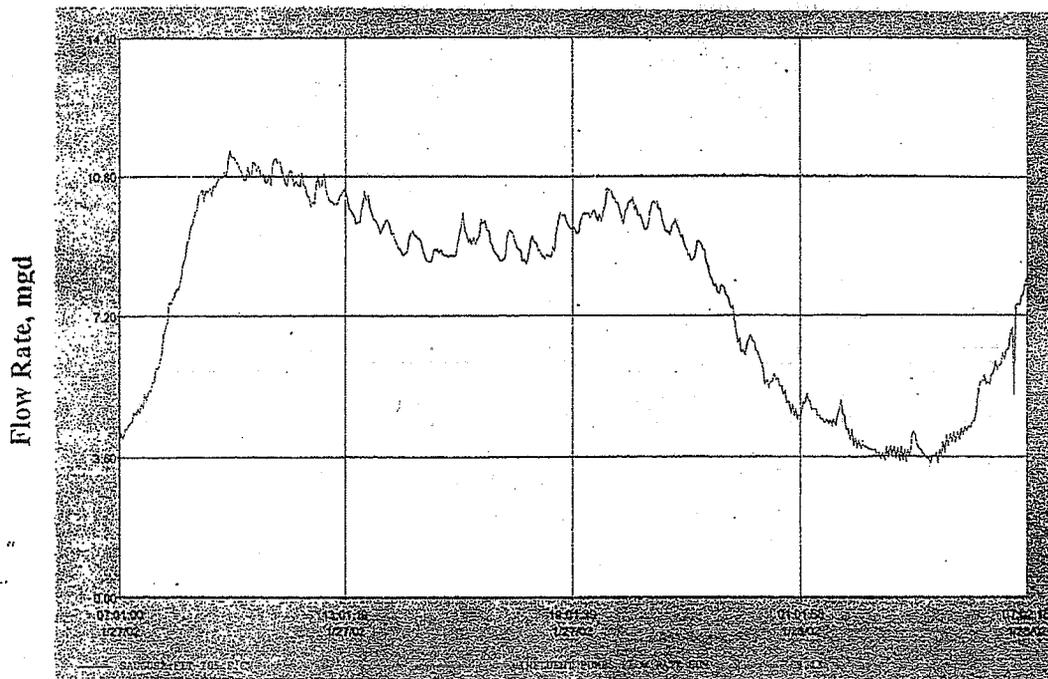


Figure 2-15 Saugus WRP Influent Flow (Rain Day)

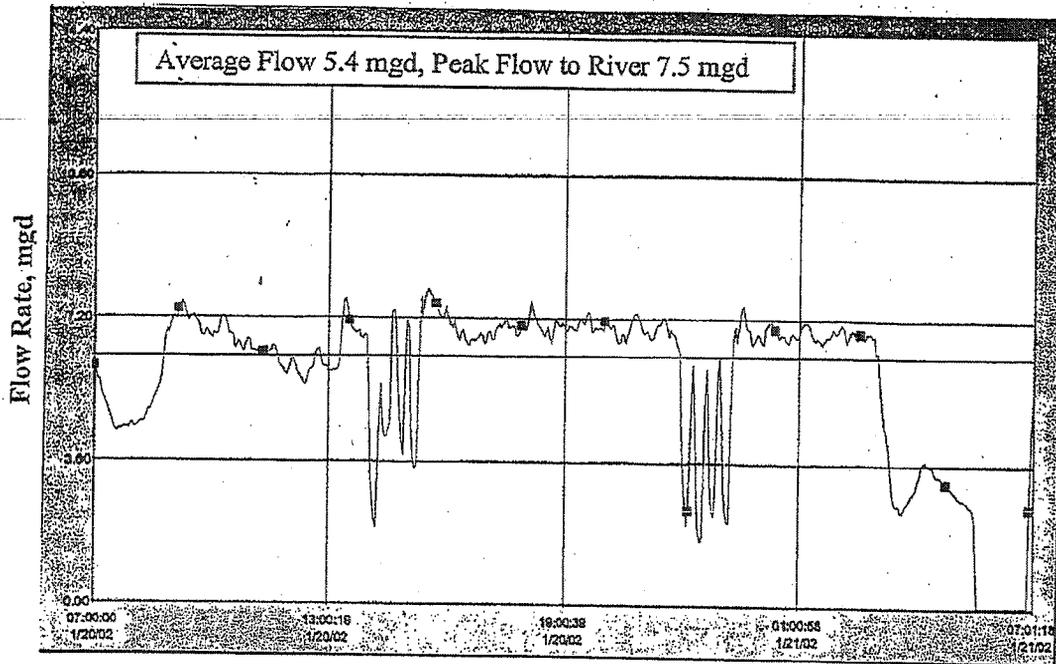


Figure 2-16 Saugus WRP Flow Into River (Normal Day)

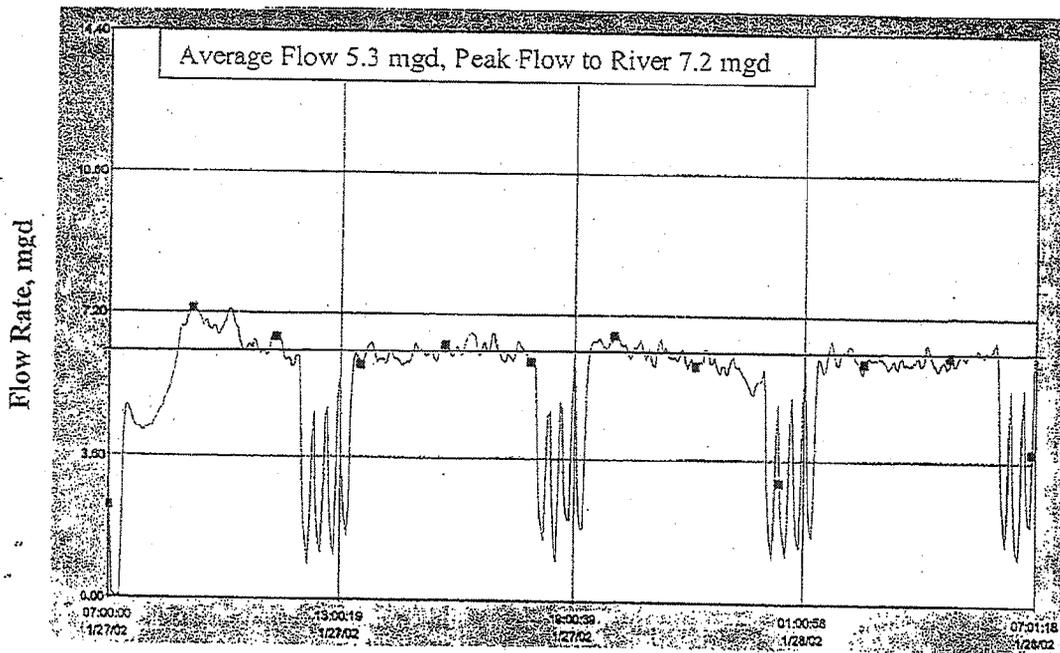


Figure 2-17 Saugus WRP Flow Into River (Rain Day)

## **Projected Flows**

**Projected 2015 Flows.** The CSDLAC SCVJSS 2015 Plan uses projected population growth and per capita water consumption to estimate the treatment capacity required at the Valencia and Saugus WRPs through year 2015. 2015 projected flows will be the basis for sizing the demineralization facilities at Saugus and Valencia WRPs and for the deep well injection brine disposal option.

The design capacity of the Valencia WRP is currently 12.6 MGD. The WRP is nearing completion of Stage 5 expansion that will increase capacity to 21.6 MGD and provide sufficient capacity until the year 2010. Stage 6 expansion is scheduled for completion in 2010 and will further increase the capacity of the WRP to 27.6 MGD. Completion of Stage 6 expansion will provide sufficient capacity through the year 2015.

The design capacity of the Saugus WRP is 6.5 MGD. There are currently no plans for increasing the capacity of the Saugus WRP.

**Ultimate Build-Out Flows.** For purposes of compliance analysis, on March 7, 2002 CSDLAC issued a memorandum with projected ultimate build out flows for WRPs serving the Santa Clarita Valley. It is estimated these flows will be achieved within approximately fifty years. Ultimate build out flows will be the basis for sizing and costing the brine pipeline disposal options.

The ultimate build out flow for the Valencia WRP is estimated to be 59 MGD. There are no plans to increase the capacity of the Saugus WRP, which will remain at 6.5 MGD.

The ultimate build out flow memorandum includes an additional 6.9 MGD plant flow from the proposed water reclamation plant serving the Newhall Ranch development. Any potential flows from this WRP were not included in the sizing and costing of the facilities or the brine flow disposal options.

## **Demineralization Treatment Flows**

In order to reliably meet the instantaneous chloride limit, the demineralization facilities must be sized for maximum sustained design flow conditions.

**Valencia WRP Demineralization Treatment Flows.** Using 2015 design flows as a basis, the demineralization treatment facility at the Valencia WRP would have to be sized to treat 27.6 MGD. In order to operate the demineralization facility at a constant flow rate, flow equalization will be required downstream from the chlorine contactors. The size of this equalization tank will be dependent on considerations outside the scope of this evaluation.

**Saugus WRP Demineralization Treatment Flows.** The demineralization treatment facility at the Saugus WRP will be sized for 6.5 MGD as an average flow. In order to operate the demineralization facility at this WRP at a constant flow rate, this

facility will also require significant storage capacity downstream of the chlorine contactors for flow equalization. The size of this storage tank will be dependent on considerations outside the scope of this evaluation.

**Heavy Rain-Day Flows.** WRP flows can increase significantly during rain days due to infiltration of rainwater into pipes. During a heavy rain day on February 22, 1998, an instantaneous flow rate of 17.5 MGD was recorded on the effluent hydrograph for the Valencia WRP. Demineralization facilities at the two WRPs are not sized to treat these flow rates. It is assumed that low chloride rainwater will decrease chloride concentrations in the wastewater plant effluents, but no data is available to estimate this dilution effect and at what point MF RO treatment would be necessary to treat storm flow tail water. Further analysis of this condition is required in order to assure constant compliance.

#### DEMINERALIZATION SIZING FACTORS

The required demineralization treatment capacity can be determined by multiplying the required chloride reduction and the corresponding design flow. This calculation provides a sizing factor that is a rough approximation of the portion of the flow that must be demineralized water. Table 2-3 presents year 2015 sizing factors.

**Table 2-3 Demineralization Treatment Sizing Factors at Saugus and Valencia WRPs to Achieve 100 mg/L Instantaneous Maximum Chloride**

WRP	Year	Chloride TMDL Requirement	Required Chloride Reduction	Projected Flow (MGD)	Treatment Sizing Factor
Saugus	2015	Instantaneous	83%	6.5	5.4
Valencia	2015	Instantaneous	79%	27.6	21.7

### SECTION 3 DESCRIPTION OF TREATMENT ALTERNATIVES

A review of potential chloride reduction technologies was performed and feasible treatment alternatives identified under this task. These include thermal desalination technologies: Multi-Stage Flash Distillation (MSF), Multi-Effect Distillation (MED), Mechanical Vapor Compression (MVC); Ion Exchange and Membrane technologies: Electrodialysis/Electrodialysis Reversal (ED/EDR) and Reverse Osmosis (RO).

#### THERMAL DISTILLATION

The most widely used thermal desalination technology is Multi-Stage Flash (MSF) Distillation Process. In this process the feedwater is heated by condensing steam in a vessel called the brine heater. This heated water then flows into another vessel where the pressure is lower than the first stage causing the steam to immediately boil or "flash". This vapor is then passed through demisters to remove brine droplets and condenses to freshwater on tubes of heat exchangers that run through each stage. These tubes are cooled by incoming feedwater, which in turn is preheated before being fed to the brine heater. The uncondensed brine is sent to the next stage, which is under a lower pressure, and the process is repeated. Typically, an MSF plant can contain from 15 to 25 stages. The MSF distillers can operate at top brine temperatures (at the inlet to the first flash chamber) around 110 C, using scale control polymers. The MSF process has been extensively used for seawater desalination but applications to desalination of reclaimed water is not common. This technology will not be considered further for chloride removal.

Multiple Effect Distillation (MED) is another thermal desalination process. In this process vapor formed in each effect flows to the condensing side of the heat transfer surface in the next effect. The latent heat of condensation is transferred through the tube wall to evaporate part of the water flowing across the surface. The main difference between the MSF and the MED process is in the method of evaporation and heat transfer. In the MED process the saline water film is evaporated by heat transfer through the condenser tube surface while in the MSF process evaporation occurs by "flashing" the brine in each stage. High heat transfer rates can be achieved in the MED process due to thin film boiling and condensing conditions. Diverse designs have been used for the heat exchanger, such as vertical tubes with falling brine films or rising liquids, horizontal tubes with falling film, or plates with a falling brine film. The most common heat exchanger design consists of horizontal tubes with a falling film. Traditional uses for MED have been in the field of industrial distillation for the production of sugar from sugarcane juice and in production of salt. Application to wastewater desalination was not found in the extensive literature search conducted, thus, this technology will not be considered further.

The Vapor Compression (VC) Distillation process is generally used in combination with other processes like MED and MSF and by itself for small and medium scale seawater

desalination applications. The heat for evaporating the water comes from the compression of vapor rather than direct exchange of heat from steam produced in a boiler. There are two classes of vapor compression distillation - thermal vapor compression where steam ejectors are used, and mechanical vapor compression where mechanical compressors are used in the compression cycle to run the process.

VC units have been built in a variety of configurations. In a mechanical vapor compression unit, all steam is removed by a mechanical compressor from the last effect and introduced as heating steam into the first effect after compression where it condenses on the cold side of the heat transfer surface. Water high in salts is distributed on the other side of the heat transfer surface where it boils and partially evaporates to produce more vapor. In a thermal vapor compression unit a steam ejector operated using 45-300 psi motive steam removes part of the vapor from the vessel. In the ejector the removed vapor is compressed to the necessary heating steam pressure and reintroduced into the first effect. VC has been extensively used for seawater desalination for resorts, industries, and drilling sites where freshwater is not readily available and relatively smaller quantities are needed. Its application to reclaimed water desalination has not been tested and, therefore, there is no further consideration of this technology.

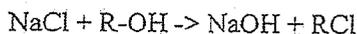
#### **ELECTRODIALYSIS REVERSAL**

In the Electrodialysis Removal (EDR) process, charged ions are removed from solution by applying an electrical potential across a stream of water. This causes the ions to move towards the opposite charged electrode. Ion selective membranes separate the stream from the electrode allowing only positive or negatively charged ions to pass through. These membranes are arranged alternately, with an anion selective membrane followed by a cation selective membrane. A spacer sheet is then placed between these two membranes. This forms channels in the EDR cell. As the electrodes are charged and feed water flows along the product water spacer at right angles to the electrodes, the anions (like chloride and carbonate) in the water are attracted and diverted through the anion selective membrane towards the positive electrode. This dilutes the salt content of the water in the product water channel. The anions pass through the anion selective membranes but cannot pass through the cation selective membrane and hence the anions are concentrated in the brine channel. Similarly, cations (like calcium and sodium) under the influence of the negatively charged electrode pass through the cation selective membrane and are trapped in the brine channel on the other side. This results in concentrated and dilute solutions being created in the spaces between the alternating membranes. These spaces, bound by two membranes (one cationic and one anionic) are called cells. The cell pair consists of two cells, one from which the ions migrated (dilute cell for product water) and the other in which the ions concentrate (the concentrate cell for the brine). The basic EDR unit consists of several hundred cell pairs bound together with electrodes on the outside and is referred to as a membrane stack. Feed water passes through the feed paths in parallel providing a continuous flow of desalted water and concentrate from the stack.

EDR has been tested for reclaimed water in the past. The City of San Diego has 1.1 MGD of EDR capacity at their North City Reclamation Plant for reduction of TDS in reclaimed water used for irrigation. Their experience with EDR has been that frequent cleaning and constant operator attention was required leading to prohibitive operational costs. The City of San Diego currently has plans to replace the EDR process with MF followed by RO. In light of the above facts, EDR as a technology for chloride removal is not given further consideration.

### ION EXCHANGE

Ion exchange (IX) is a sorption process where ions from the liquid phase are exchanged for ions held by electrostatic forces to charged functional groups on the surfaces of a solid. Ion exchangers have fixed ionic groups that are balanced by counterions of opposite charge. These counterions, which can be cations or anions, are exchanged for ions in the solution during the ion exchange process. The majority of ion exchange resins are made by the copolymerization of styrene and divinylbenzene. The styrene molecules provide the basic matrix while the divinylbenzene molecules provide crosslinking for strength. To provide various types of cationic and anionic resins, the styrene divinylbenzene copolymer is reacted with either acids or bases. Strong acid IX resins use strong acids like sulfuric acid to incorporate strong acid groups into the matrix. Similarly, weak acid IX resins use weak acids, strong base anionic resins use strong bases, and weak base anionic resins use weak bases. For chloride removal, a strong base ion exchange resin can be used. The strong base anion exchange resins operate well throughout the entire pH range and split neutral salts into their corresponding bases.



For most strong base anion exchange resins, the selectivity of nitrate is higher than chloride for exchange. Nitrate removal might be required if this technology is to be used for treating reclaimed water. Also particle removal will be required as particulate matter and suspended solids can cause plugging of the ion exchange bed. Water reclamation using ion exchange is an untested technology and will not be considered in this case.

### REVERSE OSMOSIS

Reverse Osmosis (RO) is a pressure driven membrane separation process where dissolved solutes are separated from the solution by forcing the water through a semipermeable membrane under a pressure higher than the osmotic pressure of the solution. It has been selected as a best available technology (BAT) by the USEPA for removal of inorganics like sulfate and nitrate that comprise a large percentage of the TDS present in water and wastewater. It has been extensively tested for treatment of reclaimed water and several full scale facilities have been constructed. An important aspect of reverse osmosis treatment of reclaimed water is the selection of the pretreatment process. Membrane pretreatment has been found to be the ideal pretreatment for the RO process in studies conducted by MWH at San Diego. Pretreatment of the reclaimed water using microfiltration or ultrafiltration helps in particle removal and

provides a higher quality of feed water to the RO process as compared to the conventional pretreatment process. Also, since reclaimed water quality is highly variable, the membrane process is an ideal selection because product water quality from these membrane processes are not dependent on feedwater quality.

### SUMMARY

The results from the discussion of applicable technologies are summarized in Table 3-1. Of all the processes considered in the discussion above, EDR and RO are the only processes with a proven track record for reclaimed water treatment. MWH has significant experience in treating reclaimed water using both these technologies. In an earlier study EDR was found to be much more operator intensive than RO with MF pretreatment. Also significant costs can accrue due to frequent chemical cleanings that were found necessary for consistent EDR operation. Therefore, RO treatment of the reclaimed water with MF pretreatment was selected for chloride reduction in this project.

Table 3-1 Evaluation of Technologies for Chloride Reduction in Treated Wastewater

Technology	Economical	Energy Intensiveness	Complexity	Applicability
Thermal Desalination	-	-	-	-
Ion Exchange	+	+	+	--
EDR	-	+	+	+
MF/RO	+	+	+	+

Note: "-" indicates low score with respect to evaluation criteria  
 "+" high score with respect to evaluation criteria.

### BRINE REDUCTION TECHNOLOGIES

Brine disposal from any demineralization system can represent a major expense if the facility is not close to an acceptable disposal site such as the ocean. Brine treatment to reduce the volume of brine might be a cost-effective alternative to transporting or disposing large amounts of brine. Brine reduction technologies have not, however, kept pace with the rapid development of demineralization systems such as RO and significant progress may be required in the future to develop an economical process to treat brine generated from demineralization. The most common technique used for brine reduction has been solar evaporation. Other brine reduction technologies have been studied that include distillation technologies such as crystallization, membrane technologies to further concentrate the brine, and electrodialysis processes. Chemical precipitation can be used as a step in reducing the concentration of the brine before using distillation or membrane techniques. Freeze drying has also been proposed as an alternative but has not been used on a large scale. Biological processes are also being developed for reverse osmosis brine containing high levels of ammonia.

Solar evaporation is a land intensive process and its application is dependent on geographical location. A low precipitation, high evaporation scenario is necessary for use of this technology. Specially lined lagoons are required to prevent salt water intrusion into the ground water. The concentrated brine still requires ultimate disposal.

Crystallizers can be used to concentrate the brine produced from membrane operations. These crystallizers are energy intensive. Also the brine might require chemical treatment (precipitation) to prevent scaling inside the equipment. A process being researched at UCLA combines crystallization with low pressure membrane separation of the formed crystals to treat brine. The complexity of this treatment process is high and its applicability to brine concentration appears very limited at the present time.

Chemical precipitation is used to remove some of the sparingly soluble salts to enhance the applicability of some of the brine concentration techniques. It involves in most cases increasing the pH to precipitate these salts. Lime is widely used for this application. A process currently being developed at Texas A&M University involves addition of high levels of lime and aluminum salts to precipitate salts from brine solutions. This process is called Ultra High Lime with Aluminum process (UHLA). The researchers claim that this process can remove many of the compounds that can limit recycling - like sulfates, chlorides, and organics. Use of waste alum sludge from water treatment plants has been suggested for this process to lower costs. The treated brine can then be concentrated using reverse osmosis after pH adjustment. There are no full scale systems in operation at the present time and therefore this technology remains experimental.

Reverse osmosis membranes using brine concentrating membranes is an energy intensive option. Brine concentrating membranes are essentially seawater membranes and require very high operating pressures. Chemical pretreatment might also be required to prevent membrane scaling. Electrodialysis reversal can also be used to concentrate brine.

Freeze drying has been used in the past to extract water from highly saline waters. Salt lowers the freezing point of water and partial freezing occurs when saline solutions are cooled to the freezing point of water. Relatively pure ice crystals form along with an unfrozen brine solution, which contains an increased concentration of salt. With a higher density than purified ice, the brine flows away from the ice, separating it from the clean water. A process employing freeze drying consists of spraying the saline water into the air under below freezing temperature conditions. This causes large quantities of relatively clean ice to form. The unfrozen concentrated brine solution is pumped away for disposal while the frozen clean ice is melted to obtain water with low levels of salinity.

In summary, available brine treatment systems for volume reduction prior to disposal by deep well injection, truck haul, or brine pipeline have significant limitations. Potential disadvantages include being land intensive, energy intensive or representing unproven technology. None of these approaches to brine reduction will be given further consideration within this cost analysis.

## SECTION 4 COST AND SCHEDULE EVALUATION OF MF RO

An interactive spreadsheet model was developed to facilitate the investigation of different chloride removal requirements on MF RO plant size and cost. The required model inputs are:

- wastewater plant effluent flow rate,
- wastewater plant effluent chloride concentration, and
- target blended water chloride concentration.

Model outputs are calculated for:

- total capital and annual O&M cost, and
- required MF RO treatment capacity.

Values are provided for both the Saugus and Valencia WRPs.

The costs of three different brine disposal options can also be evaluated from the spreadsheet model. These options are:

- brine pipeline to Ventura – ocean outfall
- brine pipeline to CSDLAC JWPCP, and
- deep well injection of brine.

A fourth brine disposal option, trucking to the CSDLAC Joint Water Pollution Control Plant (JWPCP) in Carson, is presented in this report section, but not included within the spreadsheet model. The model includes separate screens with a breakdown of cost factors for MF RO and the different brine disposal options. Individual costing parameters can be modified as needed. The spreadsheet model provides an easy way to interactively evaluate the costs of MF RO treatment for different WRP flows, influent chloride concentrations and blended water chloride concentrations.

This report section presents spreadsheet model MF RO size and cost estimates based on projected worst case flow and chloride reduction requirements for the year 2015. Brine disposal pipeline costs are based on ultimate build out flows, while deep well injection costs are based on 2015 flow estimates.

### MICROFILTRATION AND REVERSE OSMOSIS

RO removes dissolved solids by forcing water under pressure through a membrane that is permeable to water but impermeable to dissolved components. Approximately 95 percent of chloride ion is removed in a two stage RO system. MF pretreatment to RO is recommended to remove particulate solids and decrease the fouling rate of the RO membranes. The required MF RO treatment capacity and cost is a function of wastewater plant effluent flow, wastewater plant effluent chloride concentration, target

blended water chloride concentration, MF feed water recovery, RO recovery, and RO chloride rejection.

### MF RO Treatment Flow Model

The MF RO treatment facilities will treat a portion of the WRP tertiary effluent flow sufficient to meet the target blended water chloride concentration. Tertiary treatment is still required for the portion of flows that will bypass MF RO. The RO treated water will then be recombined with the portion of the wastewater plant flow not RO treated, before discharge to the river. Figure 4-1 presents a schematic of the MF RO treatment process. Table 4-1 presents the definitions for the descriptors used in the treatment process flow model.

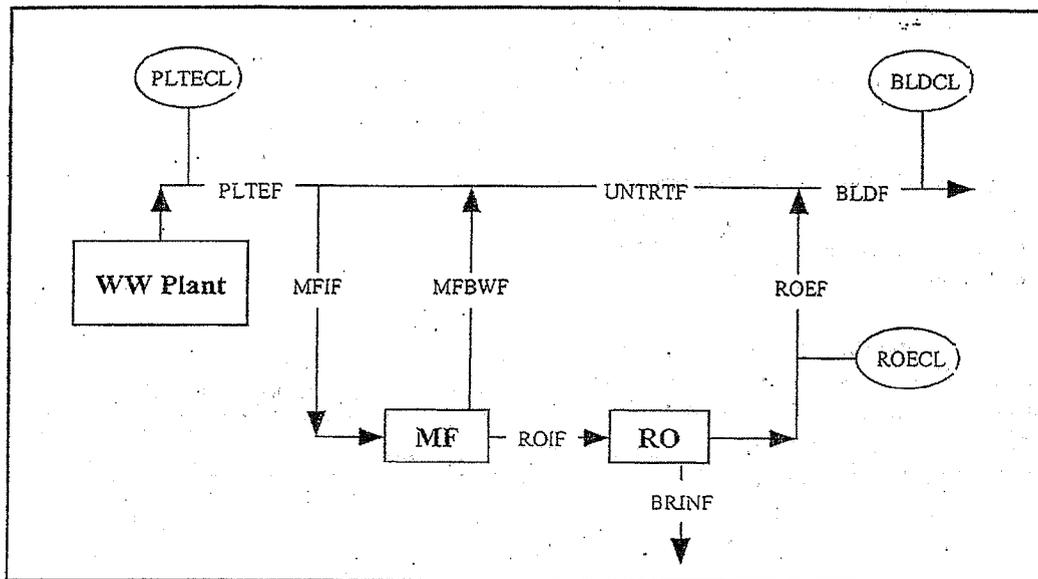


Figure 4-1 MF RO Treatment Process

**Table 4-1 Treatment Process Descriptor Definitions**

Descriptor	Parameter
PLTECL	Plant effluent chloride concentration
PLTEF	Plant effluent flow rate
UNTRTF	Untreated flow rate
MFIF	MF influent flow rate
MFBWF	MF backwash flow rate
ROIF	RO influent flow rate
BRINF	RO brine flow rate
ROEF	RO effluent flow rate
ROECL	RO effluent chloride concentration
BLDF	Blended plant flow rate
BLDCL	Blended effluent chloride concentration
MFFWR	MF feed water recovery rate
ROFWR	RO feed water recovery rate

**MF RO Treatment Process Equations**

The following equations apply to the MF RO treatment process.

- [1]  $BLDF = PLTEF - BRINF$
- [2]  $BLDF = UNTRTF + ROEF$
- [3]  $MFBWF = MFIF - ROIF$
- [4]  $BRINF = ROIF - ROEF$
- [5]  $MFFWR = ROIF / MFIF$
- [6]  $ROFWR = ROEF / ROIF$
- [7]  $BLDF \times BLDCL = (UNTRTF \times PLTECL) + (ROEF \times ROECL)$

This series of equations can be solved for ROIF, the RO influent flow. The value of the following parameters in equations 1 through 7 are known: PLTEF, PLTECL, ROECL, BLDCL, MFFWR and ROFWR.

To solve equation [7] in terms of the unknown ROIF, note the following:

[7a]  $BLDF =$

- PLTEF - BRINF, from [1]
- PLTEF + ROEF - ROIF
- PLTEF + (ROFWR x ROIF) - ROIF
- PLTEF + {ROIF x (ROFWR - 1)}

$$\begin{aligned} [7b] \quad UNTRTF = & \text{BLDF} - \text{ROEF, from [2]} \\ & \text{PLTEF} + \{\text{ROIF} \times (\text{ROFWR} - 1)\} - \text{ROEF, from [7a] line 4} \\ & \text{PLTEF} + \{\text{ROIF} \times (\text{ROFWR} - 1)\} - (\text{ROFWR} \times \text{ROIF}) \\ & \text{PLTEF} - \text{ROIF} \end{aligned}$$

$$[7c] \quad \text{ROEF} = \text{ROFWR} \times \text{ROIF}$$

Substitution of the results of [7a], [7b] and [7c] into [7] and solving in terms of ROIF gives the following:

$$[8] \quad \text{ROIF} = \{\text{PLTEF} \times (\text{PLTECL} - \text{BLDCL})\} / \{(\text{ROFWR} \times \text{BLDCL}) - \text{BLDCL} + \text{PLTECL} - (\text{ROFWR} \times \text{ROECL})\}$$

The other process flows are calculated from the equations above, once RO influent flow is known.

#### MF RO Model Cost Basis

The MF RO model capital and O&M costs are based on costs prepared for a reclaimed wastewater facility, with 5 MGD RO product water flow rate, recently put into operation in the Southern California area.<sup>6</sup> The model uses linear scaling of costs based on RO product water flow rate, with the exception of the MF membrane racks, which are added in increments of 96 module racks. MF RO model O&M costs are adjusted to account for the percentage of MF RO capacity that is currently being utilized. Savings on O&M costs for unused MF RO capacity are estimated at 70 percent. The percentage of MF RO capacity being utilized is calculated by determining the percentage of wastewater plant capacity that is currently being utilized on an annual average flow basis.

Other sources were used to verify the cost basis of the MF RO model used in this report, including information in the literature and costs from engineering reports prepared for other projects. Both the capital and O&M costs from this model compare well with cost estimates from these other sources.

**Feed Water Recovery and Chloride Rejection.**<sup>7</sup> The default model settings for feed water recovery for both the MF and RO are 85 percent. Both MF and RO feedwater recoveries can be adjusted in the "Design Data" screen of the spreadsheet model. Increases in MF recovery beyond 85 percent assume addition of a second stage of MF for recovery of backwash water. MF capital costs are increased accordingly. An error message prompting the user to increase MF feedwater recovery appears on the model "Size and Cost Summary" screen when required chloride reduction targets are not achievable at 85 percent MF recovery.

<sup>6</sup> Backup MF RO cost basis information available on request.

<sup>7</sup> Backup feedwater recovery and chloride rejection information available on request.

RO feedwater recoveries above 85 percent are assumed by the spreadsheet model to be achievable with existing RO capacity on current water quality. Therefore, no adjustments are made to RO capital costs for feedwater recoveries greater than 85 percent.

The default model chloride rejection for RO is 95 percent. This is based on a membrane manufacturer's RO model projections for two-stage RO using thin-film composite membranes at 85 percent feed water recovery.

#### MF RO Size and Cost

**MF RO Treatment Requirements – Year 2015.** The projected flows, projected wastewater plant effluent chloride concentration and target blended chloride concentration for worst-case treatment conditions are presented in Table 4-2.

**Table 4-2 Worst-case MF RO Treatment Requirements in Year 2015**

WRP	Chloride TMDL Requirement	WRP Effluent Chloride (mg/L)	TMDL Chloride (mg/L)	Projected WRP Flow (MGD)
Saugus	Instantaneous	575	100	6.5
Valencia	Instantaneous	467	100	27.6

**MF RO – Size and Cost Estimate – Year 2015.** With the treatment requirements from Table 4-2 as inputs to the spreadsheet model, the required MF RO design capacity and associated costs were calculated. The required RO product flow was not achievable at 85 percent MF feedwater recovery at Saugus WRP with these inputs, so the MF feed water recovery was adjusted to 90 percent. The size and cost estimates based on these inputs are presented in Table 4-3.

**Table 4-3 MF RO Size and Costs<sup>8</sup>**

	Valencia WRP MF RO	Saugus WRP MF RO
Design Flows, RO product water	20 MGD	4.9MGD
Total Capital Cost	\$142M	\$35.5M
Annual O&M Cost	\$7.5M	\$1.9M

MF RO O&M costs are based on 2015 design flows at both WRPs.

**MF RO – Project Constraints.** In addition to the uncertainty in the year 2015 WRP effluent chloride concentration, the MF RO cost estimate does not account for some

<sup>8</sup> MF RO capital costs do not include costs for equalization of flows to MF and RO at each WRP.

additional cost items that will require more detailed evaluation to estimate and could add significantly to project costs. These additional cost items are:

- Site acquisition and site preparation costs
- MF RO influent flow equalization tanks.

#### **MF RO Building Sizes and Siting**

The spreadsheet model estimates of the space requirement for the 4.9 MGD product flow MF RO facility at Saugus are 19,000 square feet for the MF building and chemical storage tanks and 6,200 square feet for the RO building and control center. The siting of these facilities at the Saugus WRP presents a challenge. The Saugus WRP is extremely space constrained by railroad tracks on one side and a fairly steep hillside on the other. The two potential locations for the structures and tanks required for the MF RO that were identified during a site visit were either 1) build on top of existing process facilities, or 2) add fill to the hillside to create an elevated plateau. Both these siting options will add significantly to construction costs.

The spreadsheet model estimates of the space requirement for the 20 MGD product flow MF RO facility at Valencia are 76,000 square feet for the MF building and chemical storage tanks and 25,000 square feet for the RO building and control center. The potential location for these new facilities, identified during a site visit, was beyond the boundary of the current facility downstream to the west. The CSDLAC would have to procure this additional property.

#### **BRINE DISPOSAL ALTERNATIVES**

A waste product of the reverse osmosis treatment process is a brine solution, which is the concentrated reject waste stream from the RO process. The brine waste contains all constituents in the water that are rejected by the RO membranes. RO membranes reject most of the dissolved compounds in the water and as such, will contain constituents that exist in the effluent of the existing Valencia and Saugus WRPs. The brine waste may contain high concentrations of total dissolved solids, pathogens, and heavy metals and therefore, may be classified as a hazardous waste. This presents a challenge in disposing the brine waste, which is typically 5 to 25 percent of the influent flow to the RO process. Spreadsheet model estimates of brine flow for ultimate WRP flows were 8.6 MGD. The 30-inch pipe required would have sufficient brine flow capacity for up to 12 MGD.

The four brine disposal alternatives being considered for the Valencia and Saugus WRPs are listed below. The first three alternatives involve ultimate discharge of the brine waste to the ocean. The fourth alternative involves the injection of the brine waste into a subsurface geologic formation.

1. Brine pipeline to Ventura
2. Brine pipeline to Carson, CSDLAC JWPCP
3. Truck brine to Joint Plant in Carson
4. Brine disposal via deep well injection

A description of each alternative and conceptual-level costs are provided in the following sections.

#### **Alternative 1: Brine Pipeline to Ventura**

Alternative 1 involves a gravity pipeline to transport brine waste from the Valencia and Saugus water reclamation plants to the City of Ventura for discharge to a 3-mile dedicated ocean outfall. The pipeline alignment would generally follow highway 126 from Valencia to Ventura. See Figure 4-2 in the Appendix for a plan view of the pipeline alignment. The total length of the brine pipeline is approximately 42 miles. The elevation drop from Valencia to Ventura is approximately 1,000 feet and elevations along the pipeline alignment indicate that it may be feasible to flow by gravity to the ocean.

Unlike the MF RO treatment process, which can be incrementally expanded as necessary, the brine pipeline is sized for the ultimate capacity flow. The ultimate brine flow is projected to be approximately 8.6 MGD, which requires a 30-inch pipeline. The pipeline would be a reinforced concrete pipe with manholes installed every 500 feet. Depending on brine pH, other pipeline materials could be selected with no major impact on costs. The majority of the pipeline alignment along Highway 126 is open country with the remainder passing through developed areas such as Fillmore, Santa Paula, and Ventura. Considering the general geographic conditions along the pipeline alignment, it is assumed that construction may include some rock excavation, tunneling, dewatering, and river undercrossings. These factors have been generally factored into the construction cost estimate for the pipeline with additional construction contingency intended to account for unknown conditions. A 3-mile long ocean outfall constructed of ductile iron pipe would ultimately discharge brine waste to the ocean. Other pipe materials could be substituted for ductile iron without a major impact on costs. Table 4-4 presents conceptual-level capital costs for a brine pipeline and ocean outfall.

<sup>9</sup> Backup brine disposal cost information available on request.

**Table 4-4 Capital Costs for Alternative 1: Brine Pipeline to Ventura**

	Unit	Value
<b>Design Parameter</b>		
Brine Flow	MGD	8.6
Pipeline Diameter	inches	30
Length - Brine Pipeline	mile	42
Length - Ocean Outfall	mile	3
<b>Construction Costs</b>		
Brine Pipeline	\$ million	\$135 M
Ocean Outfall	\$ million	\$60 M
Engineering, Legal, Administration	\$ million	\$49 M
<b>Total Capital Cost</b>	<b>\$ million</b>	<b>\$244 M</b>

O&M costs for transmission sewers can be applied to a brine pipeline to estimate annual O&M costs. The primary O&M costs can be classified as pipeline inspection/cleaning and pipeline repair. A 50-year service life for the brine pipeline was used as the basis for estimating O&M costs. Pipeline inspection and cleaning is recommended on an annual basis to monitor the integrity of the pipeline and promote continuous service of the pipeline. Inspection and cleaning of the pipeline can be performed with portable closed-circuit television cameras and hydrojetting equipment, respectively. It is proposed to inspect and clean 10 percent of the total pipeline length per year, excluding the ocean outfall. This strategy allows the entire brine pipeline to be inspected and cleaned every 10 years. The ocean outfall is excluded from inspection and cleaning due to difficult access.

Pipeline repairs will be necessary throughout the service life of the brine pipeline. The magnitude and frequency of repairs cannot be predicted; therefore, it is recommended that an annual repair fund be established to respond to pipeline repairs. The contribution to the annual fund would be approximately 0.2 percent of the total construction costs for the brine pipeline. Over a 50-year period, this equates to a total contribution of 10 percent of the construction costs to the repair fund. Money in the annual fund would accumulate each year if unused. This strategy assumes that repairs will be minimal during the early life of the pipeline and will increase as the pipeline reaches the end of its service life. Table 4-5 presents conceptual-level O&M costs for a brine pipeline.

**Table 4-5 O&M Costs for Alternative 1: Brine Pipeline to Ventura**

	Unit	Value
<b>Pipeline Inspection and Cleaning</b>		
Inspection and Cleaning	\$/ft	\$2
Length – Brine Pipeline	ft/yr	23,000
Annual Cost	\$/yr	\$46,000
<b>Pipeline Repair</b>		
Annual Repair Fund	\$/yr	\$270,000
<b>Total Annual O&amp;M Cost</b>	<b>\$/yr</b>	<b>\$316,000</b>

**Brine Pipeline to Ventura – Project Constraints.** The pipeline alignment from Valencia to Ventura should be feasible in concept; however, there are considerations that must be investigated in detail to determine the actual feasibility of the construction. The potential project constraints and considerations listed below should be evaluated prior to selecting this alternative. The list is not all-inclusive, but provides issues that could substantially impact implementation and project costs and could potentially render the alternative infeasible or impractical. Note, the following constraints and considerations were not factored into the construction cost estimate.

- Geologic conditions
- River or stream undercrossings
- Traffic control
- Property acquisition and rights-of-way
- Permitting (and impacts to impairment determination)
- Environmental assessment
- Permit for ocean discharge
- Dewatering flows that cannot be discharged to the Santa Clara River

**Alternative 2: Brine Pipeline to JWPCP**

Alternative 2 involves a pipeline and pump station to transport brine waste from the Valencia and Saugus WRPs to the CSDLAC JWPCP located in the City of Carson. The brine waste would be discharged to the ocean via the existing tunnel and ocean outfall connected to the JWPCP. The challenge of this alternative is that the pipeline would be installed in densely populated and highly urban areas along the majority of the pipeline alignment. See Figure 4-3 in the Appendix for a plan view of the pipeline alignment. The total length of the brine pipeline is approximately 46 miles. A booster pump station would also be required to transport the brine over the mountain range just south of Valencia. From that point, it may be feasible to transport the brine via gravity pipeline to the JWPCP.

The brine pipeline would be sized for an ultimate brine flow of 8.6 mgd, which requires a 30-inch pipeline. The pipeline would be a reinforced concrete pipe with manholes installed every 500 feet. Depending on brine pH, other pipeline materials could be selected with no major impact on costs. Considering the highly urban areas of the pipeline alignment, construction would be very difficult and may require significant tunneling to cross under freeways and major streets. Existing utilities such as sewer, water, gas, power, and telecommunication lines will also create a challenge to find adequate space for the brine pipeline. Construction of a railroad corridor for the Alameda Corridor Project through urban areas of Los Angeles required five years to complete. These challenges result in a higher construction cost estimate for the pipeline with additional construction contingency intended to account for unknown conditions. Table 4-6 presents conceptual-level capital costs for a brine pipeline and pump station.

**Table 4-6 Capital Costs for Alternative 2: Brine Pipeline to JWPCP**

	Unit	Value
<b>Design Parameter</b>		
Brine Flow	MGD	8.6
Pipeline Diameter	inches	30
Length – Brine Pipeline	miles	46
Pump Station Horsepower	hp	1,020
<b>Construction Costs</b>		
Brine Pipeline	\$ million	\$224 M
Booster Pump Station	\$ million	\$6.0 M
Engineering, Legal, Administration	\$ million	\$58.0 M
<b>Total Capital Cost</b>	<b>\$ million</b>	<b>\$288 M</b>

The O&M strategy for pipeline inspection, cleaning, and repairs is identical to the strategy proposed in Alternative 1. Additional O&M costs are included for a booster pump station. Table 4-7 presents conceptual-level O&M costs for a brine pipeline and pump station.

**Table 4-7 O&M Costs for Alternative 2: Brine Pipeline to JWPCP**

	Unit	Value
Pipeline Inspection and Cleaning		
Inspection and Cleaning	\$/ft	\$2
Length – Brine Pipeline	ft/yr	27,000
Annual Cost	\$/yr	\$54,000
Pipeline Repair		
Annual Repair Fund	\$/yr	\$447,000
Booster Pump Station		
Annual Energy Cost	\$/yr	\$661,000
Annual Labor Cost	\$/yr	\$240,000
<b>Total Annual O&amp;M Cost</b>	<b>\$/yr</b>	<b>\$1,402,000</b>

**Brine Pipeline to JWPCP – Project Constraints.** The pipeline alignment from Valencia to Carson should be feasible in concept; however, there are considerations that must be investigated in detail to determine the actual feasibility of the construction. The potential project constraints and considerations listed below should be evaluated prior to selecting this alternative. The list is not all-inclusive, but provides issues that could render the alternative infeasible or impractical. Note, the following constraints and considerations were not factored into the construction cost estimate.

- Geologic conditions
- Freeway and major street undercrossings
- Traffic control
- Property acquisition and rights-of-way
- Permitting (and impacts of impairment determination)
- Environmental assessment
- Permit for ocean discharge
- Dewatering.

**Alternative 3: Truck Brine to JWPCP**

This alternative involves transporting brine waste via 5,000 gallon trucks from the Valencia and Saugus WRPs to the CSDLAC JWPCP located in the City of Carson. Brine waste would be loaded into trucks and hauled to the JWPCP, where it would then be discharged into the existing tunnel and ocean outfall. Preliminary calculations were performed to estimate the number of truck loads that would be required to haul brine waste. Calculations were performed for brine waste flow of 4.4 MGD and 8.6 MGD, which are the projected brine flows from the RO treatment process for the years 2015 and ultimate capacity, respectively. For brine flows of 4.4 MGD and 8.6 MGD, approximately 880 and 1,720 truck loads, respectively, would be required per day to haul

brine waste to the JWPCP. Additionally, an equalization basin in the range of 6 to 12 million gallons would be required at the water reclamation plants to equalize the flow from the RO treatment facilities to allow for loading into the trucks. The number of truck deliveries required per day make this alternative infeasible; and therefore, this alternative will not be given further consideration.

#### **Alternative 4: Brine Disposal via Deep Well Injection**

Deep well injection is a method used for disposal of non-hazardous liquid wastes. The wastes are injected into porous subsurface formations in areas where there is no communication with potable groundwater supplies. This lack of connection is vital to successful development of disposal wells. It has been theorized that deep well injection could be used as a method for brine disposal in existing oil fields in the Santa Clarita valley. Injection wells are used extensively for disposal of concentrate brine in Florida. In California, however, there is very limited experience with this disposal methodology.

Numerous issues must be investigated in detail prior to proceeding with this alternative. The geology, hydrogeology, and existing well conditions must be evaluated in detail. Adjacent groundwater supplies, both existing and potential, must be identified and favorable conclusions must indicate that water supplies will not be negatively impacted by the brine injection. Permit issues must also be resolved to proceed with deep well injection. Injection wells in California are regulated under the Toxic Injection Well Control Act enforced by the State Department of Health Services (DHS). One requirement of the Act is a permit can be issued only if DHS determines that the wastes cannot be disposed of in an alternative way.

Data from existing oil fields in the Santa Clarita valley were examined to estimate geologic characteristics. The oil fields are mostly in the Pico and Repetto formations. The depths of these wells range up to approximately 2,000 feet. The formations consist of interbedded marine siltstone, sandstone, mudstone and conglomerate. The Pico and Repetto formations are approximately 1,000 feet in total thickness. The total storage capacity of the formations is finite; therefore, the capacity must be estimated to determine the duration that deep well injection may be utilized.

**Deep Well Injection – Cost Estimate.** Preliminary calculations for the deep well injection alternative indicate that approximately 44 wells are necessary to inject 4.4 MGD of brine waste into the subsurface environment. Each well would have a tubing diameter of 6-inches and a total depth of 2,000 feet. In addition to the deep injection system, a system of monitoring wells will be required. At this level of evaluation, the exact number of wells is unknown, but it is estimated that at least 15 monitoring wells should be installed. A pump station and brine pipeline are also required to transport the brine waste from the Valencia and Saugus water reclamation plants to the injection wells. Table 4-8 presents a breakdown of conceptual-level capital costs for the deep well injection alternative.

**Table 4-8 Capital Costs for Alternative 4: Deep Well Injection**

	Unit	Value
Deep Injection Well (each)	\$ M/well	\$ 2.2 M
Total for 44 wells	\$ million	\$ 96 M
Monitoring Well (each)	\$ M/well	\$ 0.5 M
Total for 15 wells	\$ million	\$ 7.5 M
Brine Pipeline		
Length	mile	10
Construction Cost	\$ million	\$ 19 M
Pump Station		
Horsepower	hp	424
Capital Cost	\$ million	\$ 4 M
Engineering, Legal, Administration	\$ million	\$ 32 M
Total Capital Cost	\$ million	\$ 159 M <sup>10</sup>

Operation and maintenance costs for the deep well injection alternative are estimated to be associated with the sampling of monitoring wells and the O&M for the brine pipeline and pump station. Table 4-9 presents conceptual-level O&M costs for the deep well injection alternative.

**Table 4-9 O&M Costs for Alternative 4: Deep Well Injection**

	Unit	Value
Brine Injection Wells		
Annual Labor Cost	\$/yr	\$240,000
Pipeline Repair		
Annual Repair Fund	\$/yr	\$38,000
Pump Station		
Annual Energy Cost	\$/yr	\$278,000
Annual Labor Cost	\$/yr	\$160,000
Total Annual O&M Cost	\$/yr	\$716,000

<sup>10</sup> The total capital cost of a deep well injection system for a capacity of 8.6 MGD (brine flow estimated for ultimate buildout of the SCV) is estimated to be \$295 million with an annual operation and maintenance cost of \$1.0 million per year. It is estimated that a total of 86 injection wells and 29 monitoring wells would be required to handle the disposal of ultimate buildout brine flows for the SCV.

**Brine Disposal via Deep Well Injection – Project Constraints.** Deep well injection of brine should be feasible in concept; however, there are considerations that must be investigated in detail to determine the actual feasibility of this option. The storage capacity of the underground formation could be insufficient to make this a long-term disposal option. In addition, the DHS may not issue permits for deep well injection if other disposal options appear to be feasible. The potential project constraints and considerations listed below should be evaluated prior to selecting this alternative. The list is not all-inclusive, but provides issues that could substantially impact implementation and project costs and could potentially render the alternative infeasible or impractical. Note, the following constraints and considerations were not factored into the construction cost estimate.

- Determination of well storage capacity
- Impact on adjacent groundwater supplies
- Property acquisition and rights-of-way
- Permitting
- Environmental assessment.

#### **IMPLEMENTATION SCHEDULE**

The alternatives presented in the preceding sections for MF RO treatment and brine disposal involve difficult construction issues and will likely be confronted with significant environmental and permitting challenges. The construction of a brine pipeline to Ventura or Carson will be complex and could encounter construction difficulties such as dewatering, rock excavation, and stream crossings. The preparation of an environmental impact report and permits is anticipated to be extensive, especially considering that brine discharge to the ocean is being proposed. Right-of-way and property acquisition issues will also be extensive since a brine pipeline to Ventura or Carson will pass through many communities and involve numerous utilities and municipal organizations.

Conceptual-level implementation schedules were prepared for the MF RO facilities at the Saugus and Valencia WRPs and the various brine disposal alternatives presented in this report. Only major project activities that require significant time expenditure were included in the implementation schedules to provide an overall estimate of project duration. Activities that were presented in the schedules include preliminary design, pilot-testing, geotechnical evaluation, environmental impact report, permitting, right-of-way acquisition, design, and construction. A projected implementation timeline for each alternative is presented in Figure 4-4.

Space restrictions at Saugus will make MF RO site selection difficult and site preparation more costly. The brine disposal options are anticipated to be the most difficult and contentious components of the project. The environmental impact report and permitting process associated with the brine disposal options are anticipated to add significant effort and time to the project. Approval for the discharge of brine either to the ocean or a subsurface formation will require extensive evaluation of environmental impacts and will

be under close scrutiny by regulatory agencies. The estimated project duration for each alternative is presented in Table 4-10.

**Table 4-10 Estimated Project Duration for Chloride Reduction Alternatives**

<b>Alternative</b>	<b>Description</b>	<b>Project Duration</b>
MF RO		2 yr., 9 mo.
Brine Alternative 1	MF RO and Brine Pipe to Ventura	7 yr., 9 mo.
Brine Alternative 2	MF RO and Brine Pipe to JWPCP (Carson)	8 yr.
Brine Alternative 4	MF RO and Brine Deep Well Injection	7 yr., 3 mo.

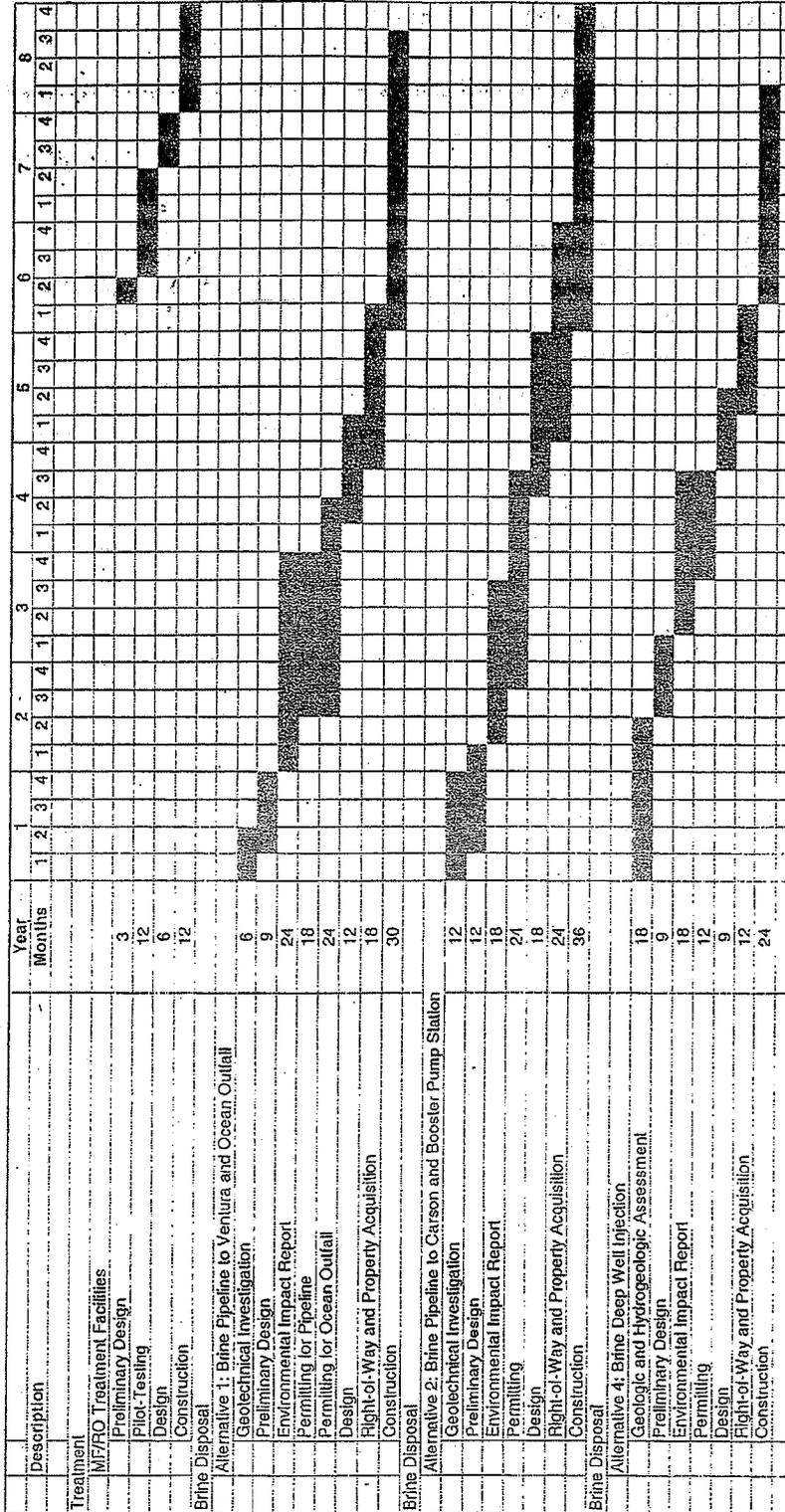


Figure 4-4 Project Conceptual Level Implementation Schedule

## SECTION 5 SUMMARY AND CONCLUSIONS

### TMDL CHLORIDE REQUIREMENT

The TMDL chloride WLAs for the Saugus and Valencia WRPs are in the process of being developed. In this report an instantaneous chloride discharge limit of 100 mg/L for both the Saugus and Valencia WRPs is used as the basis for demineralization facility sizing.

### CURRENT AND PROJECTED FLOWS AND CHLORIDE LEVELS

Table 5-1 presents the projected flows for the Saugus and Valencia WRPs. The flows presented in Table 5-1 through the year 2015 are based on the CSDLAC Facilities Plan. Ultimate build out flow projections were evaluated in a recent internal memorandum within CSDLAC. It is anticipated ultimate buildout flows will be reached within the next 50 years.

**Table 5-1 Projected Flows**

	Current	2010	2015	Ultimate
Saugus WRP	6.5 MGD	6.5 MGD	6.5 MGD	6.5 MGD
Valencia WRP	12.6 MGD	21.6 MGD	27.6 MGD	59 MGD

Projected worst-case WRP effluent instantaneous chloride concentrations for the year 2015 formed the basis for sizing the demineralization facilities. These projections were based on SCVJSS estimates of future annual average WRP effluent chloride concentrations under drought conditions assuming the current rate of increase in chloride loading to the Saugus and Valencia WRPs (e.g. no prohibition of self regenerating water softeners). These worst-case instantaneous maximum chloride concentrations for the year 2015 are presented in Table 5-2.

**Table 5-2 Worst-Case Instantaneous Chloride Estimates**

	Year 2015
<b>Instantaneous Chloride</b>	
Saugus Effluent	575 mg/L
Valencia Effluent	467 mg/L

### CHLORIDE REDUCTION ALTERNATIVES

A number of technologies for chloride reduction were considered, including MF RO, thermal distillation, ion exchange and electrodialysis/electrodialysis reversal. RO with MF pretreatment was selected based on its proven application for this purpose.

### CHLORIDE REDUCTION COST ESTIMATES

A spreadsheet model was developed for estimating capital and O&M costs for MF RO facilities at the Saugus and Valencia WRPs as well as the costs for three brine disposal options. The MF RO facilities were sized for treating year 2015 flows, instantaneous maximum chloride concentrations of 575 mg/L at Saugus WRP and 467 mg/L at Valencia WRP and a chloride discharge requirement of 100 mg/L as an instantaneous maximum. Brine pipelines were sized to handle ultimate buildout flows of 59 MGD at Valencia and 6.5 MGD at Saugus. The 30-inch pipe required has sufficient capacity for up to 12 MGD of brine flow. Deep well injection of brine was sized for 2015 flow rates. Table 5-3 presents the design criteria for sizing the MF RO facilities and the brine disposal options.

**Table 5-3 MF RO and Brine Disposal Design Criteria**

	Year	WRP Effluent Flow	WRP Effluent Chloride	Chloride Discharge Limit
Saugus WRP MF RO	2015	6.5 mgd	575 mg/L	100 mg/L
Valencia WRP MF RO	2015	27.6 mgd	467 mg/L	100 mg/L
Pipeline Brine Disposal Options 1 & 2	2050	65.5 mgd	634 mg/L (Saugus) 516 mg/L (Val.)	100 mg/L
Deep Well Injection Brine Disposal Option 4	2015	34.1 mgd	575 mg/L (Saugus) 467 mg/L (Val.)	100 mg/L

Table 5-4 presents the spreadsheet model total capital costs and annual O&M costs using the design criteria of Table 5-3. Costs are presented for MF RO facilities at the two WRPs and for each of the three brine disposal options.

Table 5-4 Total Capital and O&M Costs for Chloride Reduction with MF RO<sup>11</sup>

	Saugus WRP MF RO	Valencia WRP MF RO	Brine Pipe to JWPCP	Brine Pipe to Ventura	Well Injection of Brine <sup>12</sup>
Design Flow, RO product for MF RO	4.9 MGD	20 MGD	8.6 MGD	8.6 MGD	4.4 MGD
Total Capital Cost	\$ 36 M	\$ 142 M	\$ 288 M	\$ 244 M	\$ 159 M <sup>13</sup>
Annual O&M Cost	\$ 1.9 M	\$ 7.5 M	\$ 1.4 M	\$ 0.32 M	\$ 0.72 M

### PROJECT ASSUMPTIONS AND CONSTRAINTS

The implementation of MF RO at the Saugus and Valencia WRPs for chloride reduction is feasible in concept, however there were a number of assumptions made in projecting future flows and future chloride concentrations that affect the size and cost of the facilities required. These assumptions include:

- The chloride TMDL discharge requirement is assumed to be 100 mg/L instantaneous for both WRPs. This may change once the final TMDL requirement is issued.
- SCVJSS projections of future annual chloride concentrations and the resultant estimates of future worst-case instantaneous chloride concentrations are accurate.
- The relative height of instantaneous chloride spikes at each WRP is assumed to remain the same in the future.
- The influent flow equalization capacity and mode of operation at the Valencia WRP, relative to design capacity, is assumed to remain the same.

The following assumptions affecting the costs of implementing MF RO at the two WRPs were made:

- The cost estimates do not include costs associated with equalizing the WRP effluent flows.
- Special siting requirements at the plants may greatly add to the cost of MF RO facilities.

<sup>11</sup> MF RO capital costs do not include costs for equalization of flows to the MF and RO facilities at each WRP.

<sup>12</sup> The option of disposing brine waste via injection wells may not be feasible since the CA DHS would not likely issue permits for deep well injection if other disposal options appear to be feasible. In addition, the storage capacity of the underground formation could be insufficient to make this a long-term disposal option.

<sup>13</sup> The total capital cost of a deep well injection system for a capacity of 8.6 MGD (brine flow estimated for ultimate buildout of the SCV) is estimated to be \$295 million with an annual operation and maintenance cost of \$1.0 million per year. It is estimated that a total of 86 injection wells and 29 monitoring wells would be required to handle the disposal of ultimate buildout brine flows for the SCV.

- MF RO and brine disposal capacities are based on the assumption of treating worst-case instantaneous maximum chloride concentrations at plant design flow rates. It may be feasible to implement limited chloride equalization by diverting influent flows during chloride peaks to separate off-line equalization for this purpose. Further data would be needed to assess the potential impact of chloride equalization on facility size and cost. At best, this chloride equalization would result in the equivalent of treating worst-case 24-hour composite chloride concentrations. Preliminary costs based on estimated worst-case 24-hour composite chloride concentrations suggest that total capital cost savings would be only three to four percent (not including the cost of additional equalization capacity).

With respect to the brine pipeline disposal options, the following constraints and considerations may affect the feasibility of the project. These include:

- Geologic conditions
- Freeway and major street undercrossings
- Traffic control
- Property acquisition and rights-of-way
- Permitting (and impact of impairment determinations)
- Environmental assessment
- Permit for ocean discharge
- Dewatering activities.

**APPENDIX**  
**Brine Pipeline Alignments**

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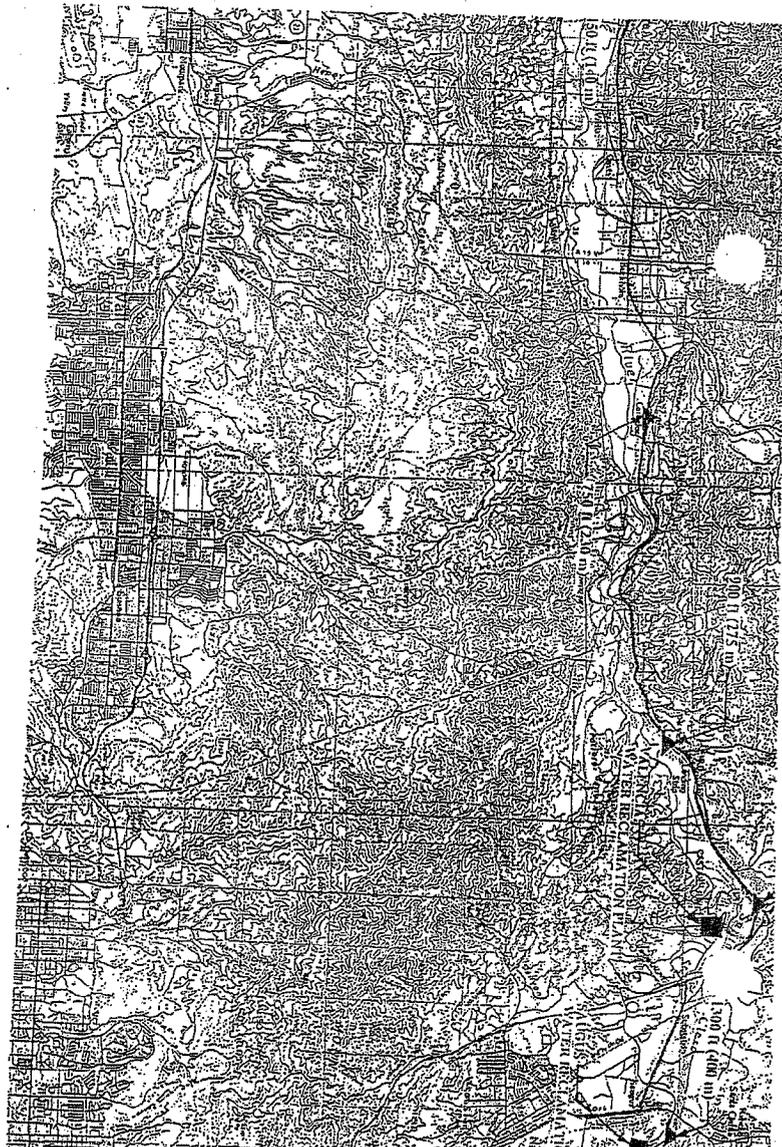
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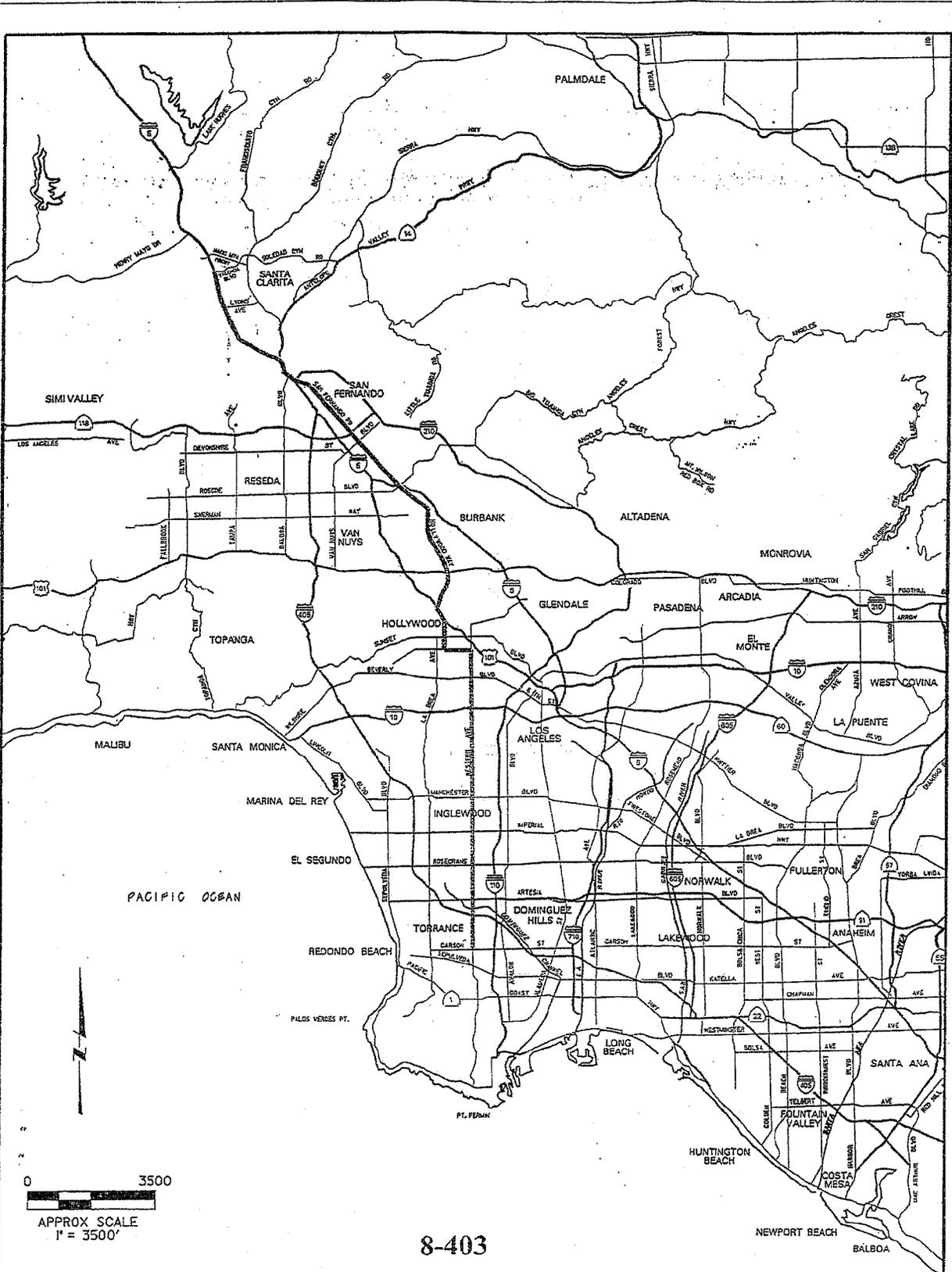
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 <p><b>MWH</b>          MONTGOMERY WATSON HARZA</p> <p>Pasadena          California</p>	<p>LA COUNTY          SANITATION          DISTRICTS</p>	<p>CHLORIDE COMPLIANCE STUDY          BRINE PIPELINE          TO CARSON-JOINT PLANT</p>	<p>FIGURE          4-3</p>
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# **ATTACHMENT 84**



Phase 1

Final Report

# Literature Review Evaluation

Upper Santa Clara River Chloride TMDL Collaborative Process



Prepared for  
Upper Santa Clara River  
Agricultural Technical  
Working Group

Prepared by  
**CH2MHILL**

September 2005

## Executive Summary

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### Background

On May 6, 2004, the Los Angeles Regional Water Quality Control Board (Board) adopted an amendment to the Water Quality Control Plan for the Los Angeles Region to revise the interim waste-load allocations and Implementation Plan of the Upper Santa Clara River (SCR) Total Maximum Daily Load. The Implementation Plan incorporated four major studies, including an evaluation of the appropriate chloride (Cl) threshold for the reasonable protection of salt-sensitive agriculture. The Los Angeles County Sanitation Districts (Districts) and the Board are working jointly on these studies. The Districts own and operate two water reclamation plants (the Valencia and the Saugus Water Reclamation Plants) in Los Angeles County that discharge tertiary-treated effluent to the Upper SCR. This report references both the Santa Clara River and the project study area/areas of concern as the "Upper SCR." Within the reaches of the river, avocado, strawberry, and some nursery crops have been identified as the most Cl- and salt-sensitive crops that are currently grown and that are likely to be grown in the future.

### Purpose

This report focuses on the Cl effects on these three crop types, and many other factors related to Cl effects, such as salinity, ion interactions, and management through a comprehensive literature evaluation. As part of Phase 1, Literature Review and Evaluation Task 1 efforts, approximately 200 articles were acquired and reviewed. This report, presenting the evaluation, is the deliverable for Phase 1, Literature Review and Evaluation Task 2 efforts. It presents the criteria, methodology, and results of the evaluation used to characterize and evaluate the literature found in the literature search and review. The main objective of the evaluation is to develop a matrix that ranks each study on its usefulness in developing a Cl threshold for the reasonable protection of salt-sensitive agriculture. This report then takes that ranking, coupled with a detailed scientific evaluation of each article, and recommends (if possible) a threshold value or range for each of the three crop types of concern: avocado, strawberry, and nursery crops.

### Crop Types

#### Avocados

Avocados are grown in several Southern California counties. According to the California Avocado Commission in 2004, the California avocado crop was valued at \$380,000,000 and accounted for over 60,000 acres of producing agricultural crops. Ventura County produces the second largest avocado crop (San Diego is the largest) in California, with about 15,000 producing acres in 2003-2004. Los Angeles County reported very small acreage in 2003-2004 (135 acres) and only accounted for 0.2 percent of the California crop. Most of California avocado crops (90 percent) are Hass variety.

EXECUTIVE SUMMARY

The avocado is known as one of the most sensitive species among woody plants to both salinity and Cl. Because Cl is a component of a salt, it can cause osmotic stress and stress related to specific physiological effects of the Cl ion. Cl, like other salt ions, accumulates in irrigated soils in arid and semiarid regions. Because the avocado is a tropical plant that is native to regions where rainfall is frequent, avocado commercial production in semiarid regions requires irrigation. Therefore, it is likely that without adequate management, most irrigated soils on which avocados are grown eventually accumulate Cl, even where the natural levels of Cl in the soil and irrigation water are low. Irrigation management, including appropriate leaching fractions, is commonly considered necessary to avoid Cl buildup in the soil matrix.

In most cases, avocados take up Cl and transport it to the shoots and leaves. Cl is mobile in plants for the same reason that it is mobile in the soil solution - it easily moves with water and is negatively charged, similar to the exchange sites of the soil and humic matter. However, when a plant transpires water from the leaf, Cl is left behind. This process is how Cl accumulates in leaves, and is why Cl accumulation in avocado leaves is directly related to transpiration. Therefore, the most distinctive symptom of Cl injury is leaf-tip burn, which is a result of high levels of Cl accumulation in leaves. Cl and/or salts can also affect other avocado growth parameters, such as root weight, trunk growth, shoot growth, yield, fruit quality, and photosynthesis.

### Strawberries

California strawberry production accounts for 88 percent of the national total for fresh and frozen strawberries, and it is the seventh most valuable fruit crop grown in the state. Although the strawberry is a perennial plant, it is primarily grown as an annual in California. This partially accounts for the high yield in the state, which is over 50 percent higher than that obtained in most states. Strawberry plants are shallow rooted and, thus, sensitive to osmotic stress from soil moisture deficit.

Relative to avocados, limited research has been performed to specifically address Cl toxicity in strawberries. The research information available on strawberries and Cl was often integrated in salinity-focused studies. Most studies involved growing berries in nutrient solutions with variable salinity from added salt treatments. Results of these studies proved that salinity and Cl uptake have significant negative effects on strawberry plant growth, survivorship, and fruit production, and that there is a strong positive correlation between Cl supply and uptake. Other studies showed that Cl uptake was roughly proportional to the concentrations in soil or substrate solutions. Cl toxicity symptoms were characterized by discoloration, followed by necrosis from margins toward base of leaves, and, finally, leaf abscission.

### Nursery Crops

California has the largest nursery and floral industry in the United States, responsible for approximately 22 percent of United States receipts in 2002. A vast array of nursery/ornamental crops are grown in Southern California. Irrigation and cultural methods are also diverse, including flood, drip, sprinkler, microspray, and a continuous fine mist or fog. These crops can be grown in natural soil or in containers.

Effects of elevated salt or Cl on growth of nursery crops are typically not a major concern unless visual impacts are noticed. In most cases, value of plants is determined by aesthetics rather than growth or yield. Therefore, any evidence of leaf burn, necrosis, or abscission can greatly reduce the value of the crop. Much less is known about salt tolerance and Cl injury in nursery crops relative to many agricultural crops. It is widely accepted that certain nursery crop species are the most salt- and Cl-sensitive species (e.g., azaleas, camellias, and rhododendrons). It is also widely known that most woody crops, such as many nursery species, tend to be more sensitive to Cl toxicity than herbaceous crops. Relatively few research studies are available examining Cl tolerance in nursery crops. The studies that are available vary widely in approach, objectives, and conclusions, making comparison of results among studies difficult. The appropriate threshold for Cl appears to depend greatly on the specific nursery crop and irrigation method to be used.

## Evaluation

Three types of evaluation criteria were used to assess the value of the literature found during the literature review, as follows:

- **Scope** - The study scope criteria were used to evaluate the presence or absence of valuable information. These criteria cannot be compared to any known conditions or practices; however, they indicated whether or not the literature provided valuable information on a specific aspect of the project topic. Each piece of literature was scored with a 0 or 1 for each scope of study criterion, depending on whether or not it was present in the study.
- **Applicability** - The study applicability criteria were used to evaluate how relevant the study was to the project area in terms of environmental conditions and agricultural practices. These criteria were compared with known conditions and/or practices in the Upper SCR, and were therefore used to evaluate how applicable the literature is to the project area. Literature was given a score of 0 to 3 for each criterion, depending on the extent the criterion is examined in the literature.
- **Quality** - The study quality criteria were used to evaluate the scientific merit of the literature. Scores of 0 to 3 were given to each piece of literature for each study quality criterion, depending on factors such as the presence or absence of standard requirements for scientific experimentation, analysis and interpretation of results, source of literature, and currency and duration of the study.

Thorough discussion is dedicated to the actual evaluation of the articles for each of the three crop types and the formulation of supporting information and trends that might or might not support establishment of a Cl threshold for these crops. The reader is encouraged to carefully review Section 3.0, Evaluation, of this report to completely understand the findings and limitations of this evaluation.

## Recommendations

### Avocados

No evidence indicates that the CI hazard level for avocados is below 100 milligrams per liter (mg/L). No scientific studies or extension specialists with experience in the project study area have indicated that CI injury occurs below 100 mg/L. Therefore, the lower limit of the CI hazard range is reasonably certain.

The upper range is less certain. Above this concentration (100 mg/L), the CI hazard level has been interpreted up to 178 mg/L by at least one author. There are various reasons to believe that this upper limit is too high. The reader is referred to Section 4.0, Recommendations, of this report for detailed justification and discussion on this topic. At CI concentrations between 120 and 178 mg/L, CI injury has been demonstrated to occur in several studies. For this reason, the recommendations for the CI thresholds that are above 100 mg/L converge on approximately 120 mg/L. The applicability of this value has some limitations because it is derived from sources that are not specific to the project study area; however, no valuable evidence suggests another proposed CI level anywhere between 120 and 178 mg/L. Therefore, although there is clearly not enough evidence to propose an absolute threshold with the literature presently available, the best estimate of a CI hazard concentration ranges from 100 to 120 mg/L.

Again, the reader is strongly encouraged to review the detailed information and justification of this threshold range provided in Section 4.0, Recommendations, of this report.

### Strawberries

The studies that were evaluated provided valuable information about strawberry CI uptake and correlated increased uptake with increased leaf burn. However, they did not provide sufficient data to determine an appropriate CI threshold for irrigation water. The primary factors that lead to this conclusion are as follows:

- Insufficient data were collected to correlate CI uptake to yield and fruit-quality impacts.
- The studies noted variability in plants or plant injury in control treatments, suggesting potential outside factors in the results.
- Study applicability to the Upper SCR was limited primarily with respect to the following factors found in the literature:
  - Varieties grown
  - Different or unknown irrigation methods
  - Different or unknown irrigation management
  - Different or unknown climate
  - Different or unknown cultural practices

## Nursery Crops

The available information does not provide sufficient evidence upon which to base a recommendation for a Cl threshold for nursery crops. The primary factors that lead to this conclusion are as follows:

- Studies by Wu et al., come the closest to providing the needed information, but they showed evidence of adverse effects with sprinkler irrigation at 300 mg/L Cl, suggesting that the threshold value is lower than 300 mg/L. In this case, it is difficult to justify establishing a standard based on the results of only a few experiments by one research group.
- Studies by the United States Salinity Laboratory provide much information on the relative salt tolerance for soil-planted and surface-irrigated plants, but include no information on sprinkler irrigation effects. Given the importance of sprinkler irrigation to Upper SCR nursery crop production, and the differential effects of root zone as compared to foliar exposure, the value of these studies in setting an irrigation water standard is limited.
- Thresholds suggested by extension pamphlets and local experts are not clearly tied to experimental data, making it difficult, again, to justify at the threshold level.
- Production of nursery crops in large containers (specimen trees) is a significant component of the industry, and no data are available on Cl standards for the production of these crops.
- Hundreds of plants potentially important to the industry are grown in the SCR, but data are only available on a limited number of these species.

# **ATTACHMENT 85**



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**Upper Santa Clara River  
Chloride TMDL Collaborative Process**

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**TECHNICAL ADVISORY PANEL: CRITICAL REVIEW REPORT**

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SEPTEMBER 26TH, 2005

PREPARED BY:  
MOORE JACOFANO GOLTSMAN (MIG), INC.

PREPARED FOR:  
UPPER SANTA CLARA RIVER CHLORIDE TMDL COLLABORATIVE PROCESS

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## **I. Introduction and Summary of Key Findings**

### **A. Purpose**

The Upper Santa Clara River (USCR) Chloride TMDL Collaborative Process was instituted to determine a threshold for chloride in the eastern end of reach 4, as well as the entirety of reaches 5 and 6 of the Santa Clara River. As part of the Collaborative Process, an Agricultural Chloride Threshold Study (ACT Study) was conducted. This study consisted of a Literature Review and Evaluation (LRE) prepared by CH2M Hill, which was then examined by a panel of experts in the fields of agriculture, chemistry, and soil science. This panel of experts, known as the Technical Advisory Panel (TAP) met several times over the course of the study to provide oversight and advice to the stakeholders and consulting teams. In their final meeting on July 11<sup>th</sup> 2005, they were asked to examine a draft of the LRE, and come to a decision as to its accuracy. During their deliberation, six key questions were developed. These questions served to guide the overall discussion of the TAP as they made their decision.

The TAP identified six key scientific issues to structure their discussion:

- 1. Please comment on the adequacy of the literature for supporting an interim number or guideline for the level of chloride that will reduce plant yields. Please comment specifically on the adequacy of the literature to justify the avocado threshold recommendations in the Literature Review Evaluation and provide your opinion on the accuracy of CH2M Hill's conclusion that there is insufficient literature to provide a recommended number or range for strawberries and nursery crops. If you are not in agreement with the range provided in the LRE, how would you modify it to feel the guideline concentration range would prevent detrimental impacts on avocado yields?*
- 2. What are the relative impacts of TDS and chloride on avocado yield? Do you believe that it is scientifically possible to separate the effects of the two stresses? Please document the evidence supporting your conclusions.*
- 3. Would you recommend that an experimental study be conducted to produce more meaningful information than is available in the current literature? Why or why not? If yes, what elements or characteristics should such a study include?*
- 4. How can local knowledge best be integrated into the study? Describe, "what works" based on information from local experience.*
- 5. Please discuss the validity of plant injury, growth, and yield as metrics of injury. Do you conclude that if there is plant injury there will be a reduction in yield? On what do you base your conclusion?*
- 6. Please provide any general comments on the Literature Review Evaluation.*

The TWG, which is comprised of a variety of stakeholders representing growers, water purveyors, elected officials, public agencies, environmental organizations, and other interested parties, examined the Literature Review Report and then generated a list of comments which were then forwarded to the TAP for their consideration. The TAP response to comments is included as an appendix to this document.

### **B. TAP Membership Information**

#### **Oleg Daugovish, Ph.D.**

Dr. Daugovish works with the Ventura County Cooperative Extension, where he serves as the farm advisor for strawberry and vegetable crops in Ventura County. He conducts research and educational programs with emphases on pest control and environmental quality of production, addressing the needs of organic farmers in Ventura County. He has also served as a research assistant with the Department of Plant, Soil and Entomological Sciences at the University of Idaho; Department of Agronomy at the University of Nebraska; and the Stensund Ecological Center. Dr. Daugovish received his Ph.D. from the

University of Idaho; M.S. from the University of Nebraska, B.S. from Latvia University of Agriculture. He is the author and co-author of 4 technical publications, 4 abstracts, and 6 technical proceedings.

**Ben A. Faber, Ph.D.**

Dr. Faber works with the Ventura County Cooperative Extension, serving as the soils/water/subtropical horticulture advisor in Ventura County. He has research experience in plant nutrition and soil management. His current research focuses on irrigation requirements of avocado and citrus, methods of controlling groundwater nitrate pollution, effects of yard waste mulches on citrus production and various methods for controlling micronutrient deficiencies in avocado. Dr. Faber received his Ph.D. from the University of California, Davis; M.S. Soil Fertility, University of California, Davis; B.S. Biology, University of California, Santa Cruz. He is the author and co-author of multiple technical papers and publications, including 18 publications developed over the last six years.

**S.R. Grattan, Ph.D.**

Dr. Grattan is a professor at the University of California, Davis, where he serves as the plant-water relations specialist in the Department of Land, Air, and Water Resources, Hydrologic Science Division. His research areas include irrigation management with saline water; plant response in saline environments; uptake of nutrients and trace elements by plants in saline environments; and crop water use. He also performs international consulting work with the World Bank, USDA/OICD, and USAID, and has previously served as a research assistant with the University of California, Riverside, and as a research plant physiologist at the USDA/ARS Salinity Laboratory. Dr. Grattan received his Ph.D. in Soil Science from the University of California, Riverside; M.S. in Soil Science from the University of California, Riverside; B.S. Soil and Water Science from the University of California, Davis. He is the author and co-author of 15 technical proceedings/presentations, 74 refereed publications, and over 100 reports.

**John Letey, Jr. Ph.D.**

Dr. Letey is Professor Emeritus of Soil Science, Soil and Water Sciences Unit, University of California, Riverside and Director of the Center for Water Resources, University of California, Riverside. He has also served as the Chair, Department of Soil and Environmental Sciences; Director, University of California Kearney Foundation of Soil Science; Associate Director, University of California Water Resources Center; California State Water Quality Coordinator; and Director, University of California Salinity/Drainage Program. His research areas include irrigation, salinity, drainage, and plant-water relationships. He received his Ph.D. in Soil Science from the University of Illinois, and his B.S. in Agronomy from Colorado State University, and has served on numerous state, federal and international advisory committees; University of California and Soil Science Society of America task forces and committees; and editorial boards. He is the author and co-author of over 80 international presentations, technical papers, publications and reports.

**Darrell H. Nelson, B.S.**

Mr. Nelson is a consultant with Fruit Growers Laboratory, and a farm operations manager and farmer in Ventura County. He is the former President and Laboratory Director of the Santa Paula and Stockton Fruit Growers Laboratory. He received his B.S. in Soil and Water Science from the University of California, Davis, and has made presentations on the use of scientific information to implement best management practices and the use of nutrient budgets. He has also been active in the appraisal of drinking water quality for regulatory purposes and irrigation water for suitability to specific crops. He has advised the Los Angeles Regional Water Quality Control Board on Best Management Practices and the use of Nutrient Budgets as they relate to Total Maximum Daily Loads (TMDLs), and is currently serving on the California Avocado Commission Research Committee as co-chairman of the management and physiology sub committee.

**Kenneth K. Tanji, Sc.D.**

Dr. Tanji is Professor Emeritus of Hydrology, Department of Land, Air and Water Resources, University of California, Davis. He has also served as the Senior and Principal Laboratory Technician, Department of Irrigation; Lecturer in Water Science, Department of Water Science and Engineering; Professor of Water Science, Department of Land, Air and Water Resources; Vice Chair and Chair, Department of Land, Air and Water Resources; and Professor of Hydrology, Department of Land, Air and Water Resources. He has more than 45 years of research experience dealing with salinity in agricultural lands in California, the Western U.S. and foreign countries, and is currently involved with developing a salinity management guide for irrigation of landscapes using recycled water. Dr. Tanji received his Sc.D. in Agricultural Science-Irrigation, Drainage and Hydrological Engineering from Kyoto University; M.S. in Soil Science-Soil Chemistry from the University of California, Davis; B.S. in Chemistry from the University of Hawaii. He is the author and co-author of 6 books, 28 book chapters, 158 papers, and more than 200 technical reports and proceedings.

**C. Definitions**

In an effort to clarify the work of the Agricultural Chloride Study, the TAP developed the following definitions to differentiate the terms "Threshold" and "Guideline":

*Threshold Concentration for Chloride Injury:* A specific and absolute numerical value of chloride concentration beyond which, according to the scientific literature, plant injury will occur. In the case of avocados this refers to the concentration beyond which leaf injury will occur.

*Guideline Concentration for Chloride Injury:* A range of numerical values of chloride concentration beyond which, according to the scientific literature, plant injury is likely to occur. The range establishes the likely lowest value at which injury might begin to occur and the likely highest value at which injury might begin to occur. For example, a guideline range for a hypothetical constituent might begin at 3 ppm as the lower bound or 5 ppm as the upper, depending on conditions.

**D. Summary of Findings**

The key differences between the majority report and the two minority reports center on three key issues: threshold value, the importance of TDS and ion-specific effects, and handling the need for incorporating local knowledge into the study. The chart below summarizes the positions of the majority and two minority reports on each of these issues.

	Threshold Value	TDS Vs. Ion-Specific Effects	Local Conditions
<b>Majority Report</b>	The lower limit at which chloride would be unlikely to cause damage to avocados on Mexican rootstock is somewhere around 100 mg/L.  The upper limit, however, is much less clear to the panelists. The TAP majority suggests that 117 mg/L would be a conservative upper-protective limit and a limit of 140 mg/L may be protective but only under ideal, non-restricting conditions.	It seems clear that TDS has a negative impact on avocado as it does with other salt-sensitive crops. Chloride is a contributor to salinity, and studies have shown that avocado is sensitive to this specific ion.  Separating the two effects (TDS and chloride) might be possible by controlled experiments, but it would be extremely difficult and long-term in nature. Extrapolating the results back to irrigation water Cl guidelines would again be difficult.	A correlational survey of local water quality, yield and management practices would provide useful information. However, establishing a precise relationship between chloride and yield may not be possible in light of the large number of management and environmental factors that can impact tree yield.
<b>Minority Report 1</b>	Using the soil concentration range of 355 to 540 mg/L from table 4 results in a range of 177 to 270 mg/L in the irrigation water.	All of the experimental evidence strongly leads to the conclusion that TDS is the critical factor for avocados and chloride is minor except to the extent that it contributes to TDS.	Although I agreed that a survey-based study to document local information on water quality and yield would be helpful, the probability of gaining definitive information is very low.
<b>Minority Report 2</b>	To utilize a level above 100 mg/l, which has been used successfully for the past 40 plus years, would be detrimental to the continued health of these crops.	I feel that the difference between the effects of chloride and total dissolved solids (TDS) are easily observed in the field and can therefore be separated in research trials.	Local knowledge and experience must be integrated into the study process for the determination of chloride thresholds for the plants in question.

### **E. Structure of the Critical Review Report**

What follows is the Critical Review Report (CRR) of the TAP. This report contains three sections:

- First, a *majority report* containing majority responses to each of the questions, supplemental information, and the responses of the four individual TAP members that contributed to the majority decision.
- Second, a section containing the *minority report of John Letey*, which includes supplemental information and an explanation of the differences between his opinion and that of the majority.
- Third, the *minority report of Darrell Nelson* is included. This section includes supplemental information and an explanation of the differences between his opinion and that of the majority.

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# **ATTACHMENT 86**



# CHLORIDE SOURCE IDENTIFICATION/REDUCTION, POLLUTION PREVENTION, AND PUBLIC OUTREACH PLAN

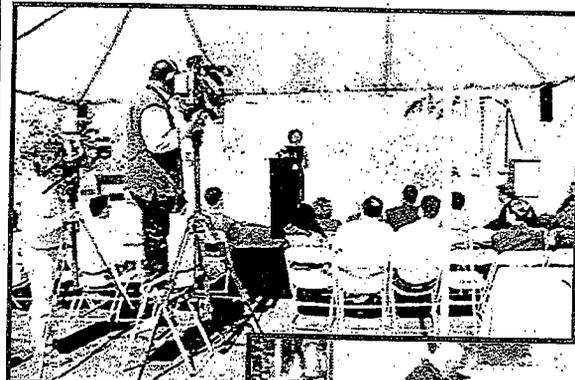
## NOTICE

### THE FACTS About Automatic Water Softeners

- FACT** All homes must unplug automatic water softeners or sewer bills may triple to \$400+.
- FACT** Automatic water softeners produce a salty waste with high chloride levels.
- FACT** High chloride levels in the Santa Clara River could harm downstream aquatic life and agriculture.
- FACT** New automatic water softener installations became illegal in 2003 because of the high salt levels.
- FACT** The 7,000 households that DO use automatic water softeners must remove them or a new chloride treatment plant must be built to reduce salt going to the Santa Clara River.
- NEW FACT** Over 15 alternative water conditioning systems are available NOW.
- NEW FACT** Product reviews of these systems by community members are available on the chloride web site.

To find the right alternative for your home, visit [www.lacsd.org/chloride](http://www.lacsd.org/chloride) or call 877-CUT-SALT. UNPLUG your automatic water softener TODAY!

For more information on the facts in which you are out of protection



# NOVEMBER 2005

SANITATION DISTRICTS OF LOS ANGELES COUNTY



2005 NOV 16 PM 2:33  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

## Section 1. Executive Summary

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### EXECUTIVE SUMMARY

#### 1.1 Introduction

The purpose of this report is to address measures taken and planned to be taken by the County Sanitation Districts of Los Angeles County (Districts) to quantify and control sources of chloride in the Santa Clarita Valley. The Districts currently operate eleven wastewater treatment facilities in Los Angeles County, California, including two water reclamation plants (WRPs) in the Santa Clarita Valley of northern Los Angeles County. These two plants, the Saugus and Valencia WRP, comprise the Santa Clarita Valley Joint Sewerage System (SCVJSS), along with more than thirty miles of Districts' operated trunk lines and one pumping plant. The system is operated by the Santa Clarita Valley Sanitation District of Los Angeles County.

The Saugus and Valencia WRPs discharge treated wastewater into the upper reaches of the Santa Clara River. The Districts are currently facing significant water quality and regulatory challenges regarding the concentration of chloride being discharged to the river from the Saugus and Valencia WRPs. The discharges contain chloride in excess of the water quality objective for the upper Santa Clara River of 100 mg/L, which was established by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) in 1978 to reflect existing water quality conditions.

To address chloride in the upper reaches of the Santa Clara River, the Regional Board adopted Resolution 04-004 on May 6, 2004. This resolution is known as the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL), and it sets forth a comprehensive Implementation Plan for evaluating and attaining the water quality objective for the upper Santa Clara River. It became effective May 4, 2005. One of the tasks required under the TMDL Implementation Plan, Task 3, requires the Districts to submit a plan addressing measures that have been taken, and are planned, to quantify and control sources of chloride in the SCVJSS. This report was prepared in partial fulfillment of the requirements under Task 3 of the Upper Santa Clara River Chloride TMDL Implementation Plan.

#### 1.2 Sources of Chloride Loadings

This report addresses chloride sources for the years 2002 through the first half of 2005. Chloride loadings for the year 2001 were fully characterized in a previous report by the Districts, *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*. This report builds upon the methodologies established in the previous report.

The primary source of chloride in the SCVJSS is chloride present in potable water served to the community. Potable water in the area is derived from two sources: imported water delivered under the State Water Project (SWP) and local groundwater. The chloride concentration in these two sources varies depending on a number of factors, most notably rainfall patterns. To estimate chloride loading in the potable water supply, water quality and quantity data from the local water suppliers were used.

Other sources of chloride in the SCVJSS include the industrial sector, the commercial sector, and hauled waste. Industrial loadings of chloride were estimated using chloride sampling data from industrial dischargers, combined with flow information from Districts' permit and surcharge records. Commercial loadings of chloride were estimated using concentration data taken from the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*, along with flow information taken from Districts' service charge records. The contribution of chloride from hauled waste was determined using sample data to characterize concentration and waste manifests to determine volume. Chloride introduced

## Section 1. Executive Summary

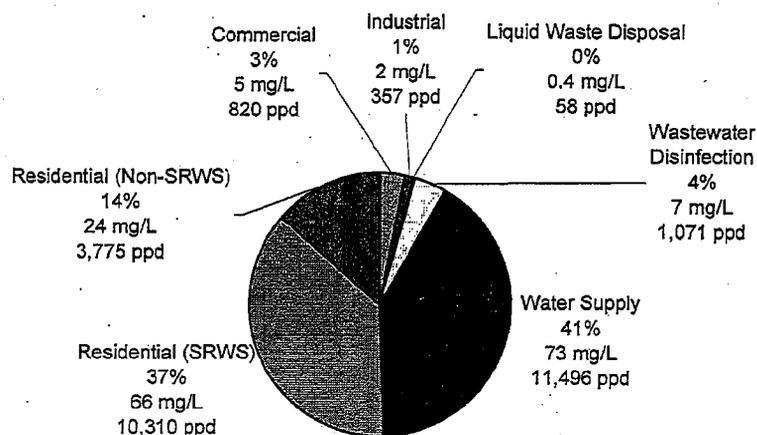
at the Saugus and Valencia WRPs during disinfection of wastewater using sodium hypochlorite was quantified using Districts' operational records.

The residential sector also contributes a substantial chloride loading. Chloride concentrations in residential wastewater, exclusive of contributions from self-regenerating water softeners (SRWS), were transferred from the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*. The flow volume for residential discharges was estimated using a differential method, whereby other known flow volumes were subtracted from the total system flow volume to obtain the residential wastewater flow rate. This method was validated in the *Santa Clarita Valley Joint Sewerage System Chloride Source Report, October 2002*, in which residential flow volumes were determined using both this differential method and a rigorous modeling technique based on extensive field data collection. There was excellent agreement between the two methods. The chloride loading contributed from SRWS was also estimated using a differential method, whereby all other chloride loadings were subtracted from the total chloride loading and the difference was assumed to be contributed by SRWS.

The results of the updated quantification of chloride sources in the SCVJSS indicate that the two largest sources of chloride on the system continue to be the water supply and residential SRWS. The estimated chloride from water supply peaked in 2003 at 12,800 pounds per day of chloride, representing 85 mg/L chloride in the system effluent. This peak coincided with drought conditions in northern California and thus a high chloride content in SWP water provided in the area. With extensive rainfall in both northern California and locally, the concentration of chloride in the water supply dropped to approximately 55 mg/L for the first half of 2005, and the mass loading of chloride from the water supply dropped to about 9,600 pounds per day. The chloride loading from SRWS peaked in 2003/2004 at approximately 10,000 pounds per day, representing 66 mg/L in the system effluent. This coincided with implementation of a prohibition on the installation of SRWS in the Santa Clarita Valley. The SRWS contribution fell significantly in the first half of 2005, as a community-wide public outreach effort to convince residents to remove existing SRWS began to take full effect. For the first half of 2005, the chloride loading from SRWS was an estimated 8,700 pounds per day, representing 50 mg/L in the system effluent.

Based on the SRWS chloride loading for the first half of 2005, there are an estimated 6,500 SRWS still present in the community. This is down from a peak of about 7,600 in the 2003/2004 time frame. The 6,500 estimate was corroborated by a survey conducted by a local water purveyor in May 2005. A graphical depiction of the breakdown in chloride sources for the last full year available, 2004, is presented below in Figure 1.2-1.

Figure 1.2-1 2004 Chloride Sources



## **Section 1. Executive Summary**

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The Districts will continue to monitor and quantify chloride sources on an on-going basis. Continued efforts will include collection of data on industrial chloride concentrations and flowrates, industrial self-monitoring of chloride concentrations, quantification of commercial flowrates, tracking of treatment plant sodium hypochlorite use, tracking of volumes of wastes accepted at the Saugus Liquid Waste Disposal Station, collection of groundwater chloride data from local water purveyors, and monitoring of chloride concentrations and flowrates at the Saugus and Valencia WRPs. The Districts also plan to begin semi-annual effluent chloride sampling events at the Saugus and Valencia WRPs. These sampling events would consist of collection of hourly chloride samples over a period of several days. The purpose of the sampling events would be to determine if the magnitude of peak chloride concentrations in the early morning hours caused by discharge of SRWS brines decrease as chloride source control efforts continue. A summary of chloride sources will be submitted to the Regional Board each year as part of the annual progress report required under the Upper Santa Clara River Chloride TMDL Implementation Plan, Task 3.

### **1.3 Chloride Source Control Measures**

The Districts have conducted a ground breaking, nationally recognized source control program for chloride in the Santa Clarita Valley. Because SRWS are the largest added source of chloride in the Santa Clarita Valley, the source control efforts have focused on these units. However, such efforts have also extended to the industrial sector, commercial sector, hauled waste, and treatment plant operations. Chloride in water supply is also being examined.

The Districts' chloride source control efforts in the SCVJSS began in 1961 with passage of resolutions prohibiting the discharge of SRWS brines from all industrial, commercial, and residential sources. Chloride source control efforts have continued since, but were significantly expanded in the early 2000s, well in advance of deadlines required under the Upper Santa Clara River Chloride TMDL.

The cornerstone of residential source control efforts in the Santa Clarita Valley was adoption of ordinances in 2003 prohibiting the installation of residential SRWS. The ordinances were the first of their kind enacted under a new California law authorizing such ordinances. The ordinances were widely publicized using press releases, a web site, a direct mailing to the entire community, telephone calls to developers, letters to developers, letters to licensed contractors, letters to water conditioning system vendors, outreach at community fairs, and a brochure. Additionally, the Districts worked with the Regional Board and the City of Santa Clarita to obtain agreement from local retailers to voluntarily stop selling automatic water softeners.

Residential community outreach efforts began prior to enactment of the 2003 ordinances, with a pilot-scale outreach program in two neighborhoods having a high incidence of SRWS. The program included pre- and post-outreach surveys, two mailings that were sent to all residents, a web site, a mailing to realtors, and mailings to community opinion leaders. Although the pilot-scale outreach program was successful at increasing awareness of the chloride issue among the target audience, it was not successful in convincing any residents to remove their SRWS.

After enactment of the ordinances, a community-wide public outreach program was developed. Because the pilot program was not as successful as desired, new market research was conducted prior to program development to devise new strategies and messages. Market research included conducting two focus groups, which were held in late 2003. The resulting campaign that was developed relies heavily on cable television advertising and direct mailings to residents. It also includes a web site, a toll-free hotline that is answered by Districts' engineering staff, press releases, and participation in community fairs. The program was launched in March 2004 and is still underway. As the program continued, several new

## ***Section 1. Executive Summary***

features were added. These include direct mailings each month to homeowners that have purchased a house in the Santa Clarita Valley in the previous month and an innovative website that collects and presents performance reviews of alternatives to automatic water softeners.

The community-wide public outreach program has proven to be highly successful. Through August 2005, the Districts had received 668 responses to the campaign, including 261 requests for information on alternatives to SRWS. The campaign's web site has been very popular, reaching a peak of 6300 page views per month in June 2005, including over 1400 page views of the page presenting performance reviews of alternatives to automatic water softeners. Based on telephone survey results, the awareness level of the community regarding the chloride issue increased from 4% in mid-2002 to 61% in May 2005. Most notably, the number of SRWS in the Santa Clarita Valley has declined significantly. Information on the program has been sent to numerous other organizations, and six public presentations have been made to share the program with others. The program has been recognized with local, state, and national awards.

Concurrent with the outreach program to residents, the Districts have been working with local retailers to request that they stop selling rock salt and potassium for use in SRWS. These efforts have paid off, as Costco, Sears, and OSH have stopped selling these products. Other stores, such as Albertsons, Vons, and Pavilions, are still carrying rock salt and potassium but have agreed to post signage where the products are sold that provide information about the harm caused by SRWS. Although it does not sell rock salt or potassium, the operator of the Valencia Town Center, Westfield Group, agreed to help increase public awareness by posting signage at the Center about the problems with SRWS.

The Districts have also conducted research into the use of financial incentive programs and disincentive programs to further encourage residents to stop using SRWS. After an extensive investigation, the Districts chose to design an incentive program modeled after a highly successful rebate program conducted by the Santa Clara Water District. The financial incentive program will consist of a \$150 rebate for SRWS users that remove their unit and replace it with an acceptable alternative, such as portable exchange tank service or a non-salt water conditioning device. For households with SRWS that choose to no longer soften their water, a \$100 rebate will be offered simply for removal of the SRWS from the household with no replacement. The Districts are in the process of completing the detailed design for the program and plan to implement the program by the end of 2005. A grant request for funding of such a program was also submitted.

The Districts are also in the process of expanding the residential source control program to include saltwater pools. Saltwater pools are swimming pools that perform disinfection by using an electrolysis process to create chlorine gas in-situ at the pool from sodium chloride that has been added to the pool. High chloride concentrations are maintained in such swimming pools, and discharges of filter backwash from the pools and/or draining of the pools for repairs could cause excessive chloride loading to the system if these systems become popular. Therefore, the Board of the Santa Clarita Valley Sanitation District of Los Angeles County introduced an ordinance prohibiting new discharges from such pools to the sewerage system and prohibiting the conversion of existing pools that discharge to the sewerage system to saltwater pools. The ordinance was introduced on October 12, 2005 and will be considered for adoption by the Board of the Santa Clarita Valley Sanitation District on November 9, 2005.

The Districts are firmly committed to conducting residential chloride source control efforts in the Santa Clarita Valley. The Districts plan to continue the award-winning community-wide public outreach program. The program will be periodically reassessed to determine its value to overall chloride reduction. Efforts to work with retailers on a voluntary sales ban of rock salt/potassium and on placement of signage

## Section 1. Executive Summary

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will continue as an important element of the outreach program. The Districts plan to implement the incentive program for removal/replacement of SRWS as previously described. This program will also be periodically reassessed to determine its impact on chloride, and will be continued as appropriate. The Districts will consider formal approval of the saltwater pool prohibition and, if it is adopted, will take steps to maximize its effectiveness. It is anticipated that this will include publicizing the ordinances through press releases and direct mailings, and contacting swimming pool supply retailers to request a voluntary sales ban on these units.

Implementation of the incentive program for removal/replacement of SRWS and enactment of an ordinance regarding saltwater pools are expected to accelerate reductions in the chloride concentrations of effluent from the Saugus and Valencia WRPs. The Districts will continue to identify opportunities to reduce residential chloride discharges, and modify the residential source control program as appropriate to strengthen its impact. The Districts have already taken a number of ground-breaking steps in its residential chloride source control program, and plan to continue to remain the national leader in residential chloride source control efforts.

Although source control efforts have focused on the residential sector, the Districts have also conducted extensive source control efforts for other sectors. For the industrial sector, the Districts operate a comprehensive industrial waste source control program that includes permitting, inspections, monitoring, and enforcement. Under this program, industrial dischargers in the Santa Clarita Valley have either been assigned a chloride discharge limit of 100 mg/L or assigned a performance-based chloride limit that reflects implementation of chloride reduction practices to the extent technologically and economically feasible. For the commercial sector, the Districts are aggressively enforcing their prohibition on the use of SRWS. Numerous notifications about the prohibition have been made to commercial businesses, and hundreds of on-site inspections to verify compliance have been conducted. On-site inspections have included inspections of all establishments in the commercial sectors most likely to have SRWS including all restaurants, hotels, bars, billiard halls, and dry cleaners. No illegal SRWS have been found at commercial businesses since 2002. In addition, the Districts conducted a comprehensive assessment of sources of saline discharges at commercial businesses, to identify such discharges and develop measures to reduce these sources to the extent technologically and economically feasible. As a result of this assessment, the Districts required implementation of management practices to reduce chloride discharges from commercial swimming pools. The liquid waste disposal station at the Saugus WRP was also evaluated for potential chloride reductions, and a program put in place whereby incoming septage loads are checked for conductivity.<sup>1</sup>

The Districts have also made substantial changes to operation of the Saugus and Valencia WRPs to minimize the amount of chloride added to wastewater during treatment. In 2000 and 2001, the Districts discontinued use of ferric chloride and ferrous chloride at the plants, resulting in an average 17 mg/L chloride reduction in the combined effluent from the two plants. The only significant remaining source of chloride at the treatment plants is use of sodium hypochlorite for disinfection. The Districts are continuing to evaluate alternative disinfection methods that could further reduce this source.

Finally, the Districts have applied for grant funding to conduct a Water Supply Chloride Contribution Study, which would characterize the relationship between chloride in water supply and WRP effluent and explore potential management strategies to minimize the water supply contribution of chloride to WRP effluent. The Districts have also applied for grant funding to work with one of the local water purveyors, the Valencia Water Company, on a demonstration project regarding wellhead softening

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<sup>1</sup> Conductivity generally correlates well with total dissolved solids and chloride is part of total dissolved solids. Ensuring that loads with excessive conductivity are not accepted helps ensure that loads with excessive chloride are not accepted.

## ***Section 1. Executive Summary***

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of groundwater served to the community. It is believed that serving softened water to the community could further reduce usage of SRWS in the area, thus leading to decreased chloride loadings.

The Districts are firmly committed to reducing chloride sources in the SCVJSS to the maximum extent that is technologically and economically feasible, and will continue to explore innovative and effective means to bring about this reduction.



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# **ATTACHMENT 87**

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

FINAL

Upper Santa Clara River Chloride TMDL  
August 24, 2007 Meeting  
10:00 AM – 12:00 PM  
Los Angeles Regional Board Offices

A G E N D A

1. Review meeting summaries and action items
2. De-brief on August 21 TWG Meeting
  - a. Key Action Items
  - b. GSWIM Base Scenario Recommendations
  - c. Camulos Well
3. Reach Redefinition Staff Report & November/December Hearing
4. White Paper No.2 (AGR BU Clarification) Status
5. White Paper No.3 (Reach 4 SSO Considerations)
  - a. Compliance averaging period discussions
  - b. Drought provision considerations
  - c. Margin of Safety
  - d. Draft outline of White Paper No. 3
6. Max Benefit Approach for USCR CI TMDL
7. Phase I SSO-ADA Report (time permitting)
8. Next Steps / Next Meeting
  - a. Meeting date with Fran Spivey-Weber

Meeting Summary

Attendees: Sam Unger (Regional Board), Yanjie Chu (Regional Board), Eric Wu (Regional Board), Ashli Desai (Larry Walker & Associates), Phil Friess (LACSD), Brian Louie (LACSD), Francisco Guerrero (LACSD)

1. Review meeting summaries and action items

RB staff indicated that they did not have time to review 8/17 meeting summary due to work on the Reach 4 re-definition staff report. RB staff will approve of meeting summary at the next face-to-face meeting.

2. De-brief on August 21 TWG Meeting

Key Action Items — RB staff indicated that they were again disappointed by the lack of substance related to UWCD Upper Basin Purveyor proposal on alternative water management strategies. RB staff thought that while the UWCD-Upper Basin Purveyor proposal on alternative water management strategies proposal has the potential to make sense "technically," there were a

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number of regulatory issues that had not been sufficiently addressed in the alternative water management proposal to date. These regulatory issues include: (1) lack of enforceable commitments; (2) the use of best effort/BMP style implementation measures for compliance; (3) the reliance on point-of-use for compliance; and (4) lack of alignment between numeric targets vs. numeric limits. District and RB staff discussed that if the alternative water management option is to be further explored, there would need to be a nexus that links the concepts being considered in the alternative water management proposal with a regulatory framework that will work for the RB. District staff discussed the Santa Ana Watershed Protection Authority (SAWPA) Nitrogen-TDS Task Force model as a potential framework that used "tiered objectives" (anti-degradation WQOs vs. Maximum Benefit WQOs) as a means to allow for higher WQOs, so long as agency commitments (implementation projects) are being honored in the watershed. RB staff noted that they needed more time to review the SAWPA model, but based on preliminary understanding, they are not necessarily sure that it could be used in this TMDL setting. RB staff indicated that they understood that the basis of the SAWPA model was the need to increase water supply through more Colorado river recharge projects, and the greater use of recycled water. District staff noted, that the technical issues might be different but the concepts as a regulatory framework has potential to give RB some regulator certainty that is based on achieving certain deadlines through the use of tiered objectives. Both parties agreed that these concepts and others needed to be further investigated. As such, District staff tasked Ashli Desai to draft up white paper on the regulatory framework that the RB could potentially utilize to facilitate a potential alternative water management option. This draft white paper would be presented and discussed at the next face-to-face meeting between staff on September 7, 2007.

GSWIM Base Scenario Recommendations – District staff has had discussions with CH2M Hill, who has indicated that they were on track with completion of GSWIM, inclusive of 21 Base Scenarios agreed upon by District and RB staff. However, CH2M Hill noted that the completion of the 21 GSWIM Base Scenarios would likely squeeze the collaborative process and TWG stakeholder review time to achieve schedule. District staff inquired about the possibility of truncating the GSWIM base scenarios, from 21 to 8 scenarios in order to bracket the range of potential compliance options. This would give the full range of compliance options, and would make work products and TWG review cycles more manageable for all parties involved. RB staff agreed with reduction in GSWIM Base Scenarios that would be delivered for the November 20, 2007 Final Report. The remaining 13 scenarios would be considered as "additional scenarios" that could be simulated in the future as part of the SSO-ADA efforts.

Camulos Well – District staff indicated that UWCD and District are working on an agreement, that would facilitate the construction of a multi-port monitoring well on Camulos Ranch property. UWCD indicated that Camulos Ranch would allow the UWCD to construct and sample a multi-port monitoring well on its property and grant them an easement to the monitoring well. In preliminary conversations with District staff, UWCD would own well and pay for all necessary permits, while the District would pay for drilling and installation costs. The District would be afforded the opportunity to collect split samples at the well on all samples collected by UWCD.

### 3. Reach Redefinition Staff Report & November/December Hearing

RB staff indicated that the Reach Redefinition Staff Report is in final stages and will likely be finalized for public notice on Monday August 27, 2007. RB staff noted that based on comments from legal counsel, the term "reach redefinition" has been re-characterized as "reach subdivision," to note the distinction that the Reach 4 will maintain the same boundaries (Blue Cut to A Street, Fillmore) as previously, but will only be split or subdivided at Piru Creek. Reach

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Subdivision will be the new term that is utilized for this potential action and Basin Plan Amendment in the future.

4. White Paper No. 2 (AGR BU Clarification)

Ashli Desai discussed the status of White Paper No.2 as well as some of the preliminary elements. The white paper will likely be distributed for review in the next few weeks. Ashli Desai provided an overview of the UAA factors and analyses that will be considered and described the potential approaches that the RB can consider in clarifying the AGR BUs for Reaches 5 and 6. These approaches include through a clarification/correction in the Basin Plan, through a site-specific objective process, or through a formal UAA process. Ashli described the pros and cons for each option and that her staff are still working on the UAA-type analyses.

5. White Paper No.3 (Reach 4 SSO Considerations)

RB and District staff discussed Reach 4 SSO considerations, with the bulk of discussion related to the necessary averaging period for the LRE guidelines. RB staff provided an overview of a technical memorandum they developed, which in their opinion suggested that the averaging period for the LRE guidelines was 2 days. District staff discussed their perspective and analyses that suggested that the averaging period was more of a 6-month to 12-month period. RB and District staff agreed that additional work needed to be conducted to better determine the appropriate averaging period applicable to the LRE guidelines. District staff will investigate whether Joel Kimmelshue (principal author of LRE report) is available to do additional work to clarify averaging periods for LRE guidelines and salt-sensitive crops.

6. Max Benefit Approach for USCR CI TMDL

This agenda item was discussed in Agenda Item 2, and RB and Districts staff agreed that a white paper on the regulatory framework that supports alternative water supply options and/or other max benefit approaches be developed for RB review.

7. Phase I SSO-ADA Report (time permitting)

not discussed

8. Next Steps / Next Meeting

Next meeting was scheduled for September 7, 2007 at RB offices. Joint meeting with State Board Member Fran Spivy-Weber, tentatively set at October 12, 2007.

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**Action Item(s) / Agreement(s) for USCR Chloride TMDL  
 (Rev. 8/16/2007)**

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3	Regional Board commits to complete review of AGR BU White Paper by 6/28/2007. SCVSD will send White Paper to RB by 6/21/2007	June 11, 2007	Regional Board	RESOLVED
	Regional Board could not complete review until July 5, 2007 due to vacations schedules	June 22, 2007		Sam Unger provided Regional Board comments on White Paper No.2
4	Deb Smith to contact USEPA and receive clarification on UAA decision as soon as possible to provide direction to SCVSD	June 11, 2007	Deb Smith	Resolved - RB staff could not get a timeline on getting EPA feedback and advised that we conduct UAA-like analyses in White Paper to cover all possibilities.
	Sam Unger to provide date as to when EPA will provide feedback on White Paper No 2. (AGR BU Clarification)	July 6, 2007	Sam Unger	
	Due to uncertainty of EPA feedback, project team determined that UAA-like analyses should be conducted to cover all bases. UAA factors will be analyzed as part of White Paper No. 2	July 13, 2007	Project Team	UAA-like analyses will be included in Final White Paper No.2
	Project Team discussed possibility of an alternative option to conducting UAA that could be modeled after Ammonia SSO, which delineated ELS absent/present area and applicable objectives, without making changes to applicable Basin Plan Use Designations.	August 3, 2007	Project Team	This option will be included in Final White Paper No.2
5	October 2, 2007 Joint State Board - Regional Board Hearing will consider BPA to redefine Reaches 4 and 5 of the SCR.	June 12, 2007 June 22, 2007 July 6, 2007	Project Team	SCVSD - completion of White Paper No. 1 (Reach Redefinition) to RB by July 17, 2007 to support BPA processes. RESOLVED - SCVSD submitted Draft White Paper to RB on July 17, 2007.
	RB mentions that joint State Board - Regional Board hearing will not occur	August 3, 2007		
	RB mentions that they will not make October 4 Board Hearing and may potentially not be able to make November 1 Board date as well. RB has put this agenda item on Dec 5 Board Calendar as worst-case.	August 15, 2007 Conference Call		RB - completion of staff report supporting docs, tentative resolutions, public noticing by August 1, 2007 to support BPA processes  DELAYED - RB has not completed staff report, makes commitment to complete staff report in time for public noticing of the November 1, 2007 Regional Board Hearing.
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7	Use of MIG-LWA team for future TWG Collaborative Processes	June 12, 2007	SCVSD	<p>SCVSD to contact and inform LWA and MIG of new potential roles/responsibilities</p> <p>RESOLVED</p>
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10	<p>Sam Unger will consider issuing a 13267 Letter for Camulos Ranch to require their participation in the construction of a multi-port monitoring well on its property</p> <p>District Staff will provide RB with technical memo on need for multi-port monitoring well in East Piru.</p> <p>RB mentions they will not send 13267 letter to Camulos b/c they are not a discharger, but will provide help to work with relevant parties to encourage cooperation.</p>	<p>July 6, 2007</p> <p>July 13, 2007</p> <p>July 20, 2007</p>	<p>Regional Board</p> <p>District</p> <p>Regional Board</p>	<p>RESOLVED - RB staff will not issue 13267 letter to Camulos b/c they are not a discharger, but will continue to encourage cooperation. RB needs some technical back-up in the form of memo on need for multi-port monitoring well, as they pursue other options.</p> <p>RESOLVED – memorandum provided to Sam Unger on July 17, 2007</p>
11	Sam Unger to have staff send information of commercial nurseries located in the Santa Clarita Valley, from AG waiver program	July 6, 2007	Regional Board	RESOLVED – Yanjie Chu emailed Brian Louie on 7/10/2007 a list of commercial nurseries located in the Santa Clarita Valley.

Excerpts from Resolution R8-2004-01, amending the Santa Ana Regional Water Quality Control Plan (Basin Plan)

**"MAXIMUM BENEFIT" WATER QUALITY OBJECTIVES**

As part of the 2004 update of the TDS/Nitrogen Management plan in the Basin Plan, several agencies proposed that alternative, less stringent TDS and/or nitrate-nitrogen water quality objectives be adopted for specific groundwater management zones and surface waters. These proposals were based on additional consideration of the factors specified in Water Code Section 13241 and the requirements of the State's antidegradation policy (State Board Resolution No. 68-16). Since the less-stringent objectives would allow a lowering of water quality, the agencies were required to demonstrate that their proposed objectives would protect beneficial uses, and that water quality consistent with maximum benefit to the people of the state would be maintained (thus, the use of the term "maximum benefit" water quality objectives).

Appropriate beneficial use protection/maximum benefit demonstrations were made by the Chino Basin Watermaster / Inland Empire Utilities Agency, the Yucaipa Valley Water District and the City of Beaumont / San Timoteo Watershed Management Authority to justify alternative "maximum benefit" objectives for the Chino North, Cucamonga, Yucaipa, Beaumont and San Timoteo groundwater management zones. These "maximum benefit" proposals, which are described in detail in Chapter 5 - Implementation, entail commitments by the agencies to implement specific projects and programs. While these agencies' efforts to develop these proposals indicate their strong interest to proceed with these commitments, unforeseen circumstances may impede or preclude it. To address this possibility, this Plan includes both the "antidegradation" and "maximum benefit" objectives for the subject waters (See Table 4-1). Chapter 5 specifies the requirements for implementation of these objectives. Provided that these agencies' commitments are met, then the agencies have demonstrated maximum benefit, and the "maximum benefit" objectives included in Table 4-1 for these waters apply for regulatory purposes. However, if the Regional Board finds that these commitments are not being met and that "maximum benefit" is thus not demonstrated, then the "antidegradation" objectives for these waters will apply.

VI. Maximum Benefit Implementation Plans for Salt Management

As discussed in Chapter 4, with some limited exceptions, TDS and nitrate-nitrogen objectives for groundwater management zones in the Santa Ana Region were established to ensure that historical quality is maintained, pursuant to the State's antidegradation policy (State Board Resolution No. 68-16). However, alternative, less stringent "maximum benefit" objectives are also specified in Chapter 4 for certain groundwater management zones. These "maximum benefit" objectives, which would allow the lowering of water quality, were established based on demonstrations by the agencies recommending them that antidegradation requirements were satisfied. First, these agencies demonstrated that beneficial uses would continue to be protected. Second, these agencies showed that water quality consistent with maximum benefit to the people of the state would be maintained. Other factors, such as economics, the need to use recycled water, and the need to develop housing in the area were also taken into account in establishing the objectives (see Chapter 4).

The demonstrations of "maximum benefit" by these agencies are contingent on the implementation of specific projects and programs by the agencies. As discussed in Chapter 4, if these projects and programs are not implemented to the Regional Board's satisfaction, then the alternative "antidegradation" objectives apply to these waters for regulatory purposes.

White Paper No. 3  
SCR Reach 4(B) SSO Considerations - Outline

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**I. Purpose**

- a. Identify Options for Regional Board to Consider Site Specific Objectives for Reach 4 (B) of the Santa Clara River.
- 

**II. Background**

- a. Existing Beneficial Uses & Water Quality Objectives
- b. How Existing Beneficial Uses & Objectives were set in Basin Plan
- c. Reason SSO – ADA necessary
- d. Reach 3 Objective Change Discussion (80 to 100 mg/L)

**III. SSO to Revise Objective to 100-117 mg/L**

- a. LRE Guidelines (Irrigation)
- b. Oster Arpaia Paper – Salinity and Water Effects on Hass Avocado yields
- c. Rain Dilution – Letey Article (Margin of Safety)

**IV. SSO to Revise Averaging Period to (Monthly, Annual)**

- a. Ag Tap Recommendations
- b. District/Regional Board Analysis based on Ag Tap Recommendations
- c. Blue Cut Historical Data Analysis (Pre-1997)

**V. Summary & Alternatives**

- a. 100 mg/L Instantaneous (No Change)
  - b. 100 mg/L Daily Average
  - c. 100 mg/L Monthly Average
  - d. 100 mg/L 6-Month Average
  - e. 100 mg/L Irrigation Seasonal Average
  - f. 100 mg/L 12-Month Average
- 

- g. 110 mg/L Instantaneous
  - h. 110 mg/L Daily Average
  - i. 110 mg/L Monthly Average
  - j. 110 mg/L 6-Month Average
  - k. 110 mg/L 12-Month Average
  - l. 110 mg/L Irrigation Seasonal Average
- 

- m. 117 mg/L Instantaneous
- n. 117 mg/L Daily Average
- o. 117 mg/L Monthly Average
- p. 117 mg/L 6-Month Average
- q. 117 mg/L 12-Month Average
- r. 117 mg/L Irrigation Seasonal Average

## Upper Santa Clara River GSWIM Base Scenario Recommendations

### Reuse Scenarios

- Scenario 1: High Water Reuse (Planned Re-Use based on CLWA Recycled Water Master Plan and Newhall Ranch Specific Plan by 2030)
- Scenario 2: Intermediate Reuse (50% Planned Re-Use based on CLWA Recycled Water Master Plan and 100% Planned Re-Use based on Newhall Ranch Specific Plan by 2030)
- Scenario 3: Low Water Reuse (No Re-Use Beyond 2005-06 Levels and 100% Planned Re-Use based on Newhall Ranch Specific Plan by 2030)

Compliance Option	Base Scenarios					
	Non-Drought (Typical Conditions)		Drought (Critical Conditions)		Re-use Scenario 3	
	Re-use Scenario 1	Re-use Scenario 2	Re-use Scenario 3	Re-use Scenario 1	Re-use Scenario 2	Re-use Scenario 3
MFRO @ 100 mg/L (Both WRPs)	X	X	X	X	X	X
MFRO @ 120 mg/L (Both WRPs)	X	X	X	X	X	X
Fixed Discharge @ 140 mg/L (Both WRPs)	X	X	X	X	X	X
Fixed Discharge @ 160 mg/L (Both WRPs)	X	X	X	X	X	X
CL Loading Above WS (0% SRWS removal)	X	X	X	X	X	X
CL Loading Above WS (50% SRWS removal)	X	X	X	X	X	X
CL Loading Above WS (100% SRWS removal)	X	X	X	X	X	X

# **ATTACHMENT 88**



Upper Santa Clara River Chloride TMDL  
September 7, 2007 Meeting  
10:00 AM – 12:00 PM  
Los Angeles Regional Board Offices

A G E N D A

1. Review meeting summaries and action items
2. White Paper No.2 (AGR BU Clarification) Status
3. White Paper No.3 (Reach 4 SSO Considerations)
  - a. Update on additional work for Joel Kimmelshue
  - b. Preliminary Scope of Work
  - c. Preliminary Schedule of deliverables
4. Regulatory Framework for Alternative Water Management / Maximum Benefit Approaches to the TMDL
5. Phase I SSO-ADA Report
  - a. Progress on identification/description of additional scenarios
  - b. Reach 4 SSO considerations
  - c. Baseline analyses for 13241 factors
  - d. Revised schedule
6. Next Steps / Next Meeting

Meeting Summary

Attendees: Sam Unger (Regional Board), Yanjie Chu (Regional Board), Eric Wu (Regional Board), Ashli Desai (Larry Walker & Associates), Brian Louie (LACSD), Francisco Guerrero (LACSD)

1. Review meeting summaries and action items

RB staff requested minor changes to the meeting summaries for 8/17 and 8/24, related to discussions on the UWCD-CLWA Alternative Water Management Proposal as well as expected submittal dates for the Draft White Paper No.2. Final summaries reflect requested changes.

RB and District staff also discussed to change the TWG meeting date from October 16 to October 23, because of potential schedule conflicts for agencies participating in WEFTEC, which is scheduled for the week of 10/15-19. The October TWG meeting will now be scheduled for October 23, 2007.

2. White Paper No.2 (AGR BU Clarification) Status

District staff informed Regional Board staff that additional time was needed to complete White Paper No.2 and it would be submitted by early next week. The final draft report will include an executive summary that summarizes the available information and approaches that can be taken to potentially clarify the AGR beneficial use for Reaches 5 and 6. RB staff indicated that they may only discuss/provide information on the AGR BU for Reaches 5 and 6 for the November 1 Informational

Item, and will likely not discuss the details of regulatory implications. District staff indicated that such an approach is acceptable, and that the District would work with RB staff to edit the document as necessary to support the informational item.

District staff requested direction from Regional Board on the need to contact individual riparian property owners given that land use zoning for these properties indicates that only Newhall Land and Farm and the District are legally zoned for commercial agriculture. Regional Board staff indicated they still recommend that individual riparian property owners be contacted about whether they have plans to claim riparian surface water rights for the purpose of irrigating salt-sensitive agriculture.

### 3. White Paper No.3 (Reach 4 SSO Considerations)

RB Staff indicated that they would like some revisions on the scope of work submitted to Joel Kimmelshue with NewFields Agricultural and Environmental Resources, LLC, (formerly with CH2M Hill) to provide greater clarification on averaging periods for the LRE guidelines. RB staff was concerned with the usage of the term acute averaging period, as it implies that the project team is tasking Joel et al. to weigh in on chloride levels that would cause death for salt-sensitive crops. Districts and RB staff agreed that scope would be revised so that the term "acute averaging period" is replaced with the term "critical averaging period" to reflect averaging periods for different critical conditions, related to management, and seasonal conditions/considerations (i.e. Santa Ana winds, cultivation patterns, rainfall patterns, etc.). Districts and RB staff also agreed that scope would reflect desire that any new literature reviews go through the same screening processes that were employed for the LRE to assure that literature found is applicable and weighted/scored appropriately. RB staff requested that Joel be available for a conference call to discuss at a future meeting.

Regional Board and District staff discussed informing the TWG about work tasked to NewFields at the September 25 TWG meeting. District staff discussed that they have tasked Joel Kimmelshue to complete the work in time for future discussions at the October 23, 2007 TWG meeting. A draft tech memo is to be delivered by October 15.

### 4. Regulatory Framework for Alternative Water Management / Maximum Benefit Approaches to the TMDL

Ashli Desai discussed how some of the elements and approaches being advocated by the Upper Basin Water Purveyors and United Water Conservation District, could be implemented through a regulatory approach that is acceptable to the Regional Board. RB staff indicated that they did not have time to review the draft document, but did make some general recommendations that the document be revised with respect to issues of tone, and overall organization of the document. A revised framework will be prepared by Ashli Desai to reflect those requested changes. This framework will be discussed in future meetings, and after further review of the document by RB management.

### 5. Phase I SSO-ADA Report

- a. Progress on identification/description of additional scenarios
- b. Reach 4 SSO considerations
- c. Baseline analyses for 13241 factors
- d. Revised schedule

District staff discussed an 8<sup>th</sup> revision to the Gantt chart that reflects changes in the schedule for Phase I SSO/ADA reports. Both reports now are to be submitted to RB by late September. With respect to White Paper No.3 (Reach 4 SSO Considerations), District and RB staff agreed that this white paper

would be delayed pending technical memo being developed by Joel Kimmelshue on averaging periods for LRE guidelines.

6. Next Steps / Next Meeting

District and RB staff to meet September 14, where the principal discussion will be about the scope of work related to clarifications on the averaging period for the LRE guidelines.

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**Action Item(s) / Agreement(s) for USCR Chloride TMDL  
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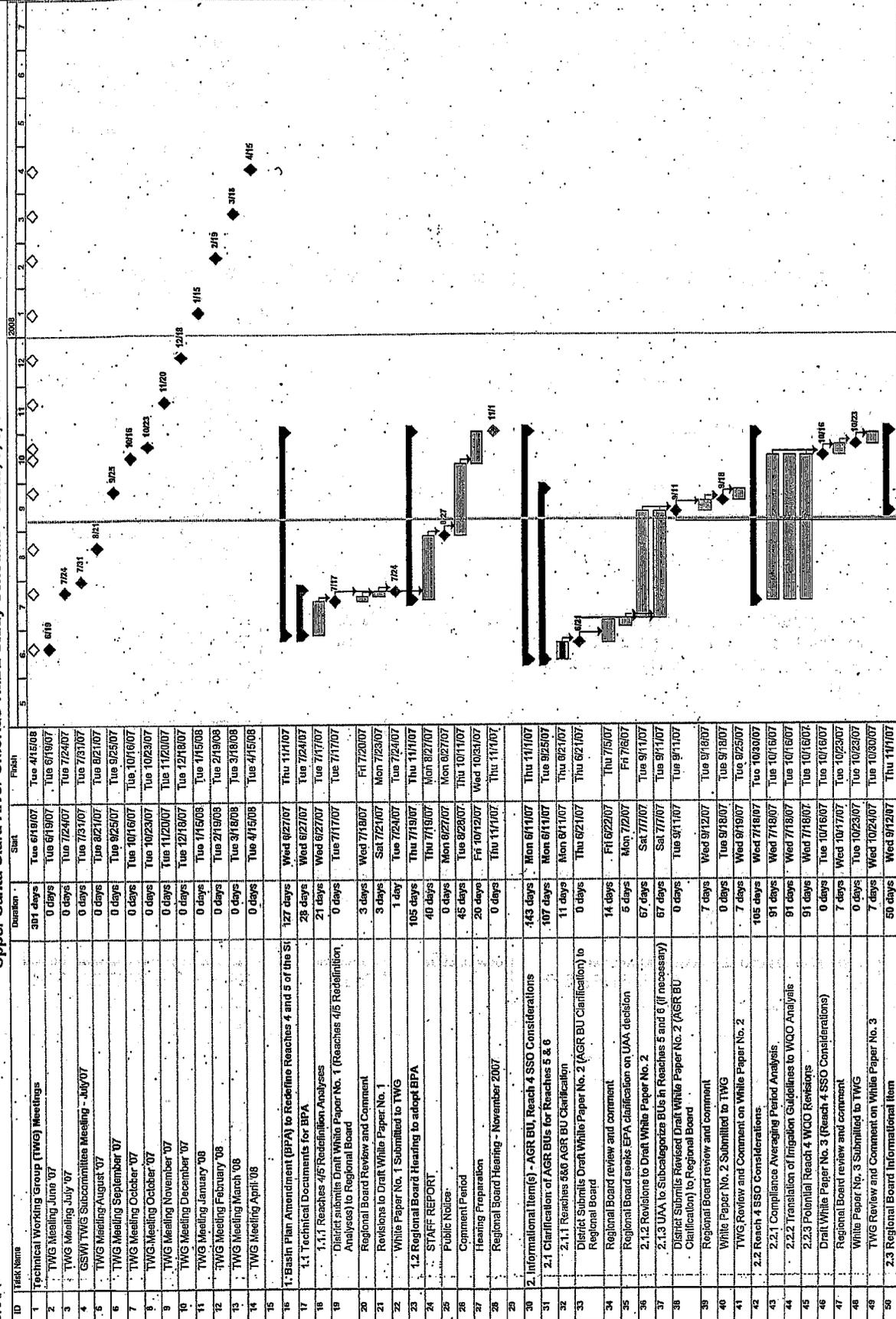
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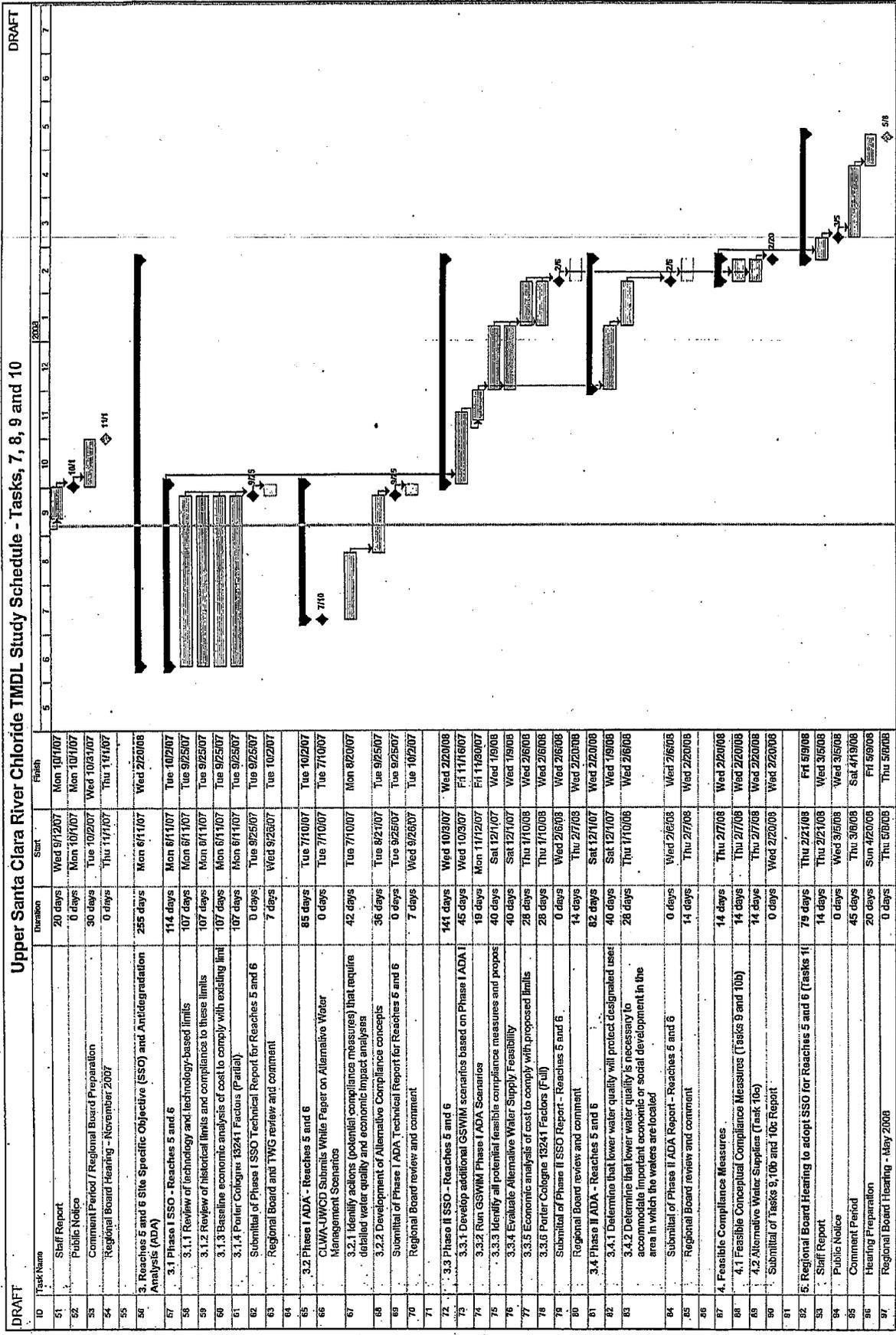
Upper Santa Clara River Chloride TMDL Study Schedule - Tasks, 7, 8, 9 and 10



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Progress: Progress, Milestone

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Task Name	Start	Finish
51 Staff Report	Wed 9/12/07	Mon 10/1/07
52 Public Notice	Mon 10/1/07	Mon 10/1/07
53 Comment Period / Regional Board Preparation	Tue 10/2/07	Wed 10/3/07
54 Regional Board Hearing - November 2007	Thu 11/1/07	Thu 11/1/07
55		
56 3. Reaches 5 and 6 Site Specific Objective (SSO) and Antidegradation Analysis (ADA)	Mon 6/11/07	Wed 2/20/08
57 3.1 Phase I SSO - Reaches 5 and 6	Mon 6/11/07	Tue 10/2/07
58 3.1.1 Review of technology and technology-based limits	Mon 6/11/07	Tue 9/25/07
59 3.1.2 Review of historical limits and compliance to these limits	Mon 6/11/07	Tue 9/25/07
60 3.1.3 Baseline economic analysis of cost to comply with existing limit	Mon 6/11/07	Tue 9/25/07
61 3.1.4 Porter Cologne R3241 Factors (Partial)	Mon 6/11/07	Tue 9/25/07
62 Submittal of Phase I SSO Technical Report for Reaches 5 and 6	Tue 9/25/07	Tue 9/25/07
63 Regional Board and TWS review and comment	Wed 9/25/07	Tue 10/2/07
64		
65 3.2 Phase I ADA - Reaches 5 and 6	Tue 7/10/07	Tue 10/2/07
66 CLWA-UWCD Submits White Paper on Alternative Water Management Scenarios	Tue 7/10/07	Tue 7/10/07
67 3.2.1 Identify actions (potential compliance measures) that require detailed water quality and economic impact analysis	Tue 7/10/07	Mon 9/20/07
68 3.2.2 Development of Alternative Compliance concepts	Tue 8/21/07	Tue 9/25/07
69 Submittal of Phase I ADA Technical Report for Reaches 5 and 6	Tue 9/25/07	Tue 9/25/07
70 Regional Board review and comment	Wed 9/26/07	Tue 10/2/07
71		
72 3.3 Phase II SSO - Reaches 5 and 6	Wed 10/3/07	Wed 2/20/08
73 3.3.1 Develop additional GSWM scenarios based on Phase I ADA	Wed 10/3/07	Fri 11/6/07
74 3.3.2 Run GSWM Phase I ADA Scenarios	Mon 11/12/07	Fri 11/30/07
75 3.3.3 Identify all potential feasible compliance measures and propose	Sat 12/1/07	Wed 1/9/08
76 3.3.4 Evaluate Alternative Water Supply Feasibility	Sat 12/1/07	Wed 1/9/08
77 3.3.5 Economic analysis of cost to comply with proposed limits	Thu 1/10/08	Wed 2/6/08
78 3.3.6 Porter Cologne R3241 Factors (Full)	Thu 1/10/08	Wed 2/6/08
79 Submittal of Phase II SSO Report - Reaches 5 and 6	Thu 2/7/08	Wed 2/20/08
80 Regional Board review and comment	Sat 12/1/07	Wed 2/20/08
81 3.4 Phase II ADA - Reaches 5 and 6	Sat 12/1/07	Wed 2/20/08
82 3.4.1 Determine that lower water quality will protect designated uses	Wed 1/9/08	Wed 2/6/08
83 3.4.2 Determine that lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located	Wed 1/9/08	Wed 2/6/08
84 Submittal of Phase II ADA Report - Reaches 5 and 6	Wed 2/6/08	Wed 2/6/08
85 Regional Board review and comment	Thu 2/7/08	Wed 2/20/08
86		
87 4. Feasible Compliance Measures	Thu 2/7/08	Wed 2/20/08
88 4.1 Feasible Conceptual Compliance Measures (Tasks 9 and 10b)	Thu 2/7/08	Wed 2/20/08
89 4.2 Alternative Water Supplies (Task 10c)	Thu 2/7/08	Wed 2/20/08
90 Submittal of Tasks 9, 10b and 10c Report	Wed 2/20/08	Wed 2/20/08
91		
92 5. Regional Board Hearing to adopt SSO for Reaches 5 and 6 (Tasks 11)	Thu 2/21/08	Fri 5/9/08
93 Staff Report	Thu 2/21/08	Wed 3/6/08
94 Public Notice	Wed 3/6/08	Wed 3/6/08
95 Comment Period	Thu 3/6/08	Sat 4/19/08
96 Hearing Preparation	Sun 4/20/08	Fri 5/9/08
97 Regional Board Hearing - May 2008	Thu 6/6/08	Thu 5/8/08

**Scope of Work on Clarifying Applicable Averaging Periods for LRE Guidelines  
NewFields Agricultural and Environmental Resources**

**Tasks**

1. Develop a technical memorandum on the following:
  - a. Review the basis for LRE Guidelines and how the supporting literature informs on potential compliance averaging periods that would be applicable for the guidelines, as well for any acute exposure conditions, and report on findings.
  - b. Conduct an additional literature review (as necessary) on any studies that would inform on applicable averaging periods for the LRE guidelines, as well for any acute exposure conditions, and report on findings.
  - c. Review Project Team questions (1-6 only), AG TAP responses (1-6 only) and Project Team analyses to determine if the available information (including any new info from literature reviews) will inform on applicable averaging periods for the LRE guidelines, as well for any acute exposure conditions, and report on findings. (This may require some consultation with AG TAP co-chairs)
  - d. Determine the feasibility of establishing a range of compliance averaging periods for acute/chronic exposures that are coupled with site-specific seasonal considerations and/or conditions. (e.g. effects of rainfall, Santa Ana winds, cultivation patterns, flowering/fruiting periods, etc.), and report on findings.
  - e. Make recommendations on applicable compliance averaging periods for the LRE guidelines, as well for acute exposure periods.
2. Participate in five monthly conference calls with Project Team from September – December
3. Attend two (2) technical working group meetings and one (1) Technical Advisors Panel meetings, as necessary.

**Schedule**

- Task 1 – Draft completed by September 30, 2007  
Final completed by October 15, 2007
- Task 2 – TBD, but typically on Fridays from 10:00 AM – 12:00 PM
- Task 3 – TWG Meetings on 3<sup>rd</sup> Tuesday in October (10/16) and November (11/20)  
TAP Meeting in November/December pending TAP availability, and if necessary (web conference call for TAP is a possibility)

**Regulatory Framework for Alternative Water Management / Maximum Benefit  
Approaches for the Upper Santa Clara River Chloride TMDL**

**DRAFT**

In the proposed Alternative Water Management Strategy as well as for other maximum benefit approaches, regulatory flexibility is being sought in the following areas:

1. Compliance point at the LA/Ventura County Line
2. Target of 117 mg/L, but maintain objective at 100 mg/L at the County Line
3. Compliance determined through implementing measures.
4. Drought relief given by supplying agricultural users with alternative water supplies.

This document provides a regulatory framework that may potentially facilitate regulatory flexibility in the areas listed above.

To help establish the boundaries of the available regulatory flexibility, the fixed requirements of the TMDL were identified. Two key fixed requirements were determined:

1. The TMDL must result in compliance with water quality standards.
2. For Reach 4, the water quality objective cannot exceed 117 mg/L with a yet to be determined averaging period based on the LRE results.

Outside of these two requirements, the Regional Board likely has some regulatory flexibility that can be utilized to develop a solution. The following provides regulatory options to address each of the four points above.

**Compliance point at the LA/Ventura County Line and Target of 117 mg/L**

Both the compliance point at the LA/Ventura County Line and the target of 117 mg/L can be addressed through the development of site-specific objectives. Three possible site-specific objective approaches were identified.

1. Site-specific objective between 100 and 117 mg/L (with to be determined averaging period) determined at the County Line or at end of Reach 4B.
2. Site-specific objectives determined for each Reach 4B, 5 and 6 applied at the end of each reach.
3. Site-specific objectives determined for each Reach 4B, 5 and 6 applied at any point in the reach.

If objectives are determined for each reach, Reach 4B would be between 100 and 117 mg/L, Reach 5 and Reach 6 objectives will be determined based on the chloride concentrations necessary to protect the beneficial uses within Reaches 4, 5 and 6.

**Regulatory Framework for Alternative Water Management / Maximum Benefit  
Approaches for the Upper Santa Clara River Chloride TMDL**

**DRAFT**

**Compliance determined through implementing measures**

For stormwater and agricultural entities, compliance with TMDL allocations has been allowed through the implementation of best management practices. However, this mechanism has not been utilized in the Los Angeles Region for POTW discharges. Although it is a potentially feasible regulatory mechanism, it is unlikely that it would be acceptable to the Regional Board and other entities in the region. As a result, other options for regulatory flexibility to address this request were identified:

Based on the information provided by Kennedy Jenks in their white paper and their presentation on August 21, 2007, the primary reason for allowing compliance through implementing measures is twofold. First, it allows flexibility for meeting the TMDL requirements even if water quality objectives are not met and secondly, it ensures that required actions are taken to implement the TMDL. The rationale is problematic because the TMDL must result in compliance with water quality objectives and the required actions are not necessarily controllable by the responsible parties in the TMDL. Therefore, a regulatory mechanism must be developed that results in compliance with the water quality objectives and links the implementation actions back to the responsible parties in the TMDL. Possible approaches include:

1. Linking the POTW allocations to the available assimilative capacity in the river.
2. Linking the POTW allocations to the implementation of specified actions.
3. Making the water agencies a responsible party to the TMDL. This could be done through a discharge permit, waiver, or other mechanism, but a discharge source must be identified.

For the first two approaches, multiple allocations could be provided that are linked to implementation of actions that provide assimilative capacity or export salts out of the watershed (e.g., meeting water reuse goals, salt load export/reductions). So, the lowest allocation would correspond to meeting the site-specific objectives with the existing assimilative capacity. Then, higher allocations would be assigned corresponding to the increase in assimilative capacity or salt export from implementation actions. If the actions do not occur or cease to operate, the minimum allocations would apply. If the linked allocations result in receiving water concentrations that are greater than the existing objective, site-specific objectives would need to be developed. The water quality objectives could be tiered and based on commitments made either by the discharger and/or by other entities. (e.g., salt export/reductions, enhancements of assimilative capacity)

**Regulatory Framework for Alternative Water Management / Maximum Benefit  
Approaches for the Upper Santa Clara River Chloride TMDL**

**DRAFT**

**Drought Relief**

The best mechanism for providing drought relief is to include drought provisions in the site-specific objectives that are adopted by the Regional Board. Changing the objective would permanently allow for deviations from the water quality objectives during drought conditions. Several options exist for developing drought provisions. Some examples are:

1. Linking the objective to the water supply (i.e. only allowing a certain amount of salt addition above the water supply concentrations).
2. Providing a set higher objective during drought conditions. This would likely need to be linked to the protection of agriculture through other mechanisms, such as the provision of alternative water supplies.
3. Developing a variable objective based on climatic patterns, irrigation rates, etc. This would be complicated to develop, but would provide the most flexibility. It would be similar to the metals objectives that vary based on hardness.

If the objective does not include drought provisions, the TMDL would require compliance with the objective during drought conditions. However, the allocations could change during droughts if they are connected to actions that result in compliance with the objective. Possible actions include increasing the assimilative capacity of the River, reducing discharge volume, or increasing salt exports.

**Summary**

In summary, because of the fundamental requirement that the TMDL must result in compliance with water quality objectives, site-specific objectives need to be developed that includes a drought provision. Once the site-specific objectives are in place, a number of mechanisms are available to adjust the allocations and provide operational flexibility for the implementation program.



# **ATTACHMENT 89**



Upper Santa Clara River Chloride TMDL  
October 5, 2007 Meeting  
10:30 AM – 12:30 PM  
Regional Board Offices

A G E N D A

1. Review meeting summaries and action items
2. November 1, 2007 Regional Board Hearing
  - a. Reach 4 Subdivision
  - b. Reach 5/6 AGR BU Clarification – Information Item
  - c. Comments received
3. Update on Alternative Water Management Options
  - a. Districts' meeting with Lynn Takaichi and Steve Bachman
  - b. Regulatory Framework for Alternative Water Management / Maximum Benefit Approaches to the TMDL
4. SSO-ADA Studies
  - a. White Paper No. 2B review status
  - b. White Paper No. 3 (Reach 4B SSO Considerations)
    - i. Averaging periods for LRE Guidelines – Update
    - ii. Drought conditions
5. GSWIM / Collaborative Process Issues
  - a. TAP/TWG Reviews
  - b. Schedule Recommendations
    - i. Interim Report (Model Calibration + 8 Base Scenarios) – November 20
    - ii. Final Report (Model Calibration + Additional Scenarios) – Mid January
    - iii. Critical Review Report – End of January
6. Next Steps / Next Meeting
  - a. October 12, 2007 Meeting with Fran Spivy-Weber

Meeting Summary

Attendees: Sam Unger (Regional Board), Eric Wu (Regional Board), Yanjie Chu (Regional Board), Ashli Desai (LWA), Phil Friess (LACSD), Brian Louie (LACSD), Frank Guerrero (LACSD)

1. Review meeting summaries and action items

RB staff had changes related to discussions on the status of additional studies on the LRE guidelines averaging period. Changes to the summary are noted in track changes mode of the revised final summary. RB and Districts staff disagreed on the issue of whether discussions/concepts on averaging periods for other salt-sensitive crops (i.e. strawberries, and nursery crops) needed to be included as part of the analysis that is conducted by NewFields. The issue relates to the fact that the LRE guidelines are based on protection of avocados, since existing literature did not provide enough information on guidelines for strawberries and nursery crops. Implicit in the LRE guidelines is the

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assumption that avocados are the most sensitive crop and that the irrigation guideline established through LRE would be sufficiently protective of the other salt-sensitive crops. RB staff mentioned that they would like averaging periods for strawberries and nurseries to be included in a revised scope for NewFields. District staff expressed concerns that there is no guideline for strawberries or nursery crops and that without that information, it is difficult to establish a meaningful averaging period. RB Staff expressed concern that the LRE did not find chloride thresholds for strawberry and nursery crops that are significantly higher than the threshold for avocados and therefore they should not be excluded from the averaging period study. RB and District staff agreed to continue discussing this issue in the future. RB staff indicated that with or without that information, they will have to make a decision on this issue based on their best professional judgment.

RB staff also requested some changes to the September 21, 2007 summary related to discussions about the effects that TDS stressors had on the applicable LRE guideline range. District staff disagreed in the RB staff's assessment of the issue and both parties will continue to discuss the issue and seek answers through correspondences with NewFields.

## 2. November 1, 2007 Regional Board Hearing

RB staff provided an update of stakeholder comments/discussions they have had to date about the Reach 4 subdivision as well as the Reach 5/6 AGR BU Clarification. RB staff mentioned they have had discussions with Rob Roy (Ventura County Agricultural Water Quality Coalition) and Newhall Land and Farm about both issues. RB Staff indicated that both parties intend to submit comments and appear supportive of the Reach 4 Subdivision, and are reviewing the Reach 5/6 AGR BU Clarification.

District staff inquired about how RB staff plan to present information on the Reach 4 Subdivision Basin Plan Amendment and Information Item on the Reach 5/6 AGR BU Clarification. RB staff noted that they are comfortable with the Reach 4 Subdivision and expect it to be approved. RB staff indicated they are open to ideas for the presentation and requested that District staff help put together an initial outline of a presentation for the information item, and provide presentation materials as necessary to help RB staff in preparation for November 1 Board hearing on that agenda item. District staff will work on a presentation outline and presentation materials to support RB staff on this information item.

## 3. Update on Alternative Water Management Options

### Districts' meeting with Lynn Takaichi

District staff provided a summary of a meeting between the District, Lynn Takaichi of Kennedy Jenks and Ashli Desai (LWA), regarding the CLWA-UWCD proposal for an alternative water resource management solution for the TMDL. District staff mentioned that the purpose of the meeting was to determine the type of elements that were critical to both the water purveyors and Ventura County interests in order for an alternative water resource management solution to be viable and supported by all the stakeholders. District staff indicated that the Upper Basin Water Purveyors and Ventura County stakeholders (United Water and Agricultural Community) expressed that they may be supportive of relaxed objectives in the LA County, if the solution involved enhancing the assimilative capacity of the SCR by providing dilution flows to achieve the Reach 4B WQO, and that extraction well and blending facilities in East Piru were constructed for the purpose of exporting salts during wet weather conditions, and reducing existing chloride levels in the groundwater. District staff indicated that they would commit to funding such solutions so long as it is cost effective solution and a win-win solution for all stakeholders

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District staff inquired with RB staff about the possibility of inviting Lynn Takaichi (who represents the Upper Basin Purveyors), Dana Wisheart / Steve Bachman (United Water) and Rob Roy to next Friday's meeting with Fran Spivy-Weber to express their support for an alternative water resource management option directly to the RB, as well as to discuss progress on the alternative water resource solution and tentative concepts and potential commitments and agreements between stakeholders. RB staff agreed that such a meeting would be very useful and that it would be a good opportunity to discuss with RB management as well as with State Board Member Spivy-Weber, as to how such a solution could be developed and implemented as an SSO option for the TMDL. One of the important issues that will need critical discussion relates to drought provisions and how that will be considered in any future SSO.

District staff offered to develop an agenda for the meeting as well as presentation materials on the alternative water resource proposal. In addition, Ashli Desai will provide a presentation on some of the regulatory issues related to the SSOs, drought considerations, and AGR beneficial use clarification approaches for Reaches 5 and 6.

Regulatory Framework for Alternative Water Management / Maximum Benefit Approaches to the TMDL

District staff discussed this preliminary assessment of various regulatory strategies to implement compliance options for the TMDL. District staff noted that this is a preliminary document that listed potential options knowing that many of the options included are non-starters. District staff requested that Regional Board review this document and provide official written comments as soon as possible so that the types of strategies and acceptable regulatory framework(s) for implementation can be narrowed down quickly and consensus on how to proceed on the SSO can be established.

RB staff committed to reviewing this information and providing comments by Tuesday, October 9. District staff would then revise the document with RB staff's comments for distribution at next Friday's meeting.

4. SSO-ADA Studies

White Paper No. 2B

District staff mentioned that White Paper No. 2B was not yet distributed to the TWG because it had not yet been reviewed by Regional Board management. District staff requested that this white paper be reviewed as soon as possible so that the regulatory approach for potentially clarifying the AGR BUs in Reaches 5 and 6 could be better defined for the implementation of TMDL Tasks 7 and 8. RB staff requested that District staff (Phil Friess) directly contact Deb Smith to request her review of the document with potential discussion at the October 12, 2007 meeting between staffs.

White Paper No. 3 (Reach 4B SSO Considerations)

District staff mentioned that work on this has been delayed and is pending additional analyses being conducted by NewFields on the averaging period, as well as ongoing discussions about drought provisions.

5. GSWIM / Collaborative Process Issues

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District staff discussed concerns raised by GSWIM TAP members related to being able to have ample review time for their consideration and critical review report of the GSWIM report. As such, current GSWIM schedule will only give TAP a 1-2 week review time of the GSWIM model, which will only incorporate model calibration and a partial list of future scenarios. District staff recommended a revised schedule to provide greater review time for TAP as well as allow for them to also review future scenarios considerations. This schedule would include delivering an Interim report by Nov 20, and then a Final Report by mid January, to include all additional scenarios, with TAP review in January-February.

RB staff discussed that staff also under time pressures and that the May 2008 Regional Board re-opener may have to be pushed back a couple of months. Both RB and District staff discussed the merits of extended the TMDL re-opener and linked study tasks (i.e. Task 5 – GSWIM, Task 7 – SSO and Task 8 – ADA) by a couple of months in order to accommodate necessary reviews by TWG and TAP, as well as to reflect potential delay in the May 2008 re-opener. Both District and RB staff also noted that this extension would help in the development of an alternative water management solution that may be supported by stakeholders.

RB staff mentioned that they will contact Ventura County Ag representatives to discuss potential schedule extensions for May 2008 re-opener and linked study tasks (Tasks 5, 7 and 8), and see if this is acceptable to them.

6. October 12, 2007 Meeting with Fran Spivy-Weber

District and RB staff discussed potential agenda items for next week meeting with Fran Spivy-Weber as follows:

- Alternative Water Management Compliance Options
  - Stakeholder perspectives and consensus
- Status update on TMDL studies:
  - LRE averaging periods
  - Reach 4 subdivision BPA
  - Reach 5/6 AGR BU Clarification Information Item
  - GSWIM Study update
  - TBS Study update
  - Potential TMDL Study Schedule Extension
- Presentation on SSO Options
  - Approaches to clarify AGR BU in Reaches 5 and 6
  - Regulatory framework(s) to support various compliance options
  - Drought considerations

District staff will develop a draft agenda by early next week (Oct 9-10), and will also work on presentation materials in coordination with RB staff, in preparation for the Oct 12 meeting with Fran Spivy-Weber.

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## Strategies for Implementing Compliance Options for the Upper Santa Clara River Chloride TMDL DRAFT

### Introduction

As part of the process of identifying compliance options for the Upper Santa Clara River Chloride TMDL, a number of "alternative" strategies have been identified that provide multiple benefits to the watershed, including water resource benefits. To effectively implement many of the strategies, changes to the water quality objectives and TMDL allocations would need to be identified. This document summarizes some possible options for making adjustments to the objectives and allocations that would provide for compliance with the TMDL and implementation of the alternative strategies.

In considering the options available, the fixed requirements of the TMDL were identified. Two key fixed requirements were determined:

1. The TMDL must result in compliance with water quality standards.
2. For Reach 4B, the water quality objective cannot exceed 117 mg/L with a yet to be determined averaging period based on the LRE results.

All of the alternatives presented were determined based on the two fixed requirements above.

### Site-Specific Objectives

Because the TMDL must result in compliance with water quality objectives, any alternative strategy will likely need to develop site-specific objectives. Three possible site-specific objective approaches were identified.

1. Site-specific objective between 100 and 117 mg/L (with to be determined averaging period) determined at the County Line (Blue Cut) or at end of Reach 4B.
2. Site-specific objectives determined for each Reach 4B, 5 and 6 applied at the end of each reach.
3. Site-specific objectives determined for each Reach 4B, 5 and 6 applied at any point in the reach.

If objectives are determined for each reach, Reach 4B would be between 100 and 117 mg/L, Reach 5 and Reach 6 objectives will be determined based on the chloride concentrations necessary to protect the beneficial uses in the reach.

### Allocation Alternatives

Many of the alternative approaches require the implementation of actions that are not directly related to the discharge of chloride to the waterbody. For example, assimilative capacity in the reach may be increased by water releases that are outside the control of the dischargers. As a result, a mechanism must be developed that results in compliance with the water quality objectives and links the implementation actions back to the

responsible parties in the TMDL. Adjusting the TMDL allocations provides a possible mechanism for making this link. Possible approaches include:

1. Linking the POTW allocations to the available assimilative capacity in the river.
2. Linking the POTW allocations to the implementation of specified actions.
3. Making the water agencies a responsible party to the TMDL. This could be done through a discharge permit, waiver, or other mechanism, but a discharge source must be identified.

For the first two approaches, multiple allocations could be provided that are linked to implementation of actions that provide assimilative capacity or export salts out of the watershed. So, the lowest allocation would correspond to meeting the site-specific objectives with the existing assimilative capacity. Then, higher allocations would be assigned corresponding to the increase in assimilative capacity or salt export from implementation actions. If the actions do not occur or cease to operate, the minimum allocations would apply.

### **Drought Relief**

The best mechanism for providing drought relief is to include drought provisions in the site-specific objectives that are adopted by the Regional Board. Changing the objective would permanently allow for deviations from the water quality objectives during drought conditions. Several options exist for developing drought provisions. Some examples are:

1. Linking the objective to the water supply (i.e. only allowing a certain amount of salt addition above the water supply concentrations), up to a maximum capped level.
2. Providing a set higher objective during drought conditions. This would likely need to be linked to the protection of agriculture through other mechanisms, such as the provision of alternative water supplies.
3. Developing a variable objective based on climatic patterns, irrigation rates, etc. This would be complicated to develop, but would provide the most flexibility. It would be similar to the metals objectives that vary based on hardness.

If the objective does not include drought provisions, the TMDL would require compliance with the objective during drought conditions. However, the allocations could change during droughts if they are connected to actions that result in compliance with the objective. Possible actions include increasing the assimilative capacity of the River, reducing discharge volume, or increasing salt exports.

### **Castaic Lake Alternative Water Management Strategy Compliance Option Requests**

The Alternative Water Management Strategy that has been proposed by a number of water agencies requested "regulatory flexibility" in a number of areas:

1. Compliance point at the LA/Ventura County Line
2. Target of 117 mg/L, but maintain objective at 100 mg/L at the County Line
3. Compliance determined through implementing measures.
4. Drought relief given by supplying agricultural users with alternative water supplies.

The strategy shown above, should provide a mechanism for addressing all of the issues identified in this alternative strategy.

### Summary

In summary, because of the fundamental requirement that the TMDL must result in compliance with water quality objectives, site-specific objectives need to be developed to implement any alternative strategies in lieu of extensive advanced treatment. Additionally, the site-specific objectives should include a drought provision, either in the form of higher objectives or increased allocations coupled to actions that would protect the beneficial uses. Even in non-drought conditions, site-specific objectives should allow for a number of mechanisms to adjust the allocations and provide operational flexibility for the implementation program.



# **ATTACHMENT 90**



Upper Santa Clara River Chloride TMDL  
October 12, 2007 Meeting  
10:30 AM – 12:30 PM  
Regional Board Offices

A G E N D A

- 5 min      1. Introductions
2. Review meeting summaries and action items
- 5 min      3. Update on November 1, 2007 Regional Board Hearing
- a. Reach 4 Subdivision
- b. Reach 5/6 AGR BU Clarification – Information Item
- c. Comments received
- 30 min     4. Update on TMDL Studies/Milestones
- a. Literature Review Evaluation (LRE)
- b. Threatened and Endangered Species (TES) Study
- c. Groundwater Surface Water Interaction Model (GSWIM)
- d. SSO-ADA Studies
- 60 min     5. Alternatives for Compliance Options
- a. PowerPoint Presentation on Alternatives
- b. Stakeholder perspectives and input
- 15 min     6. Potential Schedule Revision
- a. Extension of May 2008 TMDL Re-opener
- b. Extension of linked TMDL Study Tasks
- 5 min      7. Next Steps / Next Meeting

**Meeting Summary**

Attendees: Frances Spivy-Weber (State Water Resources Control Board), Deb Smith (Regional Board), Sam Unger (Regional Board), Eric Wu (Regional Board), Yanjie Chu (Regional Board), Rob Roy (Ventura County Agricultural Water Quality Coalition; via teleconference), Dana Wisehart (United Water Conservation District), Jeff Ford (Castaic Lake Water Agency), Lynn Takaichi (Kennedy Jenks Consultants), Tracy Quinn (Kennedy Jenks Consultants), Ashli Desai (Larry Walker and Associates), Phil Friess (LACSD), Brian Louie (LACSD), Frank Guerrero (LACSD).

1. Introductions

After a round of introductions RB staff discussed with participants that RB and Districts have been meeting more or less on a weekly basis to discuss the implementation of the accelerated TMDL schedule, after State Board hearing approved the schedule revision in May. Significant progress has been made on the implementation of the SSO-ADA work.

2: Review meeting summaries and action items

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RB and District staff deferred discussion of the remaining summaries for a future discussion.

3. Update on November 1, 2007 Regional Board Hearing

RB staff discussed that they have received 6 comment letters that were generally favorable for the reach subdivision. Some commentators were concerned about any revisions to the WQOs for the proposed Reach 4 subdivision. RB staff indicated that any WQO revision to the subdivided reaches would be handled in the May 2008 re-opener, and that the action before the Regional Board on November 1, is solely looking at subdividing Reach 4 based on unique hydrogeologic and water quality conditions.

RB staff also mentioned that an information item will be discussed on salt-sensitive AGR BUs in Reaches 5 and 6 of the SCR. RB staff noted that the only potential salt-sensitive crop that is being cultivated in the vicinity of Reaches 5 and 6 are ornamentals (nursery crops), but that these crops are using groundwater and not surface water for irrigation. RB staff have made attempts to outreach to LA County agriculture.

4. Update on TMDL Studies/Milestones

District staff provided an update on the TMDL studies and milestones. See attached presentation. District staff gave a brief introduction of the watershed, chloride issue, and collaborative process studies. District staff noted that they believe that the current TMDL schedule would not support the implementation of an advanced wastewater treatment and brine disposal option. Because of the tight schedule, the District will commence CEQA work after completion of TMDL studies (Feb-April 2008) and before RB decision on final WQO and WLAs. District staff also noted that if advanced treatment of wastewater is the final option, the District would likely begin design work prior to the required milestone due date in the TMDL implementation schedule (May 2011), because of the tight compliance schedule. District staff stated that they are willing to tolerate some inefficiencies and usage of staff resources in order to demonstrate to the stakeholders and Regional Board that good-faith efforts are being employed to achieve timely compliance.

5. Alternatives for Compliance Options

District staff provided an analysis of potential alternative compliance options under consideration. See attached presentation. Four alternative compliance options have been identified, though it was recognized that a hybrid of one or more of these options could also be considered. District staff briefly described the four compliance alternatives under consideration, with the focus of the presentation on the alternative water management option. The following table summarizes the general stakeholder viewpoints/comments at the meeting on the various options being considered

Stakeholder	Potential Compliance Options		
	Advanced Treatment Brine Disposal Effluent Pipeline Ocean Outfall	Alternative Discharge Location	Alternative Water Mgt.
Ventura County Agriculture (Rob Roy)	No comment	No comment	Supports this option. Considers this a good option to achieve timely compliance with TMDL
United Water (Dana Wisehart)	No comment	No comment	Supports this option. Maximizes water supply and water resources and benefits everyone.

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Stakeholder	Potential Compliance Options		
	Advanced Treatment Brine Disposal Effluent Pipeline Ocean Outfall	Alternative Discharge Location	Alternative Water Mgt.
Upper Basin Purveyors (Lynn Takaichi and Jeff Ford)	Concerned about cost of these options as it relates to costs for recycled water	Concerned about impacts to Upper Basin alluvial groundwater wells	Supports this option. Maximizes water supply and water resources and benefits multiple parties. Increases recycled water in Upper Basin.
State Board  (Fran Spivy-Weber)	No comment	No comment	Happy Pleased to see progress and that stakeholders are working together for a joint solution. Some key questions: How does this option work within the TMDL schedule? What needs to be done to revise operations agreement for Castaic Lake?
Regional Board  (Deb Smith and Sam Unger)	Some of these elements in these options may be necessary to support Alternative Water Mgt option. Expressed that there may be a hybrid of options that would work.	No comment	Willing to support. Regulatory framework needs to be worked out. Concerns over how to handle long-term drought conditions, and availability of dilution waters for such a situation.

Overall, stakeholders opined that the alternative water management option has merit and should be considered as a potential compliance option for the TMDL.

#### 6. Potential Schedule Revision

RB staff discussed that the May 2008 TMDL re-opener hearing could be delayed to July 2008. RB and District staff have discussed the possibility of delaying the decision date and subsequent due dates of the linked tasks by 2 months. District staff provided a revised summary schedule and detailed Gantt schedule reflecting a 2-month delay in final work products for the TMDL studies and TMDL re-opener. RB staff mentioned that this potential schedule delay will be discussed at the November 1 Regional Board hearing as well as vetted among the TWG stakeholders, and that RB staff will receive further direction from their Board on November 1, about the schedule delay issues.

#### 7. Next Steps / Next Meeting

Next meeting will be between RB and District staff for 10/19/2007, at RB offices.

Final

November 1, 2007

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SANITATION DISTRICTS OF LOS ANGELES COUNTY



# SCVSD UPPER SANTA CLARA RIVER CHLORIDE TMDL BRIEFING

Phil Friess  
Brian Louie  
Technical Services

October 12, 2007

## Presentation Overview

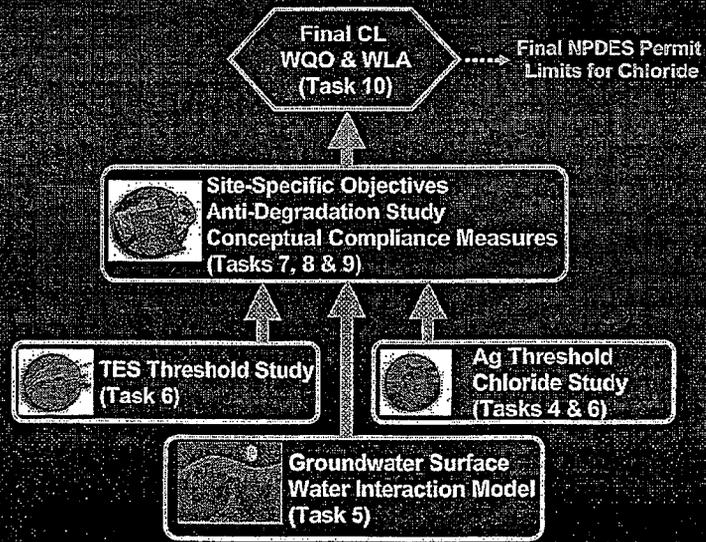
- I. Background on Upper Santa Clara River Watershed
- II. Background on Collaborative Process
- III. Remaining TMDL Study Schedule
- IV. Update on TMDL Studies
- V. Alternatives for Compliance Options

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## Upper SCR Watershed

Slide of watershed and picture of Dry Gap

## USCR CL TMDL Collaborative Process



## Update on TMDL Studies

- **LRE Study (Complete)** 100-117 mg/L
  - Averaging periods analysis (NewFields) Oct 2007
- **TES Study** Nov 2007
  - TAP Review
- **GSWIM Study** Nov 2007
  - Model Calibration & Base Future Scenarios Jan 2008
  - Additional Scenarios (Alternative Water Mgt.)
- **SSO/ADA Studies** Feb 2008
  - White Paper No. 1 (Reach 4 Subdivision)
  - White Paper No. 2A (Reach 5&6 AGR BU Clarification)
  - White Paper No. 2B (Regulatory Approaches to AGR BU Clarification)
  - White Paper No. 3 (SSO/ADA Considerations)
    - Averaging Periods
    - Drought conditions/provisions
    - Porter Cologne Section 13241 Factors
    - Alternatives for Compliance Options

## Remaining TMDL Study Schedule

### REGIONAL BOARD BASIN PLANNING ACTIONS

- Reach 4 Subdivision Basin Plan Amendment November 1, 2007
- Informational Item on AGR BU Considerations November 1, 2007
- Final SSO/WLAs Established May 8, 2008

### COMPLIANCE TASKS

- EIR & Facilities Plan Feb 2008 - May 2011
- Begin Design May 2010\*
- Complete Construction May 2016

\* Approximately 1 year earlier than required in TMDL Implementation Plan

## SCR Subdivision of Reach 4

Slide showing proposed Reach 4 Subdivision

## Alternatives for Compliance Options

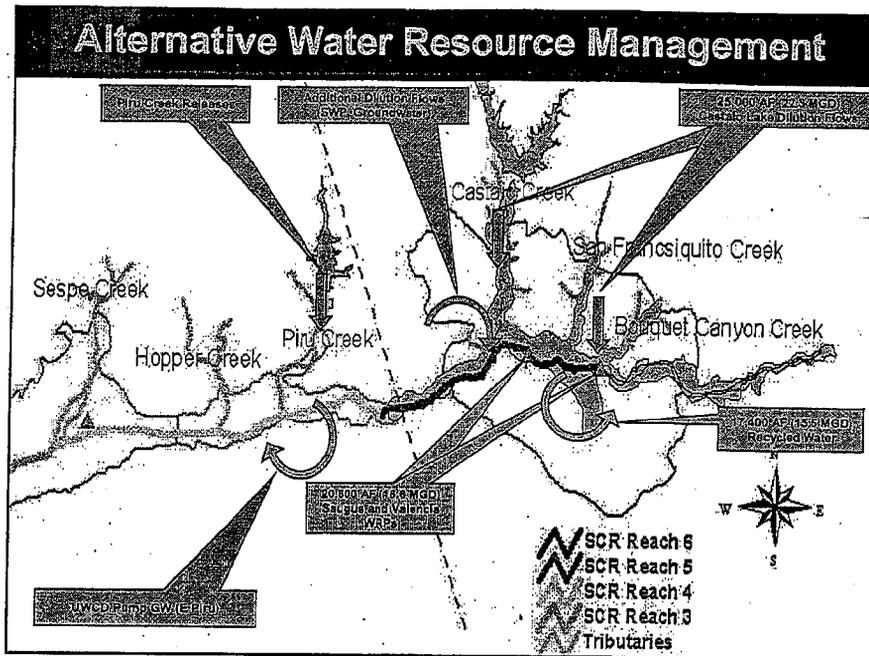
- Advanced Treatment and Brine Disposal
- Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall
- Alternative WRP Discharge Location
- Alternative Water Resource Management

## Alternatives for Compliance Options

- **Advanced Treatment and Brine Disposal**
  - Advanced Treatment to achieve WQO for WRP discharges
  - 43 mile brine-line and ocean outfall through Ventura County
  - 10 mile brine-line to deep well injection field
- **Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall**
  - Advanced Treatment to achieve WQO for minimum flows
  - 43 mile secondary effluent pipeline and ocean outfall through Ventura County
- **Alternative WRP Discharge Location**
  - Move WRP discharge to upstream location to reduce d/s impacts
  - Move WRP discharge out of Santa Clara River Watershed

## Alternatives for Compliance Options

- **Alternative Water Resource Management**
  - **Source Control to minimize WRP Chloride loadings**
    - SRWS removal incentives
    - Voter referendum
  - **UV Disinfection**
  - **Maximize Recycled Water Uses in Santa Clarita Valley**
  - **Enhance Assimilative Capacity in Reaches 5 and 6**
    - Management of local storm-flow releases at Castaic Reservoir
    - Purchase/discharge of additional dilution flows
  - **Salt export following drought conditions**
    - East Piru Extraction Wells and Blending Facilities
    - Blend with Piru Creek releases to achieve downstream surface water quality objectives



### TMDL Compliance Options

Compliance Option	WRP Discharge Reaches 5 & 6 (AFY)	Chloride SCVSD WRPs		Dilution Flow (AFY)	Chloride Reach 4B*	
		Non Drought (mg/L)	Drought (mg/L)		Non Drought (mg/L)	Drought (mg/L)
Advanced Treatment and Brine Disposal	34,800	90-120	100-120	0	70-100	80-100
Minimal Advanced Treatment and Secondary Effluent Pipeline	11,200	90-120	100-120	0	70-100	80-100
Alternative Discharge Location (Reaches 6, & 7)	38,200	90-130	130-167	0	60-100**	100-137**
Alternative Water Resource Management	20,800	90-130	130-167	Up to 25,000	<=100	<=117

\* Assumes chloride gradient of 20 mg/L between WRP outfalls and Reach 4B (to be confirmed by GSW/IM).  
 \*\* Assumes chloride gradient of 30 mg/L between alternative discharge location and Reach 4B (to be confirmed by GSW/IM).

## TMDL Compliance Options

Compliance Option	Advantages	Disadvantages
Advanced Treatment and Brine Disposal	<ul style="list-style-type: none"> <li>• High effluent quality in Reaches 5 and 6 under all conditions</li> <li>• Maintains existing hydrologic support for the SCR watershed</li> <li>• Salt export/removal capability</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum carbon footprint</li> <li>• Brine disposal impacts</li> <li>• Does not promote water recycling</li> </ul>
Minimal Advanced Treatment and Secondary Effluent Pipeline	<ul style="list-style-type: none"> <li>• Facilitates Regional effluent disposal and water recycling through shared pipeline</li> <li>• High effluent quality in Reaches 5 and 6 under all conditions</li> <li>• Salt export/removal capability</li> </ul>	<ul style="list-style-type: none"> <li>• Decreases hydrologic support to the SCR Watershed</li> </ul>
Alternative Discharge Location	<ul style="list-style-type: none"> <li>• Restores/enhances habitat in Eastern SCR Watershed</li> <li>• Promotes greater water recycling in Eastern Santa Clarita Valley</li> </ul>	<ul style="list-style-type: none"> <li>• Potential impacts on water supply wells in Eastern SCR Watershed</li> <li>• Decreases hydrologic support to the SCR Watershed</li> <li>• Low stakeholder support</li> </ul>
Alternative Water Resource Management	<ul style="list-style-type: none"> <li>• Promotes water recycling</li> <li>• Increases hydrologic support for the SCR watershed</li> <li>• Salt export/removal capability</li> <li>• Minimum carbon footprint</li> <li>• High stakeholder support</li> </ul>	<ul style="list-style-type: none"> <li>• Uncertain regulatory framework</li> <li>• Potential high cost during drought</li> </ul>

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# **ATTACHMENT 91**



**FINAL**

**Upper Santa Clara River Chloride TMDL  
April 11, 2008 Meeting Summary  
10:00 AM – 12:00 AM**

**Meeting Summary**

**Attendees:**

Regional Board Staff:	Sam Unger, Deb Smith, Jenny Newman, Yanjie Chu
SCVSD Staff:	Phil Friess, Raymond Tremblay, Brian Louie, Francisco Guerrero
Larry Walker and Associates:	Ashli Desai
City of Santa Clarita:	Travis Lange, Heather Merenda
Newhall Land and Farming:	Mark Subbotin
United Water Conservation District:	Dana Wisehart, Steve Bachman
Kennedy Jenks Consultants:	Lynn Takaichi
Newhall County Water District:	Steve Cole
Valencia Water Company:	Bob DiPrimio
Castaic Lake Water Agency (CLWA):	Dirk Marks
Santa Clarita Water Division of CLWA:	Mauricio Guardado
Ventura Co. Agricultural Water Quality Coalition:	Rob Roy
Farm Bureau of Ventura County:	John Krist
Ventura County Supervisor Cathy Long's Office	Martin Hernandez (Phone)

**Presentations**

SCVSD presented a summary of AWRM compliance option (attached)

UWCD presented a summary of AWRM water quality and water supply benefits to Ventura County (attached)

Regional Board presented a summary of potential AWRM Implementation items (attached)

**Discussion**

Rob Roy, representing the VCAWQC, commented that they support the AWRM compliance option. Mr. Roy indicated the VCAWQC had several concerns with implementing the compliance option associated with the existing 100 mg/L WQO, including the possibility that surface flow in the Santa Clara River would be reduced because the highly treated RO product water would have significant value and could be marketed as a water resources as opposed to discharged to the river. Mr. Roy also indicated the VCAWQC had concerns with the 100 mg/L WQO compliance option, as it would require disposal of brine waste from a large MF/RO facility through Ventura County to the Pacific Ocean. Specifically, Mr. Roy was concerned about environmental issues that may arise and the possibility of lawsuits challenging any such project from environmental organizations in and out of the region. Such lawsuits would delay implementation of any such project for many years, 10 – 20 years, over which, degradation of the SCR watershed would continue and no benefit would be provided to the farmers. Mr. Roy also indicated that the reaction received from local farmers to the proposed AWRM compliance option has been positive and supportive.

Dana Wisehart, representing the UWCD, commented that they support the AWRM compliance option. The key concern expressed by the UWCD Board has been the long-term degradation in water quality in the Piru Basin, which may be addressed in a shorter time period by the AWRM option. Ms. Wisehart indicated that the UWCD Board thought the AWRM was a balanced solution, and that although it relaxes standards, in the end, does not negatively impact farmers and provides substantial benefits to Ventura

FINAL - April 23, 2008

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**FINAL**

County. Ms. Wisheart indicated that although the UWCD Board supports the AWRM compliance option, there are many details and commitments that need to be worked out and added that the UWCD Board might pull their support if those commitments are not met.

John Krist with the Farm Bureau of Ventura County also indicated the Farm Bureau was supportive of the AWRM compliance option, adding they were guardedly optimistic of the proposal. He also indicated many details still needed to be worked out.

Deb Smith, Regional Board AEO, commented that it was clear that a good amount of work has been done to get to this point by all the stakeholders and that she was pleased to see so many stakeholders together supporting the AWRM compliance option and that the Regional Board was open to considering the proposal. She further indicated she looked forward to seeing how some of the details of the AWRM are further developed. Ms. Smith commented that conceptually, the AWRM compliance option appeared to be a good plan.

Sam Unger, Regional Board staff, reviewed potential implementation requirements and potential permitting actions (see attached presentation slide) that would need to be clarified before presenting AWRM to the Regional Board.

Lynn Takaichi with Kennedy Jenks inquired about the possibility of implementing certain aspects of the AWRM sooner. Regional Board staff indicating they were open to considering various implementation plans and schedules. Regional Board AEO indicated they prefer to have the entire AWRM package together to present to the Regional Board, rather than presenting the AWRM in several pieces.

# California Regional Water Quality Control Board

Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013

Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

## Meeting for Santa Clara River Chloride TMDL

April 11, 2008

NAME	COMPANY/AGENCY	TELEPHONE	EMAIL ADDRESS
Phil Friess	LACSD	562-908-4285 ext 2501	pfriess@lacsad.org
Heather Neral	City of Santa Clara	408-884-1413	hneral@scwrqa.com
Mavis Lange	City of Santa Clara	408-257-4337	hange@scwrqa.com
Asli Desai	LUGA	310-394-1036	AsliDesai@lusa.com
Ranjie Chiu	Regional Board	213-576-6681	rchiu@waterboards.ca.gov
JANNEMANN	WRWQCB	213 576 6691	jenneman@waterboards.ca.gov
Deb Smith	RWQCB	213-576-6609	dsmith@waterboards.ca.gov
MARC SUBBOTIN	Newhall Land	461-255-4069	msubbotin@newhall.com
Steve Bachman	United Water CP	805-635-4494	steven.bachman@verizon.net
Rob Roy	WRWQCB	805-388-2767	rob-roy@pacbell.net
JOHN KRIST	FARM BUREAU OF VENTURA COUNTY	805-289-0155	jkrist@farmbureau.com
Brian Lorie	LACSP	562-659-7411 x-2802	blorie@lacsad.org

Sam Miller

RWQCB

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11111

# California Regional Water Quality Control Board

Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013

Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Meeting for Santa Clara River Chloride TMDE

April 11, 2008

NAME	COMPANY/AGENCY	TELEPHONE	EMAIL ADDRESS
Ray Trebley	LACSD	11	rtrebley@lacsdc.org
Frank Guerrero	LC	LC	fguerrero@lacsdc.org
Mauricio Guardado	SCWUD	661 259-2737	Mguardado@scwwater.org
Dick Marks	CLWA	291-1600	dmarks@clwa.org
Bob DiPrimo	Valencia Water	661 295-6501	rdiprimo@valencia.com
STEVE LORE	NCWD	661 259-3610	Steve@ncwd.org
JANIS TRAKALIS	KTC	951-658-0607	JANIS@TRAKALIS.COM
DANA WISCHART	UNITED WATER CONSTRUCTORS	805-525-4431	DANA@UNITEDWATER.ORG

JANIS TRAKALIS  
 12400 WILSON BLVD  
 STE 105  
 VAN NUYS, CA 91411

7-411

## Alternative Water Resources Management Program

### Background

Since November 2007, the Santa Clarita Valley Sanitation District (District), Ventura County Agricultural Water Quality Coalition (VCAWQC), United Water Conservation District (United Water), and the Upper Basin Water Purveyors<sup>1</sup> have been working together to develop an alternative water resources management (AWRM) Program for the Upper Santa Clara River (USCR) Chloride TMDL. Through this process, the District, VCAWQC, United Water, and the Upper Basin Water Purveyors have come to an agreement on the guiding principles and key elements of the AWRM Program.

### The Guiding Principles of the AWRM Program

The following guiding principles have been established between the District, VCAWQC, United Water, and the Upper Basin Water Purveyors for the development and implementation of the AWRM Program:

1. The AWRM Program will strive to avoid and, if necessary, mitigate any water quality impacts to direct agricultural users of surface and groundwater from the Santa Clara River in East Piru (i.e., Camulos Ranch).
2. The AWRM Program will not cause long-term water quality degradation of groundwater, and agricultural uses of groundwater will be protected. (i.e., salt balance in any affected basin can be achieved within a reasonable time).
3. The AWRM Program will include a plan to improve groundwater quality in East Piru Basin and expedite water quality improvements. (i.e., water quality in groundwater and surface water in East Piru Basin will be improved before the end of the USCR Chloride TMDL implementation compliance period).
4. The AWRM Program will improve water supplies in Ventura County.
5. The AWRM Program will be implemented, monitored and funded by the Santa Clarita Valley Sanitation District.
6. The AWRM Program will provide for stakeholder oversight during implementation.

### Key Elements of the AWRM Program

#### 1. Santa Clarita Valley Sanitation District Commitments

- Reduce the chloride in WRP effluent through:
  - Self-regenerating water softener (SRWS) removals
  - Conversion to Ultra-Violet Light Disinfection
- Construction of 3 MGD Microfiltration-Reverse Osmosis (MF-RO) facility at the Valencia WRP
  - Delivered to extraction wells for Ventura County water supply benefit (Figure 1a)
  - Discharged to SCR to comply with water quality objectives, when necessary (Figure 1b)
- Construction of Ventura County water supply facilities (Figure 2)
  - RO pipeline
  - East Piru extraction wells
  - Extraction well and RO blend pipeline (East Piru Pipeline)
- Provide dilution water to Santa Clara River as an interim measure prior to completion of MF-RO and Ventura County water supply facilities, and after completion of facilities as needed to comply with WQOs.
- Protect Reach 4B agriculture (i.e. Camulos Ranch) with a suitable alternative water supply when chloride concentrations in Reach 4B exceed 117 mg/L.
- Support recycled water uses in the Upper Basin Water Purveyor service areas

<sup>1</sup> Castaic Lake Water Agency, Valencia Water Company, Newhall County Water District, Los Angeles County Water Works District No. 36, and the Santa Clarita Water Division of the Castaic Lake Water Agency.

## Alternative Water Resources Management Program

2. Revised surface water and groundwater water quality objectives (WQOs) as follows:

Proposed WQOs for Surface Waters				
Mineral WQO	Reach 4B*	Reach 5	Reach 6	Reach 7
Chloride	400  117 (low SWP Cl)** 130 (high SWP Cl)**	400  150 (12-month avg.)	400  150 (12-month avg.)	100
Proposed WQOs for Groundwater				
Mineral WQO	East Piru	Castaic Valley	Santa Clara Beug. & SF Canyons	Santa Clara Mint Canyon
Chloride	200 130 to 150	150	400 150	150
TDS	2500 1300	1000	700 1000	800 1000
Sulfate	4200 600	350	250 300	450 300

\* When water quality in Reach 4B (Blue Cut) exceeds 117 mg/L, an alternative water supply will be provided to Camulos Ranch to protect salt-sensitive agricultural uses.

\*\* Trigger between low and high State Water Project (SWP) chloride based on Castaic Reservoir chloride at 80 mg/L.

### Next Steps

- District and key stakeholders to meet with Regional Board staff and State Board member Fran Spivey-Weber to discuss AWRM Program on April 11, 2008
- USCR Chloride TMDL Studies to be completed in April-May 2008
- District, United Water, VCAWQC, and Upper Basin Water Purveyors to enter into a Memorandum of Understanding on AWRM Program by May 2008
- Regional Board Staff Report and Hearing on Chloride TMDL
  - o Staff Report released in June 2008
  - o Regional Board Hearing in September-October 2008
- District initiates SRWS Ordinance and Referendum Process (Tentative Schedule)
  - o Late April – Santa Clarita City Council Information Session on SRWS ordinance/voter referendum process
  - o Early May – Introduce SRWS ordinance/voter referendum process to SCVSD Board
  - o Mid May – SCVSD Board adopts SRWS ordinance and authorizes voter referendum process
  - o Late May – SCVSD submits application to County Registrar's Office to place voter referendum on the November 2008 General Election Ballot
  - o January 1, 2009 – SCVSD SRWS ordinance becomes effective, pending voter referendum

# Alternative Water Resources Management Program

Figure 1a. AWRM Operation when SWP CI < 80 mg/L

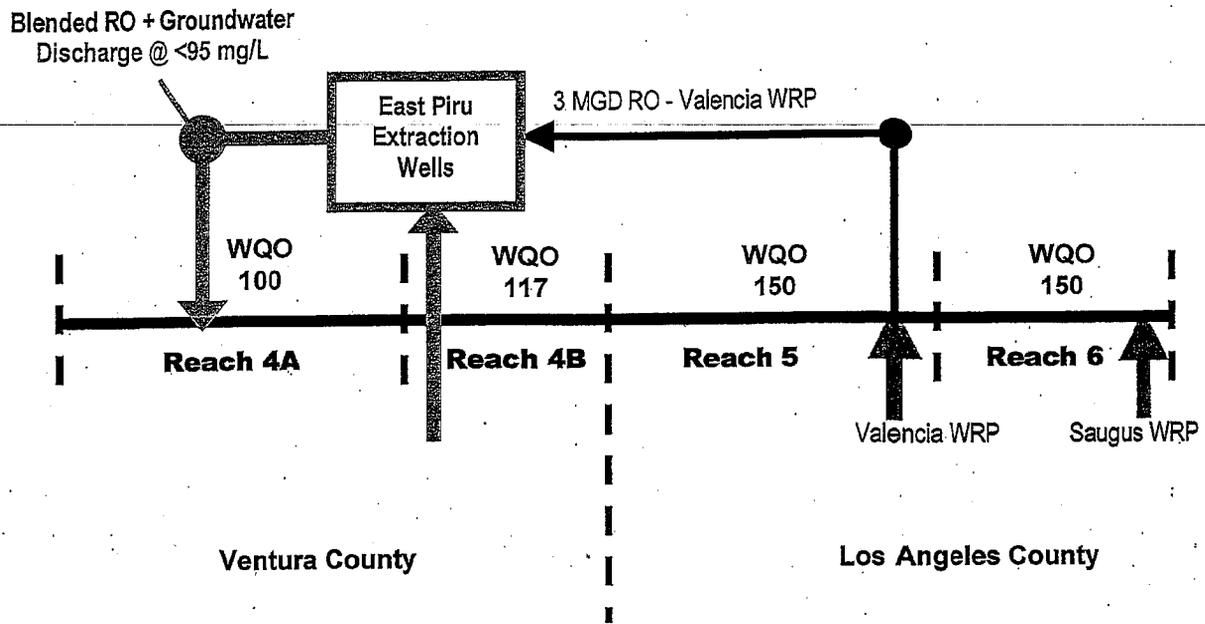
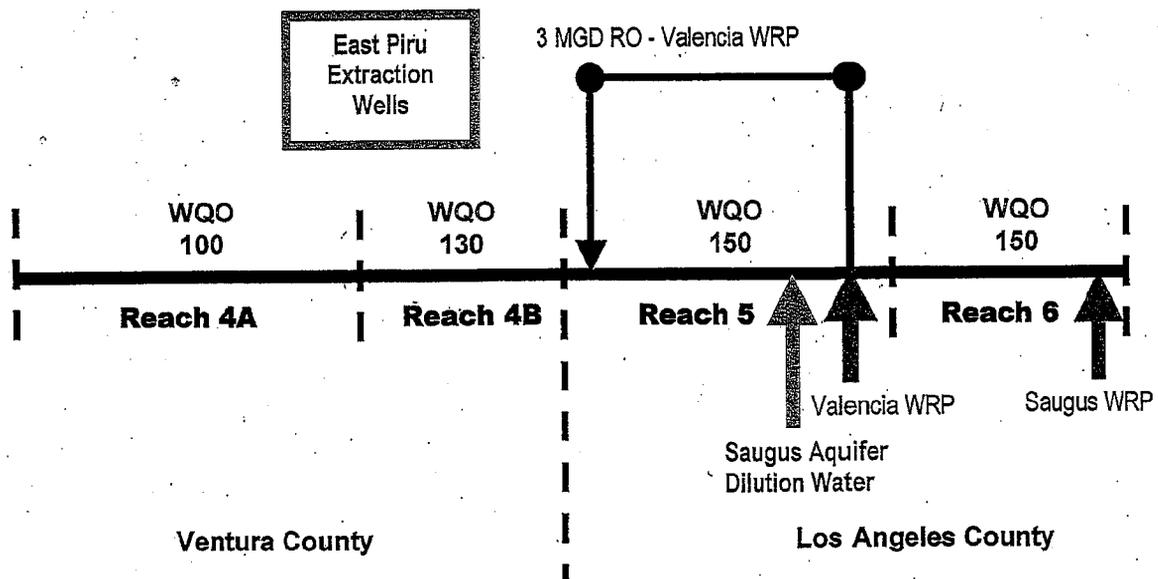
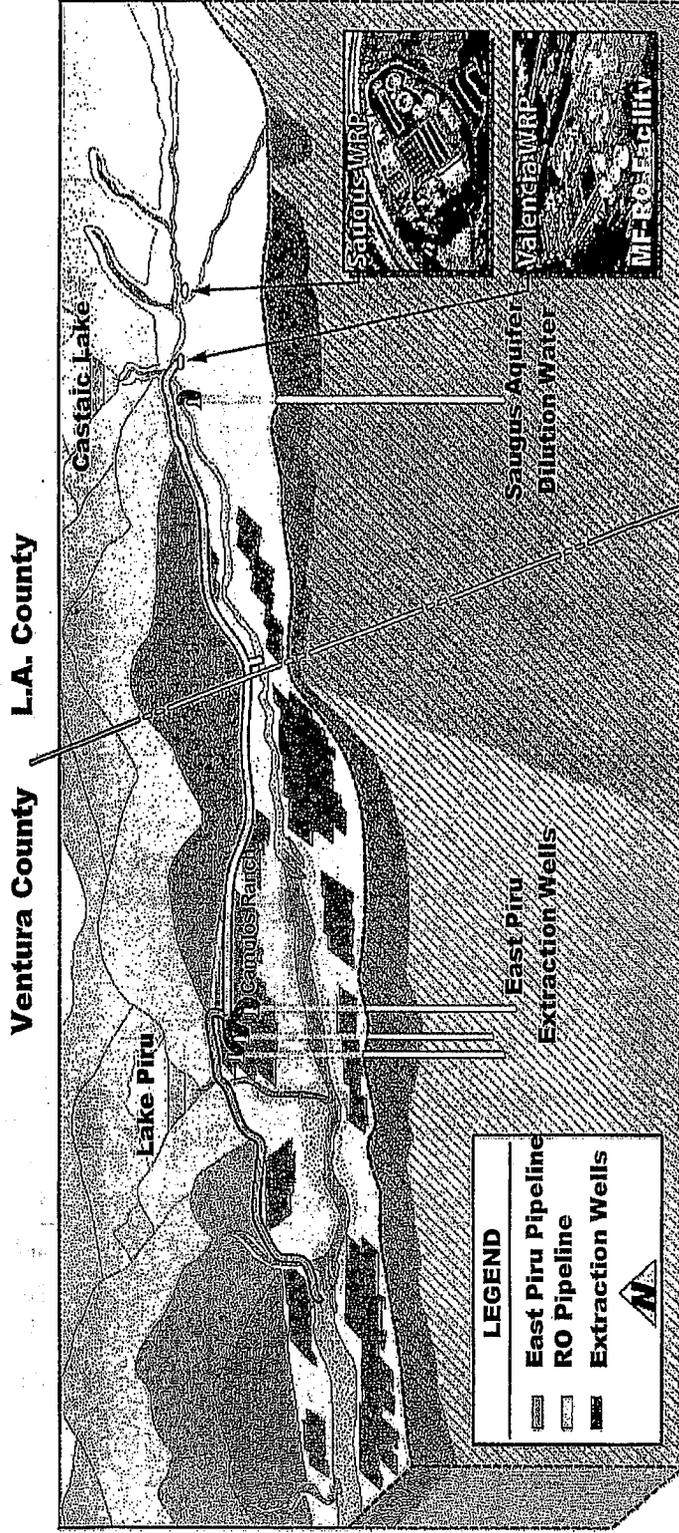


Figure 1b. AWRM Operation when SWP CI ≥ 80 mg/L



# Alternative Water Resources Management Program

Figure 2. Elements of the Alternative Water Resources Management Program



D R A F T

Received July 29, 2011  
commission on  
state mandates

SANITATION DISTRICTS OF LOS ANGELES COUNTY



# USCR CHLORIDE TMDL AND ALTERNATIVE WATER RESOURCES MANAGEMENT

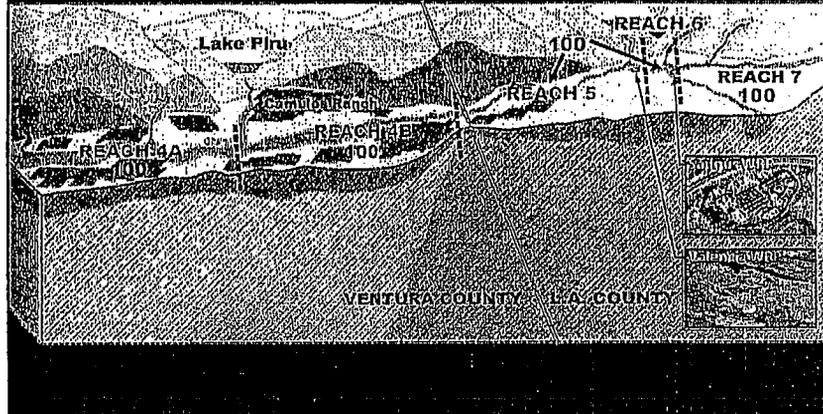
Phil Friess  
Steve Bachman  
April 11, 2008

## Presentation Overview

- Update on Chloride TMDL Study Schedule
- Regional Board Alternatives for TMDL  
– 100 mg/L vs. SSOs
- LACSD Compliance Options for TMDL
- Elements of the Alternative Water  
Resources Management (AWRM) Program
- Water Quality and Water Supply Benefits of  
AWRM Program (Steve Bachman, UWCD)
- Next Steps

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## Santa Clara River Watershed



## Update on Chloride TMDL Schedule

- TMDL Special Studies
  - Agricultural Threshold Study (Completed)
  - Threatened & Endangered Species Study (Completed)
  - Groundwater / Surface Water Model April – May 2008
  - Site-Specific Objective Study April – May 2008
- Regional Board Staff Report June 2008
- Regional Board Hearing September – October 2008

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## Regional Board Alternatives

Regional Board will likely consider two alternatives at the Fall 2008 TMDL Re-opener Hearing.

### Alternative 1

- No change in WQOs (100 mg/L)

### Alternative 2

- Revise WQOs through adoption of SSOs

## Compliance Options for Regional Board Alternatives

Alternative 1 (100 mg/L)	Alternative 2 (AWRM)
<ul style="list-style-type: none"><li>• Advanced Treatment at Saugus and Valencia WRP</li><li>• 43-mile brine line and ocean outfall</li></ul>	<ul style="list-style-type: none"><li>• Reduce Chloride in WRP Effluent</li><li>• 3 MGD Advanced Treatment Facility</li><li>• Dilution Water as necessary</li><li>• Ventura County Water Supply Facilities</li><li>• Protect Existing Beneficial Uses</li><li>• Support Water Recycling</li><li>• Revised surface water and groundwater WQOs</li></ul>
Or	
<ul style="list-style-type: none"><li>• Minimal Advanced Treatment</li><li>• 43-mile effluent disposal pipeline and ocean outfall</li></ul>	

## Guiding Principles for the AWRM Program

1. The AWRM Program will strive to avoid and, if necessary, mitigate any water quality impacts to direct agricultural users of surface and groundwater from the Santa Clara River in East Piru (i.e., Reach 4B).
2. The AWRM Program will not cause long-term water quality degradation of groundwater, and agricultural uses of groundwater will be protected. (i.e., salt balance in any affected basin can be achieved within a reasonable time).
3. The AWRM Program will include a plan to improve groundwater quality in East Piru Basin and expedite water quality improvements. (i.e., water quality in groundwater and surface water in East Piru Basin will be improved before the end of the USCR Chloride TMDL implementation compliance period).

## Guiding Principles for the AWRM Program (Cont'd)

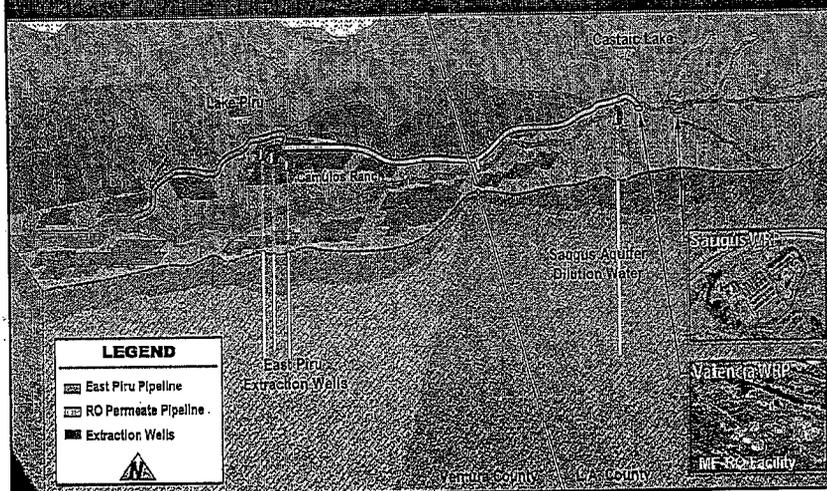
4. The AWRM Program will improve water supplies in Ventura County.
5. The AWRM Program will be implemented, monitored and funded by the Santa Clarita Valley Sanitation District.
6. The AWRM Program will provide for stakeholder oversight during implementation.

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## Elements of the AWRM Program

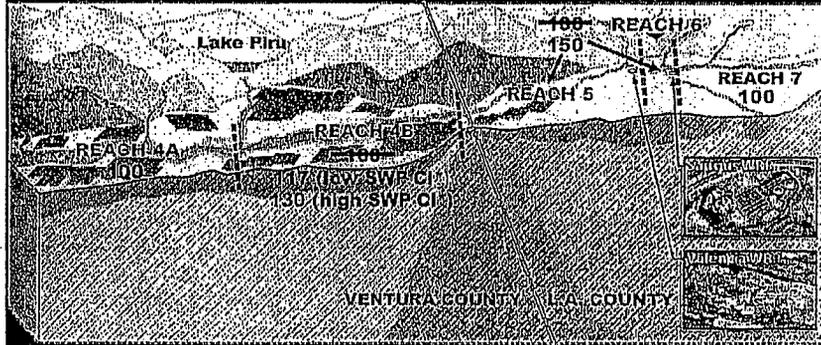
- Reduce Chloride in WRP Effluent
  - Remove all SRWS
  - Convert to UV-Disinfection Technology
- Build 3 MGD MF-RO Facility
  - Brine disposal via deep well injection (abandoned oil fields)
- Purchase dilution waters from CLWA to achieve WQO as needed
- Build Water Supply Facilities in East Piru
  - 10 Extraction Wells
  - Water Supply Conveyance Pipelines
    - RO pipeline to East Piru
    - Extracted groundwater/RO blend pipeline
- Alternative Water Supply to Camulos Ranch
- Support Water Recycling in the Santa Clarita Valley
- Revisions to some surface water and groundwater WQOs

## Elements of the AWRM Program



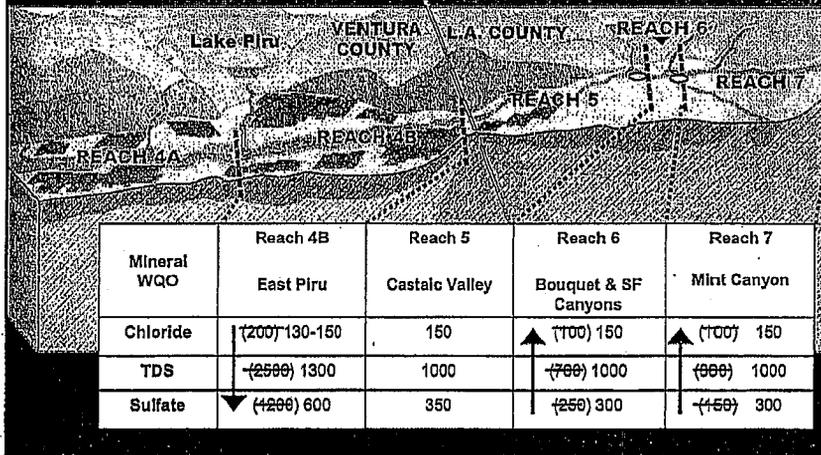
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## Upper Santa Clara River AWRM Surface Water WQOs



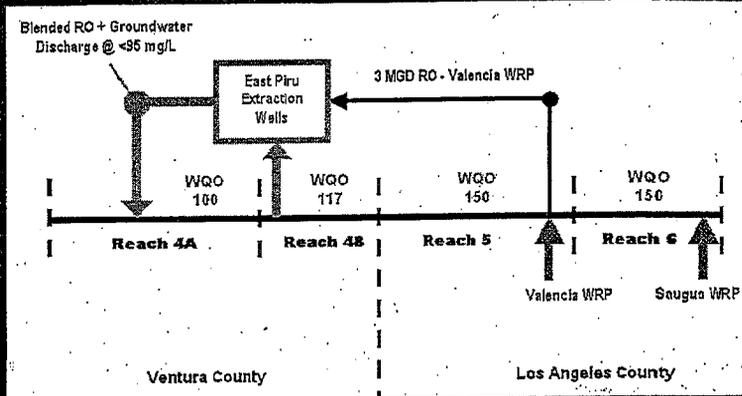
\* Trigger at 80 mg/L Chloride in SWP water at Castaic Lake

## Upper Santa Clara River AWRM Groundwater WQOs



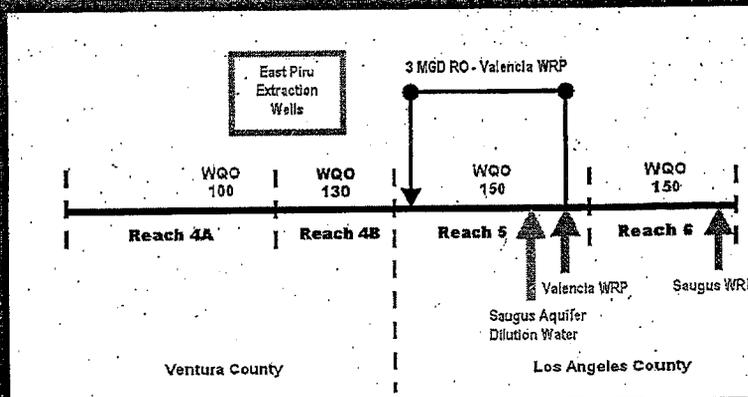
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### AWRM Operation – Low SWP CI

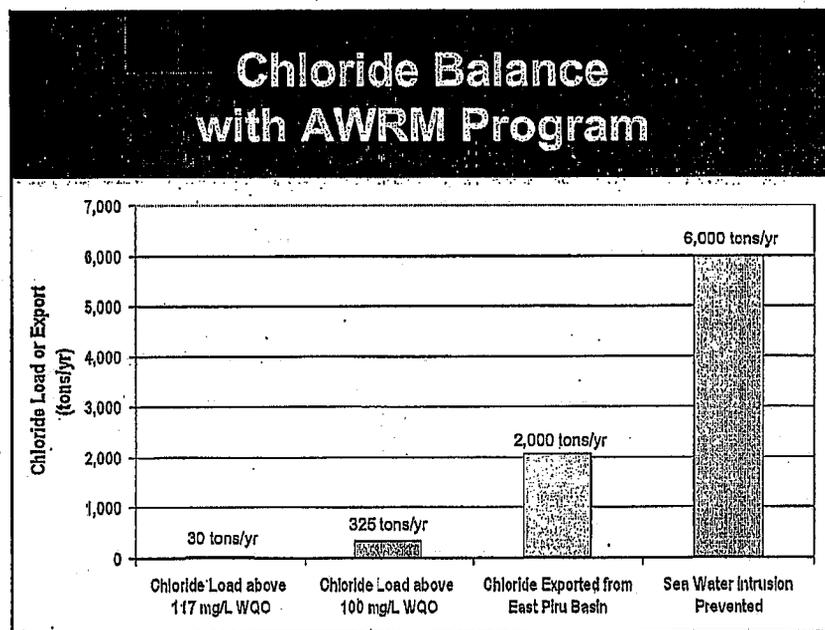
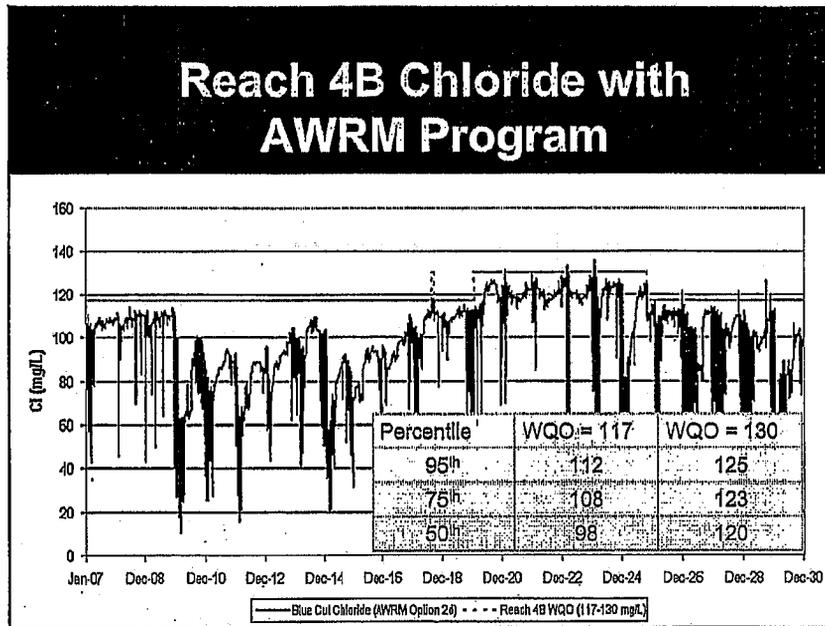


- Valencia RO delivered to East Piru Extraction Wells
- Blended RO + Groundwater discharged to Reach 4A @ < 95 mg/L
- Salt export and water supply benefits to Ventura County

### AWRM Operation – High SWP CI



- Valencia RO discharged at LA-Ventura County Line
- Reach 4B WQO (@ 130 mg/L) attained
- Alternative water supply to Camulos Ranch



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# Potential AWRM Implementation

Reach 4B WQO	Valencia WRP Permit - Receiving Water Limit
East Piru Basin WQO	New Valencia WRP WRR - Groundwater Limit
Reverse Osmosis Facility	Valencia WRP Permit - Salt Export Effluent Limit
Saugus Wellfield Discharge	New NPDES Permit - TBD
Reach 4A WQO	New NPDES Permit - TBD

**Ventura County  
Water Quality and Water Supply Benefits**

**Steve Bachman  
United Water Conservation District**

**Next Steps**

- **Brief Key Stakeholders (Ongoing)**
  - Upper Basin Water Purveyors (L.A. County)
  - City of Santa Clarita
  - United Water Conservation District
  - Ventura County Agricultural WQ Coalition
  - Ventura County Board of Supervisors
  - Camulos Ranch, Cities of Piru, Fillmore and Santa Paula
  - Ventura County Watershed Protection District
  - Calleguas Creek TMDL Water Resources Subcommittee
  - Fox Canyon Groundwater Management Agency
  - Friends of the SCR, SCOPE, Surf-Rider, Heal the Bay
- **Complete TMDL Studies (April – May 2008)**
- **Regional Board Processes (June – Oct 2008)**
  - Staff Report
  - Regional Board Hearing

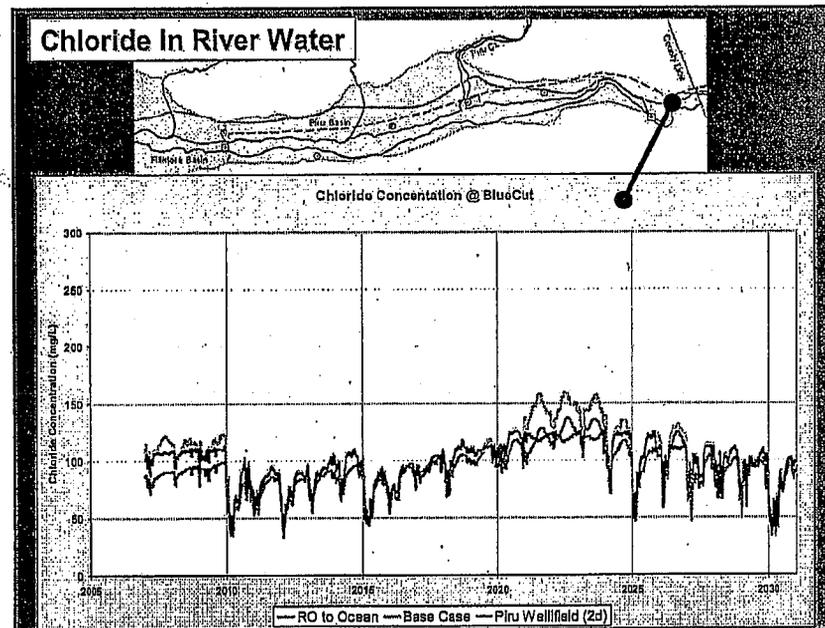
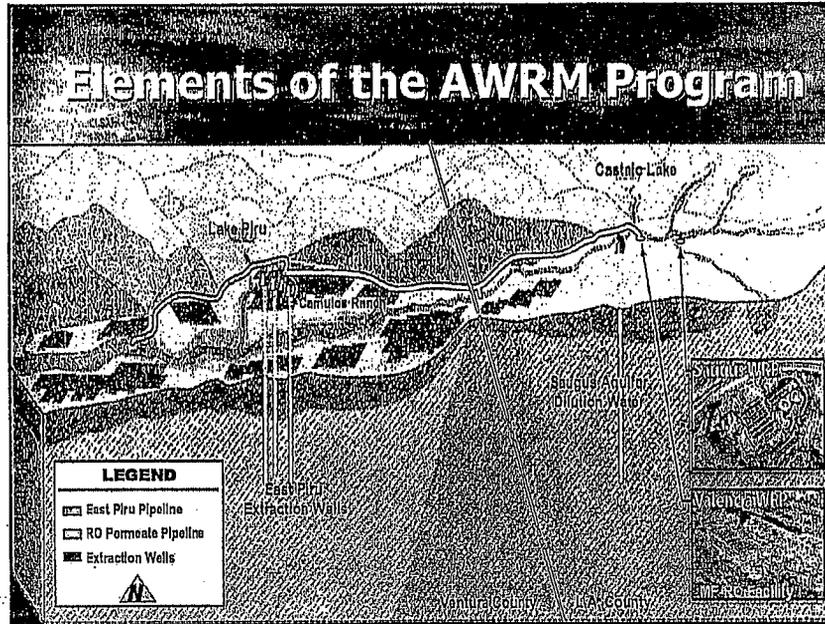
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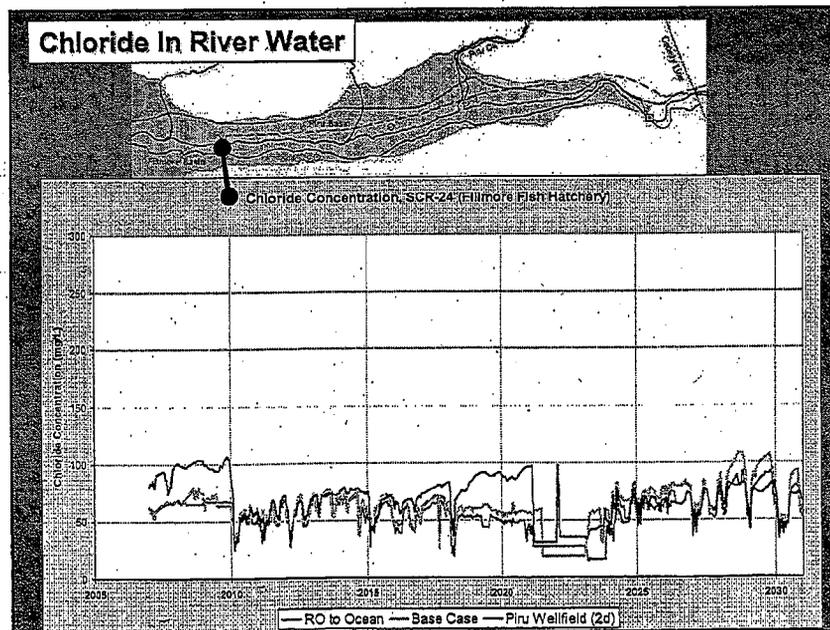
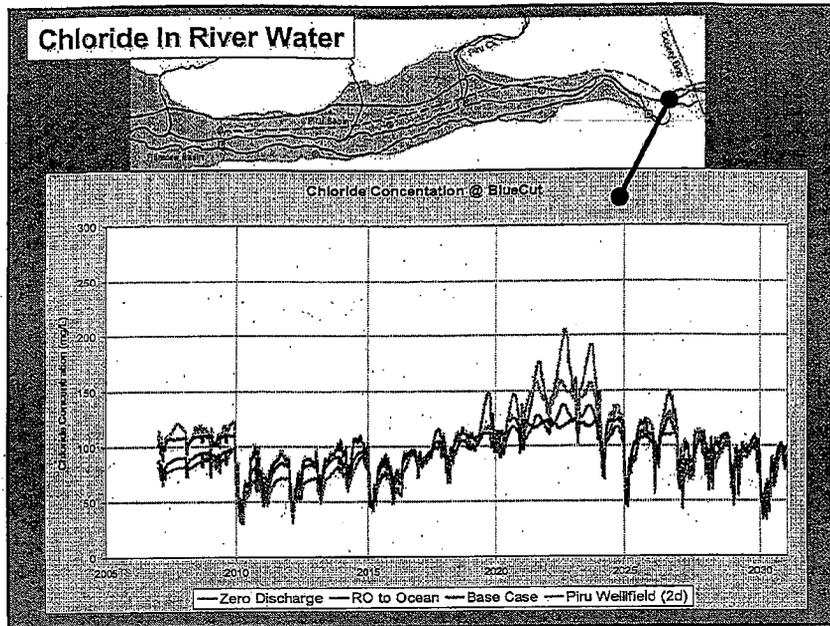
## Key Questions for Ventura County

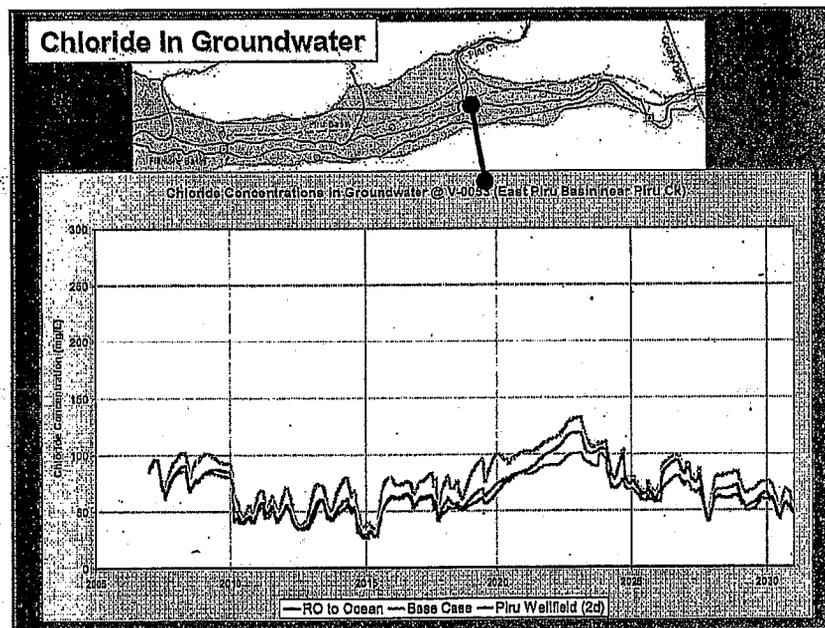
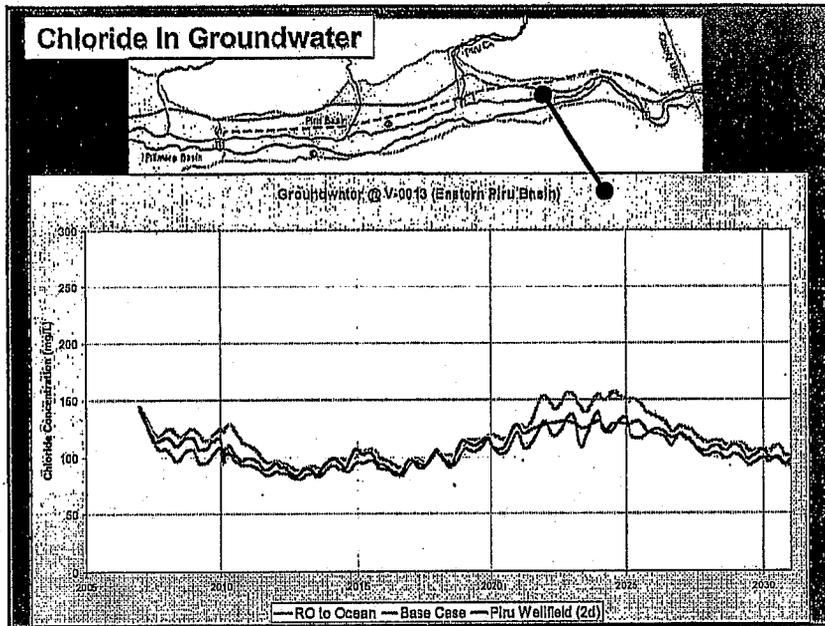
- How will chloride concentrations change along the river?
- How will chloride concentrations change in groundwater?
- How will river flow change?
- Are there benefits for overdraft and seawater intrusion?
- Are there tradeoffs – e.g., drawdown in Piru Basin?

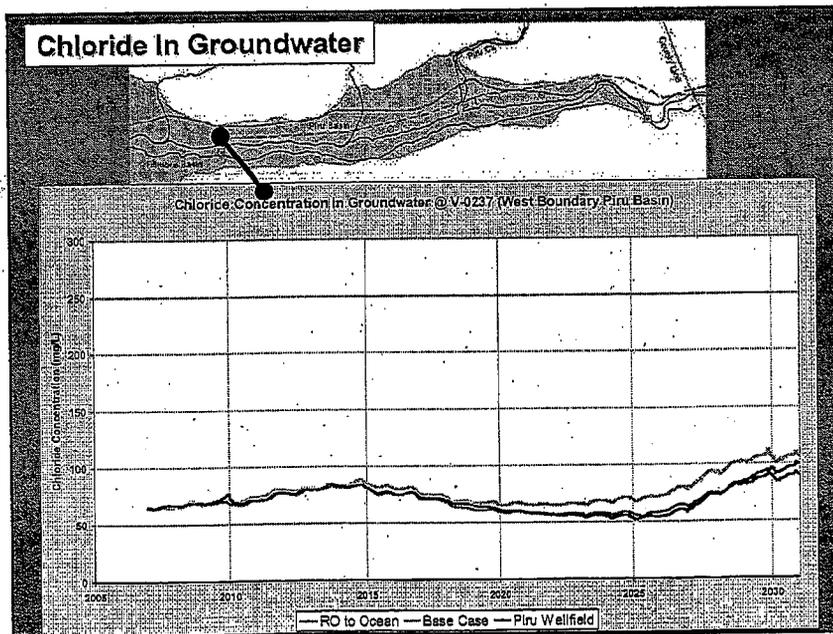
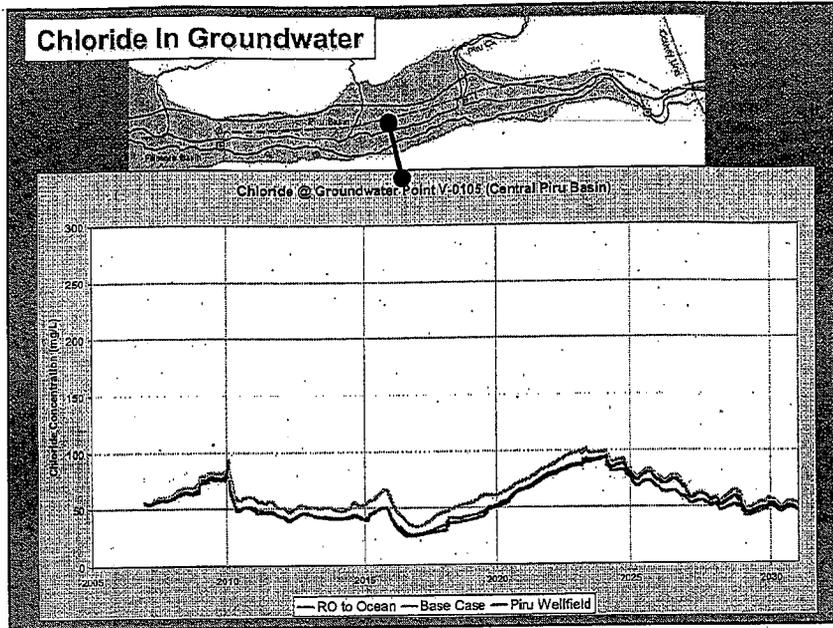
## Three Options Evaluated

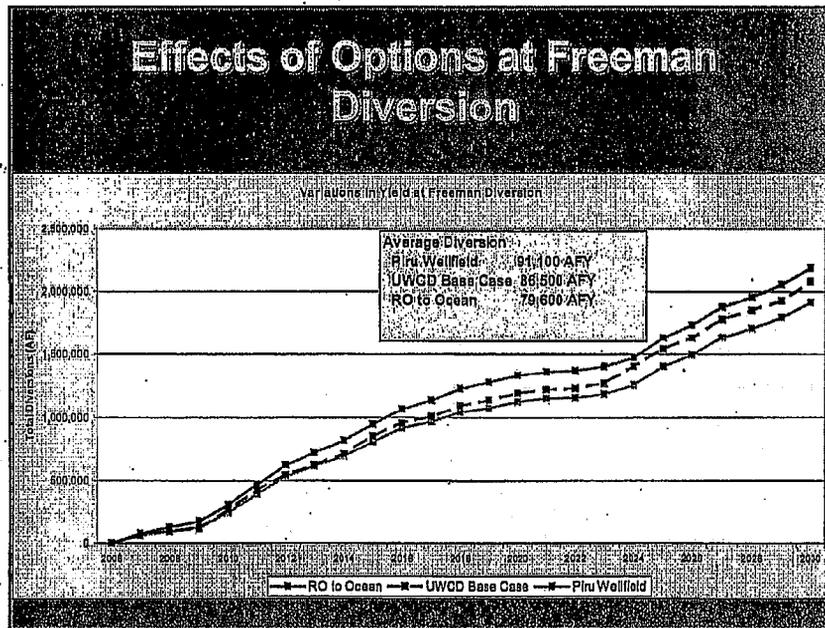
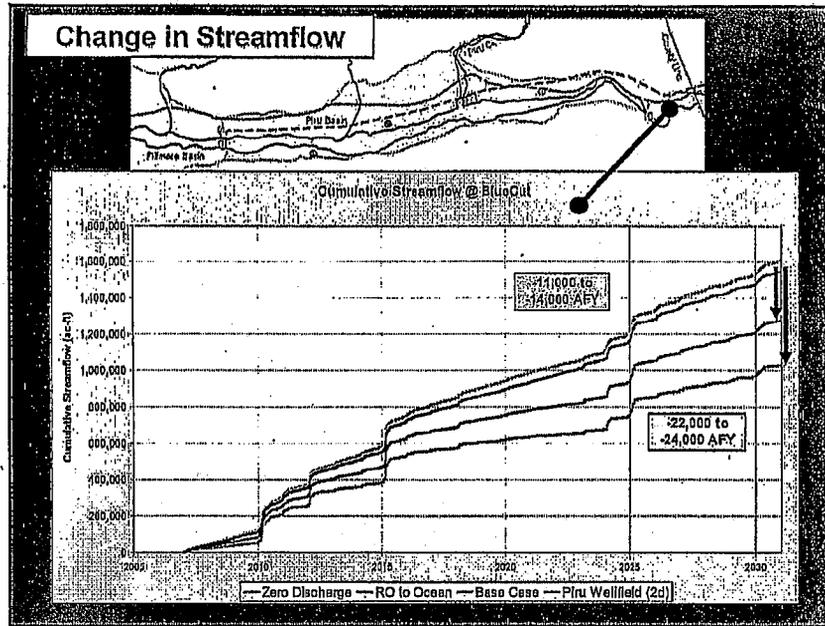
- **RO to Ocean**
  - Brine line to ocean
  - Treated water used primarily in LA County
  - Option Zero Discharge
- **Base Case**
  - Similar to today's situation, except reduction in water softeners, more LA County reuse.
- **Piru Wellfield**
  - Pump east Piru, combine w/RO, discharge Piru/Fillmore

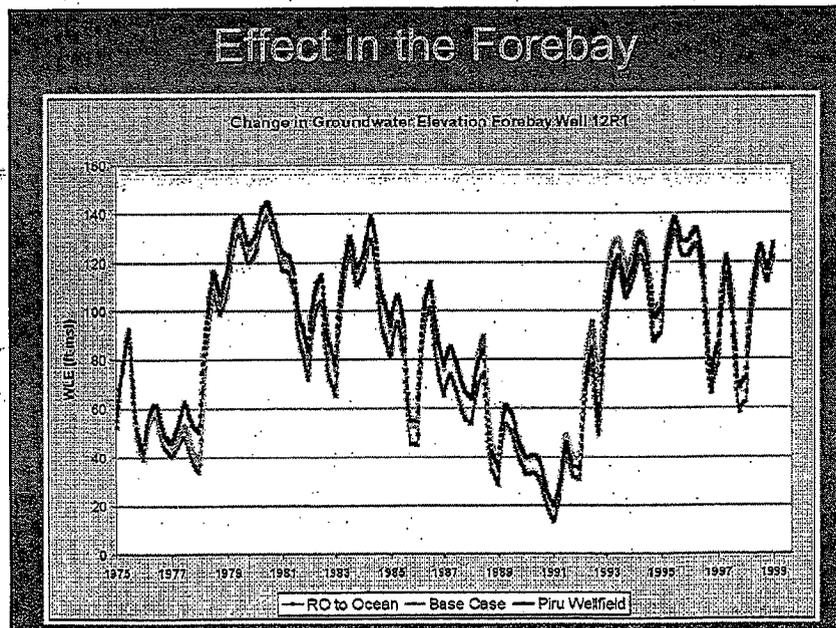
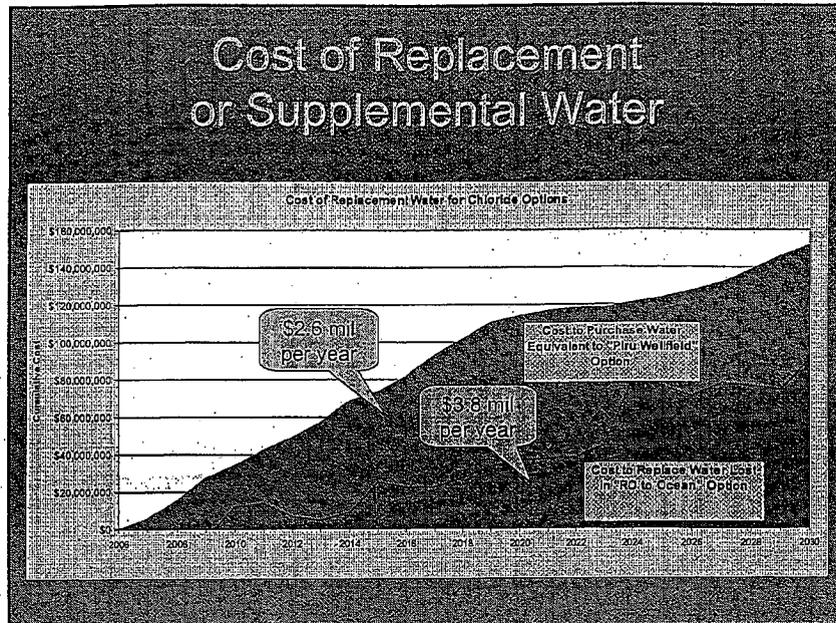


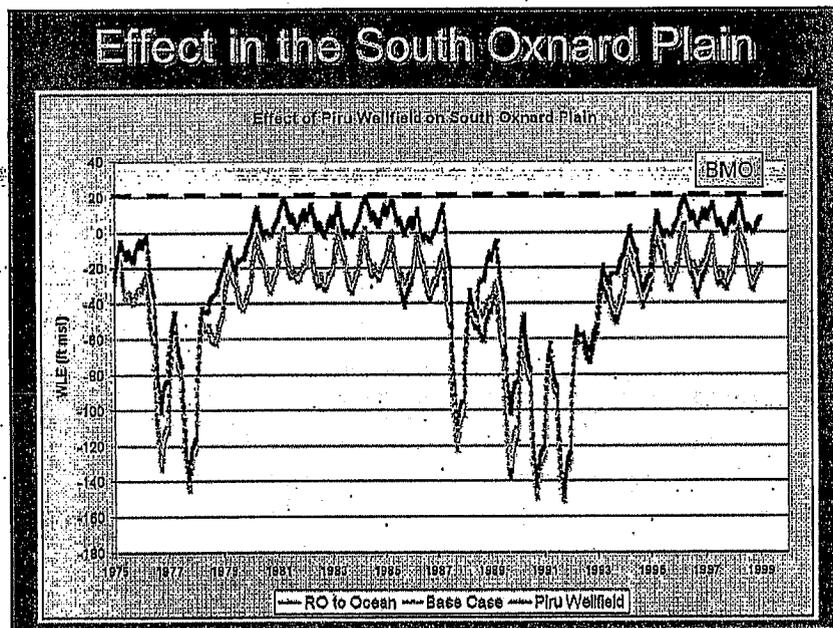
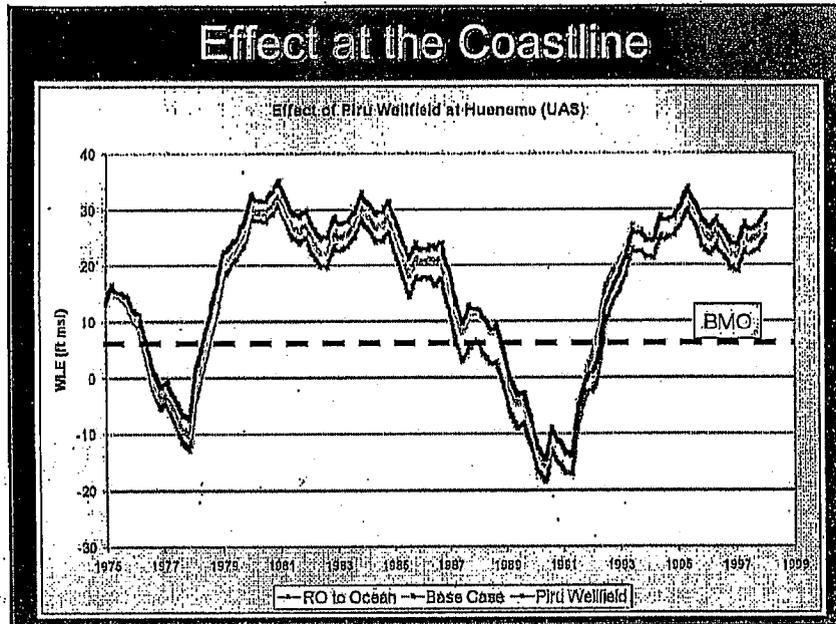


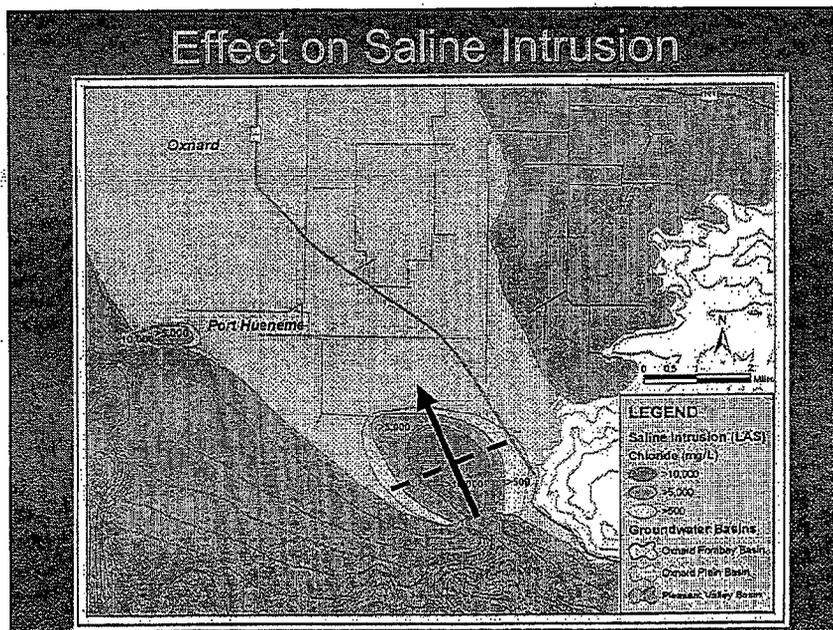
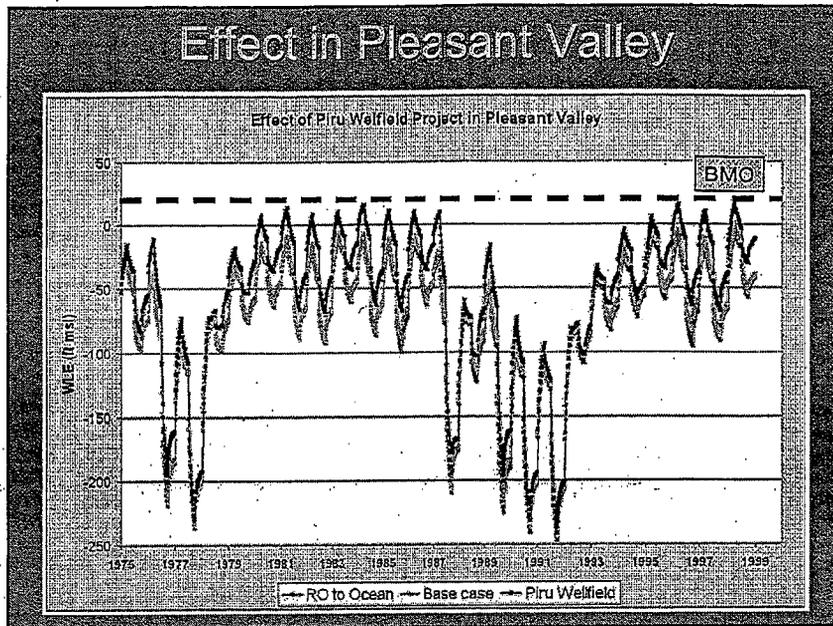


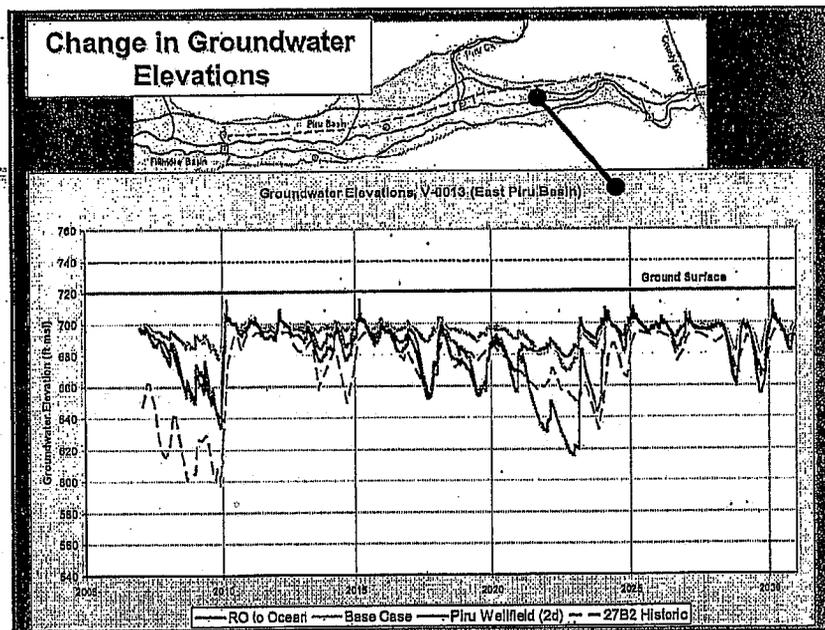
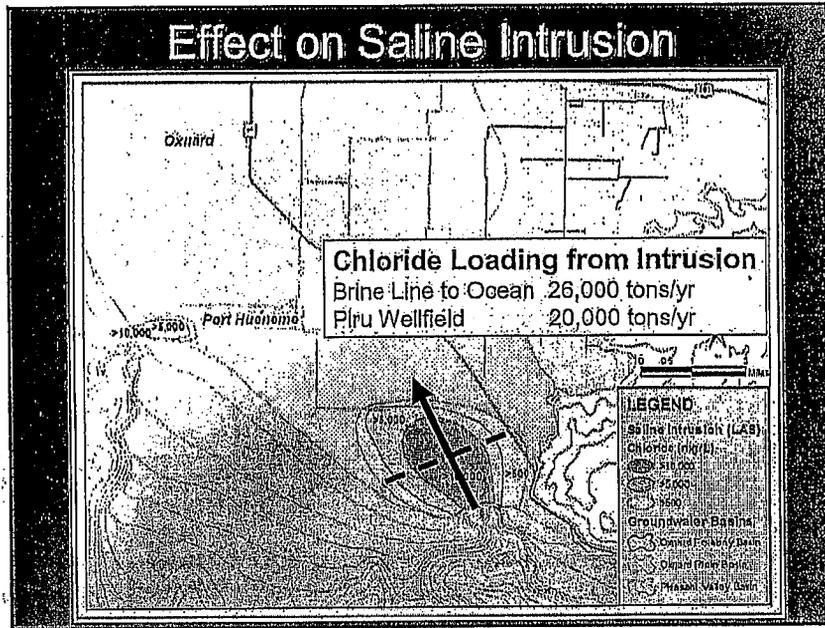


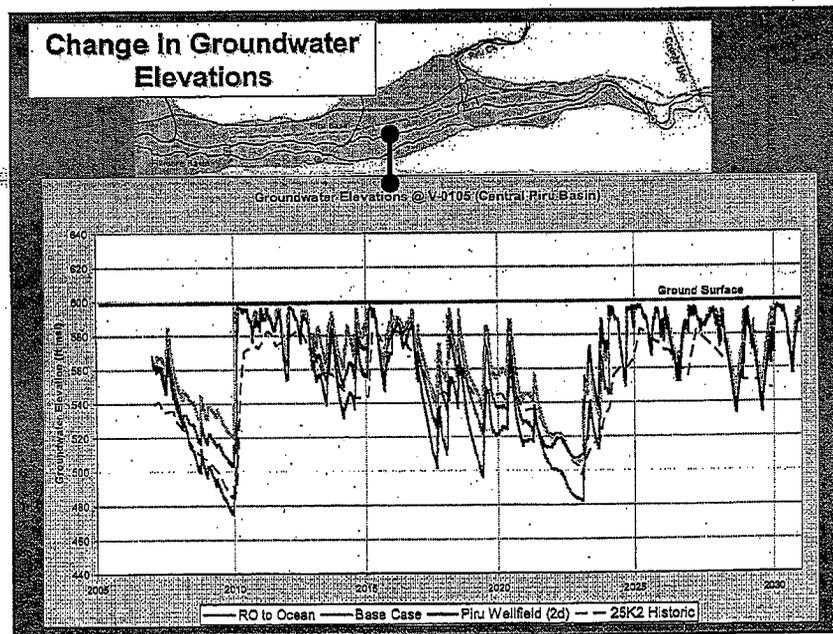
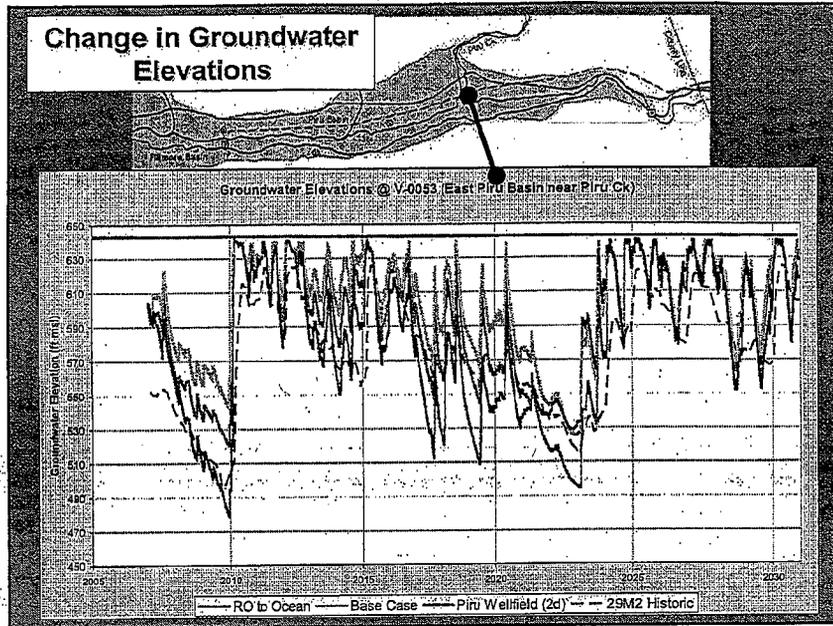














# **ATTACHMENT 92**



Upper Santa Clara River Chloride TMDL  
May 30, 2008 Meeting Summary  
10:30 AM – 11:30 AM  
Conference Call

A G E N D A

- 10:30 AM 1. Review meeting summaries and action items  
a. Draft May 9, 2008 Summary
- 10:40 AM 2. Progress on Various Action Items / Issues  
a. Meeting with Board Member Fran Spivy-Weber (Agenda)  
b. TMDL Task 7, 8 and 9 Acceptance Letter  
c. SRWS Update  
d. Regional Board CEQA/SED Documents
- 10:50 AM 3. GSWIM/AWRM Issues  
a. Regional Board GSWIM Technical Issues  
b. GSWIM Task 2B-2/TMDL Task 9 Report (Geomatrix)  
c. AWRM Water Resource Benefits Report (Steve Bachman)  
d. AWRM Program MOU(s)
- 11:10 AM 4. SSO-ADA Issues  
a. Draft SSO-ADA Report  
b. Reach 4B Groundwater SSOs  
c. Dilution water  
d. Approaches to permitting  
e. Implementation schedule
- 11:30 AM 5. Next Steps / Next Meeting  
a. Next Meeting – Tentative Friday, June 6, 2008

**Meeting Summary**

Attendees:

Sam Unger (Regional Board), Jenny Newman (Regional Board), Yanjie Chu (Regional Board),  
Brian Louie (SCVSD), Francisco Guerrero (SCVSD), Ashli Desai (Larry Walker Associates)

**1. Review meeting summaries and action items**

Regional Board reviewed meeting summary for May 9, 2008 and had no changes. Meeting summary was approved and made final.

Final – June 10, 2008

1 |

7-454

## 2. Progress on Various Action Items / Issues

### *Meeting with Board Member Fran Spivy-Weber*

Briefing of the AWRM Program for State Board Member Fran Spivy-Weber is scheduled for the June 13, 2008 meeting at the Regional Board offices. Regional Board and District staff will develop the agenda and format for the briefing. Regional Board and District staff agreed to notify stakeholders of briefing and indicate attendance is open to anyone interested. Regional Board staff will contact VCAWQC and SCVSD staff will contact UWCD and Upper SCR water purveyors to inform them of the meeting.

### *TMDL Task 7, 8 and 9 Acceptance Letter*

Regional Board staff indicated that TMDL Task 7, 8 and 9 acceptance letter is going through final review by Regional Board management, and that they expect sending the letter out in soon.

### *SRWS Update*

District staff reported that an ordinance banning / requiring the removal of SRWS was introduced to the SCVSD Board of Directors on May 27, 2008, and is agendized for the June 11<sup>th</sup> SCVSD Board of Directors meeting for adoption. District staff informed Regional Board staff that the next step required would be preparation of ballot materials in accordance with LA County Registrar's office requirements. Regional Board staff indicated they thought it would be good to present an information item at the July or August Regional Board meeting on the status of the SRWS program and ordinance. District staff indicated they would discuss with District management. District staff also indicated they anticipate having a press release after adoption of the ordinance and may request participation from Regional Board member(s). Regional Board staff requested that the District's Chief Engineer discuss this issue with the Regional Board Executive Officer directly.

### *Regional Board CEQA/SED Documents*

District staff provided requested information regarding AWRM program. Regional Board staff indicated they are moving ahead with preparing the substitute environmental documents and would contact District staff if any additional information is needed.

## 3. GSWIM/AWRM Issues

### *Regional Board GSWIM Technical Issues*

GSWIM consultants have been in contact with Regional Board staff to address concerns regarding Reach 4B groundwater chloride levels. GSWIM consultants are drafting a technical memorandum to address the Regional Board staff concerns, which is expected to be completed by May 30, 2008.

### *GSWIM Task 2B-2/TMDL Task 9 Report*

Draft of GSWIM 2B-2 Report is expected to be completed within the next week or so.

### *AWRM Water Resource Benefits Report*

District staff indicated they have provided comments on the initial draft report and expect Dr. Bachman to complete report and address comments in the next couple of weeks.

*AWRM Program MOU*

District staff notified RB staff that a meeting with Camulos Ranch and VCAWQC is scheduled for the afternoon of June 13, 2008 to discuss possible MOU with Camulos Ranch for alternative water supplies. District staff also plans to meet with upper basin water purveyors in mid June to continue discussions on the MOU.

**4. SSO-ADA Issues**

*Draft SSO-ADA Report*

LWA indicated they have prepared preliminary draft of SSO-ADA report and received comments from the District staff. LWA is currently completing the Draft Report and addressing the District's comments, expect to be complete next week or so.

*Reach 4B Groundwater SSOs*

One issue that still needs to be resolved is groundwater objectives in Reach 4B. Ashli Desai noted that the SSO-ADA report will recommend different options that the Regional Board may consider for the Reach 4B groundwater objectives, because of the more recent monitoring results that were collected in groundwater near the Blue Cut area. These options, include: (1) no change to existing groundwater WQOs; (2) use of a point of compliance for revised groundwater WQOs; and (3) subdividing the groundwater basin to reflect water quality and revised WQOs for different areas of the groundwater in East Piru Basin. RB staff indicated that this approach was reasonable and wanted to see the options that could be considered.

*Dilution water*

District staff indicated there has been considerable interest on the part of the UWCD, VCAWQC and stakeholders in Ventura County to begin using dilution water to lower chloride levels in the interim period before planning, design and construction activates for the AWRM facilities are completed. Upper basin water purveyors have identified potential candidate wells as the source of interim dilution water that could be released to the SCR, without having to construct conveyance facilities to discharge to the river or to the WRP outfalls. The location of these wells is located 1.5 miles upstream of the Valencia WRP, and would discharge to Reach 6 of the SCR Mineral water quality from these wells indicates sulfate levels may be higher than the current Reach 6 objective of 300 mg/L. District staff asked if Regional Board would consider permit limits for dilution water discharges to the SCR that would determine compliance with a weighted average for sulfate, chloride and TDS of the combined dilution water and the WRP recycled water discharges. Regional Board staff indicated that a main concern was that the dilution water discharges to the SCR be covered by an NPDES permit and that so long as these discharges of interim dilution water are covered by an NPDES permit, they ~~could~~ may consider a weighted average approach as a potential means to establish a permit limit for these interim dilution water discharges.

*Approaches to permitting*

Regional Board staff indicated they are currently drafting potential language for a basin plan amendment that considers the inclusion of provisional Site Specific Objectives for the agreed-upon surface water and groundwater WQO revisions in Chapter 3 of the Basin Plan, with an asterisk noting that these SSOs would become effective upon the implementation of various actions described in Chapter 4 (Implementation Section) of the Basin Plan. Regional Board staff suggested that additional

language could be included in Chapter 4 of the Basin Plan that would address implementation actions (chloride load reductions or facilities) that would effectuate the SSOs. An implementation schedule for these activities would also be included. District staff indicated that such an approach would work, and that District staff will review when draft of potential approach is received. District staff noted that in response to requests from Regional Board staff a few weeks ago, various permitting approaches (Receiving water limits for Reach 4B, Dilution water limits, WRP WLAs) are also being developed and would be shared with RB staff, when available, likely early next week. Regional Board staff indicated that in the development of potential Basin Plan Amendment language for the TMDL, Resolution 97-002 (Chloride Policy) appeared to work well as a template for the actions they are considering. RB staff to send a copy of this resolution and marked-up changes to District staff.

*Implementation schedule*

Implementation schedule would be included in the Basin Plan. District staff indicated that VCAWQC has expressed a desire to have an acceleration of the implementation schedule. District staff has proposed to reduce the current implementation schedule by approximately 1 ½ years. District staff will develop a draft implementation schedule and provide to Regional Board staff for discussion next week.

5. **Next Steps / Next Meeting**

Next meeting is scheduled for Friday, June 6<sup>th</sup>, either at the Regional Board offices or by conference call. Agenda items for the meeting will include additional discussion of approaches to permitting, Basin Plan amendment language and implementation schedule. Regional Board and District staff will also discuss preparation for AWRM briefing of State Board Member Spivy-Weber on June 13<sup>th</sup>.

Next TWG meeting has been tentatively scheduled for June 24<sup>th</sup>.

# **ATTACHMENT 93**



**Upper Santa Clara River Chloride TMDL  
June 20, 2008 Draft Meeting Summary  
10:30 AM – 11:45 AM  
Conference Call**

A G E N D A

- 
- 10:30 AM 1. Review meeting summaries and action items
- a. Final May 30, 2008 Summary
  - b. Draft June 06, 2008 Summary
- 10:35 AM 2. Progress on Various Action Items / Issues
- a. TMDL Task 7, 8 and 9 Acceptance Letter
  - b. SRWS Update
  - c. MOU(s) Update
- 10:50 AM 3. Review of Meeting with Board Member Fran Spivy-Weber
- a. Action Items
- 11:00 AM 4. TMDL Studies Status
- a. SSO – ADA Report (TMDL Task 7&8)
    - i. Reach 4B Groundwater SSO
    - ii. Permitting for Supplemental Water
  - b. Draft GSWIM Task 2B-2 Report (TMDL Task 9)
  - c. East Piru Technical Memorandum (Geomatrix)
- 11:15 AM 5. USCR CI TMDL Implementation
- a. Implementation of SSOs
    - i. Regional Board Draft Basin Plan Language
    - ii. Approaches to Permitting
  - b. TMDL Implementation schedule revisions
- 11:30 AM 6. CEQA/TWG Planning
- a. CEQA Scoping / Substitute Environmental Documents
  - b. June 24, 2008 TWG Meeting Agenda
    - i. GSWI/AWRM Status Update
      - 1. Task 2B-2 Report (TMDL Task 9)
      - 2. AWRM Water Resource Benefits Report
    - ii. SSO-ADA Update
    - iii. Regional Board CEQA Scoping/SED Documents
    - iv. SRWS Ordinance Update
    - v. TMDL Schedule Update
- 11:45 PM 7. Next Steps / Next Meeting
- a. June 27, 2008 RB-SCVSD Meeting

## Meeting Summary

### Attendees:

Phil Friess (SCVSD), Francisco Guerrero (SCVSD), Jenny Newman (Regional Board), Yanjie Chu (Regional Board), Ashli Desai (Larry Walker Associates)

### **1. Review meeting summaries and action items**

Regional Board staff reviewed meeting summary for June 6, 2008 and provided comments. Meeting summary with revisions was approved and made final.

### **2. Progress on Various Action Items/Issues**

#### *TMDL Task 7, 8, and 9 Acceptance Letter*

District staff indicated they were in receipt of the acceptance letter from the Regional Board for TMDL Task 7, 8, and 9 submittal.

#### *SRWS Update*

District staff indicated the District's Board of Directors adopted an Ordinance requiring removal of existing SRWS on June 10, 2008. District staff is working on preparing ballot measure and materials for the November General Election.

#### *AWRM MOU Update*

District staff indicated progress is continuing on development of AWRM MOU agreements between the District, Ventura stakeholders, and LA County stakeholders. District staff notified Regional Board staff of recent meetings with Camulos Ranch on June 13, 2008 and Upper Basin Water Purveyors on June 16, 2008. District staff noted that Camulos was receptive to utilizing blend of RO permeate with groundwater as a means for protecting salt sensitive agriculture beneficial use when surface water chloride levels do not support the use. Camulos did indicate water use in the area for these types of crops may be higher than normally expected due to the local climate. District staff notified Regional Board that one issue that still needs to be worked out with Upper Basin Water Purveyors is dividing of use rights to RO permeate when it is not needed for compliance with WQOs. District will continue to work with Ventura and Los Angeles county stakeholders to develop the MOUs and will update Regional Board staff at future meetings.

### **3. Briefing for Board Member Fran Spivy-Weber**

Regional Board staff reported that at a SWRCB meeting this week, Board Member Fran Spivy-Weber praised the efforts being made by the District and Regional Board. Board Member Spivy-Weber expressed enthusiasm for the progress being made and was cautiously optimistic that the TMDL would be resolved through these efforts.

### **4. TMDL Studies Update**

#### *Draft SSO-ADA Report status/schedule*

District staff indicated the draft SSO/ADA report would not be ready for distribution at next weeks TWG meeting. LWA indicated they would provide revised draft of report to District

today. District anticipates completing final review and having a draft available for Regional Board staff review mid-late next week.

*Reach 4B Groundwater SSOs*

LWA indicated SSO/ADA report presents all the available information and list all potential options previously discussed by District and Regional Board staff in the final SSO-ADA report.

---

*Permitting for Supplemental Water*

LWA indicated they incorporated discussion of option for revising sulfate water quality objectives in Reach 6, as recommended by Regional Board staff previously, as way to resolve permitting of supplemental water. LWA indicated they included more recent information than that include in 1993 DWR report that first recommended the revision of objectives in the Basin Plan.

Regional Board asked if possibility of discharging supplemental water through Valencia WRP outfall was still being considered. District staff indicated this option would require facilities that would need to be covered under the project EIR and therefore could not be completed prior to construction of the proposed advanced treatment facilities and could not deliver dilution water in the interim as desired by the Ventura County stakeholders.

*Draft GSWIM Task 2B-2 Report*

Regional Board staff indicated they have downloaded the draft GSWIM Task 2B-2 Report for review.

*East Piru Technical Memorandum*

Regional Board staff indicated they have downloaded the East Piru Technical Memorandum for review.

**4. USCR CI TMDL Implementation**

*Implementation of SSOs*

Regional Board and District staff indicated proposed SSOs and Basin Plan language were presented at last weeks meeting and no additional changes have been made at this time.

**4. CEQA/TWG Planning**

*CEQA Scoping/ SED*

Regional Board staff indicated they will not conduct the CEQA scoping meeting as a part of the June TWG meeting, but would be ready to combine with the July TWG meeting, tentatively scheduled for July 15 in Fillmore.

*June 24 TWG Meeting Agenda*

Proposed meeting agenda for the June 24 TWG meeting was acceptable to Regional Board and District staff. Regional Board indicated they would not provide a separate update for CEQA scoping for AWRM but would provide a brief update with the general TMDL schedule update. Proposed Agenda is as follows:

- i. GSWI/AWRM Status Update
  1. Task 2B-2 Report (TMDL Task 9) (Geomatrix)
  2. AWRM Water Resource Benefits Report (Dr. Bachman)
- ii. SSO-ADA Update (LWA)
- iii. SRWS Ordinance Update (SCVSD)
- iv. TMDL Schedule Update (SCVSD/RWQCB)

**6. Next Meeting**

Next meeting is tentatively set for June 27, 2008. Due to scheduling, meeting may be held in early afternoon rather than at usual 10:30 start time. Regional Board and District staff will confirm early next week whether meeting/conference call is necessary.

# **ATTACHMENT 94**





## Summary and Overview

*TWG Meeting #26  
November 27, 2007  
Fillmore, California*

### **Meeting Overview**

On November 27, 2007 the Upper Santa Clara River Chloride TMDL Study Project Team held the 26th meeting of the Technical Working Group in the City Council Chambers of the Fillmore City Hall in Fillmore, California. Paul Downs, of Moore Iacofano Goldsman, Inc. (MIG), facilitated the meeting. The TWG participants and consulting staff in attendance were:

### **Attendance**

- |                       |                                    |
|-----------------------|------------------------------------|
| 1. Rob Roy            | VCAWQC                             |
| 2. Steve Bachman      | United Water Conservation District |
| 3. Dan Detmer         | United Water Conservation District |
| 4. Brandon Steets     | Geosyntek                          |
| 5. Heather Merenda    | City of Santa Clarita              |
| 6. Kevin Coyne        | Ventura County                     |
| 7. Bert Rapp          | City of Fillmore                   |
| 8. Cathy Holloman     | SCWD                               |
| 9. Ron Bottorff       | Friends of the SCR                 |
| 10. Ryan Bye          | Newhall Water District             |
| 11. Jim Lloyd-Butler  | Lloyd-Butler Ranch                 |
| 12. Martin Hernandez  | Supervisor Kathy Long's Office     |
| 13. Tracy Quinn       | Kennedy Jenks                      |
| 14. Stephanie Tillman | NewFields                          |
| 15. Joel Kimmelshue   | NewFields                          |
| 16. Sorab Panday      | HydroGeologic                      |
| 17. Vivek Bandekar    | HydroGeologic                      |
| 18. Jeff Weaver       | Geomatrix                          |
| 19. Kurt Zeiler       | Geomatrix                          |
| 20. Tim Keuscher      | Geomatrix                          |
| 21. Terry Foreman     | CH2M Hill                          |
| 22. C.P. Lai          | Regional Board                     |
| 23. Yanjie Chu        | Regional Board                     |
| 24. Sam Unger         | Regional Board                     |
| 25. Eric Wu           | Regional Board                     |
| 26. Brian Louie       | LACSD                              |
| 27. Phil Friess       | LACSD                              |
| 28. Ray Tremblay      | LACSD                              |
| 29. Paul Downs        | MIG                                |
| 30. Aaron Abrams      | MIG                                |

*TWG Meeting #26 (Draft)  
November 27, 2008*

**Agenda**

- 1:30 pm I. Welcome and Introduction
- 1:35 pm II. TES Study
- 1:50 pm III. Groundwater Surface Water Modeling Effort
- Initial Eight Scenarios
  - Calibration
- 2:50 pm IV. Alternatives for Compliance Options
- 3:15 pm V. Discussion of the SSO-ADA Process
- Update/Overview
  - LRE Averaging Period Study
- 3:55 pm VI. Summary and Next Steps

**Summary of Main Points**

The following summary presents the main points of the meeting, generally in the order that they were presented. Comments are paraphrased. The summary presents a record of discussions and does not include official statements of policy, nor any commitments to undertake any regulatory or agency action. During the Upper Santa Clara River Chloride TMDL Collaborative Process, any policy agreements or statements will be published in documents, other than meeting summaries, in which it will be explicitly stated that a policy statement is being presented. MIG drafted this summary, which was then reviewed and approved by staff of the Regional Board and the Santa Clara Valley Sanitation District.

**DECISIONS, PROGRESS UPDATES, AND ACTION ITEMS**

- The TES TAP has completed its review of the Aquatic Life Report. This review is now available on the project website located at [www.santaclarariver.org](http://www.santaclarariver.org).
- The LACSD is pursuing memoranda of understanding with water suppliers to ensure that sufficient water is available for purchase in the event of drought conditions. These agreements will include the Department of Water Resources if possible.
- The GSWI Model will not be run against a "base case scenario." The modelers have not been asked to create a base case to test specific scenarios against, but have instead been asked to develop 8 scenarios for review that will allow for informed policy decisions to be made regarding potential impacts of a variety of options for achieving compliance.
- The NewFields report recommends that a 3 month rolling average be used for the measuring chloride in the project area. This report is being reviewed by the Co-Chairs of the AGTAP.

**II. THREATENED AND ENDANGERED SPECIES (TES) STUDY UPDATE**

**Study Status Report**

The TES TAP has completed its review of the Aquatic Life Report. This review is now available on the project website located at [www.santaclarariver.org](http://www.santaclarariver.org). Brian Louie explained the general background of the TES Study to the TWG. He states that the TES study consists of a report developed by ADVENT-ENVIRON. This report (The Aquatic Life Report) outlines potential impacts of elevated chloride levels on threatened and endangered species in the Upper Santa Clara River. After this report was presented, the

TWG requested that an independent panel review the report. A team of reviewers was empanelled to review and comment on the report in response to this TWG request. The final document and the review are both available on the project website.

*(The Agenda was altered to accommodate participants' schedules. The TWG skipped ahead to agenda Item IV before returning to the regular agenda order)*

#### **IV. ALTERNATIVES FOR COMPLIANCE OPTIONS**

##### *Alternatives Presentations*

Phil Friess of the LACSD gives a presentation on potential alternative compliance options to the TWG. His presentation focused on four main options:

- Advanced Treatment and Brine Disposal
  - Advanced Treatment to achieve WQO for WRP discharges
  - 43 mile brine-line and ocean outfall through Ventura County
  - 10 mile brine-line to deep well injection field
- Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall
  - Advanced Treatment to achieve WQO for minimum flows
  - 43 mile secondary effluent pipeline and ocean outfall through Ventura County
- Alternative WRP Discharge Location
  - Move WRP discharge to upstream location
  - Increase use of SCR Assimilative Capacity
- Alternative Water Resource Management (AWRM)
  - Source Control to minimize WRP Chloride loadings
    - o SRWS removal incentives
    - o Voter referendum
  - UV Disinfection
  - Maximize Recycled Water Uses in Santa Clarita Valley
  - Enhance Assimilative Capacity in Reaches 5 and 6
    - o Management of local storm-flow releases at Castaic Reservoir
    - o Purchase/discharge of additional dilution flows
  - Salt export following drought conditions
    - o East Piru Extraction Wells and Blending Facilities
    - o Blend with Piru Creek releases, maintain compliance with surface water quality objectives

##### *Removal of Self Regenerating Water Softeners (SRWS)*

Rob Roy of the VAWQC asks what enforcement mechanisms have been considered to ensure removal of SRWS. Phil Friess responds that the LACSD expects that compliance will largely be voluntary, and that aggressive mechanisms will likely not be necessary. If voluntary compliance does not achieve expected results, the LACSD may consider different incentive mechanisms.

##### *Provision of Additional Purchased Water*

Mr. Roy asks how the AWRM will ensure that sufficient water is available for purchase in the event of drought conditions. Mr. Friess states that the LACSD is pursuing memoranda of understanding with water suppliers to fill this need if it arises. These agreements will include the Department of Water

Resources if possible. Additionally, the LACSD will be looking to mix alternative discharges with supplied water to ensure compliance.

*Averaging Period for Compliance*

Brandon Steets asks what averaging period will be used to measure compliance of the various alternative compliance options. Mr. Friess states that this has yet to be decided, and that the Board and LACSD are currently working to determine this averaging period in cooperation with the Co-Chairs of the Agricultural Study TAP's Co-Chairs, Drs. Grattan and Faber.

*Additional Presentations*

At this point, Tracy Quinn of Kennedy/Jenks consulting, and Steve Bachman representing the United Water Conservation District give supporting presentations outlining other possible directions for the Alternative Compliance Options. These presentations are available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org).

**III. GROUNDWATER SURFACE WATER MODELING EFFORT**

*Calibration Status*

Terry Foreman of CH2M Hill gives an update on the calibration of the GSWI Model. He states that the calibrations effort is largely completed, and is looking good. The calibration of the model has had extensive vetting by the GSWI Technical Subcommittee of the TWG.

*Scenario Presentation*

Mr. Foreman gives a presentation on the initial 8 scenarios to be run on the GSWI Model. The scenarios are currently being finalized and the parameters will be distributed later in the week. Mr. Steets asks if the data is available for review. Mr. Foreman states that any participant interested in specific data should contact Mr. Foreman to receive the files.

*Base Case Scenario*

Mr. Foreman states that the 8 scenarios will not be run against a "base case" scenario. The modelers have not been asked to create a base case to test specific scenarios against, but have instead been asked to develop 8 scenarios for review that will allow for informed policy decisions to be made regarding potential impacts of a variety of options for achieving compliance.

**V. DISCUSSION OF THE SITE SPECIFIC OBJECTIVES/ANTI DEGRADATION ANALYSIS (SSO-ADA) PROCESS**

*Overview*

Ashli Desai of Larry Walker and associates gives a presentation on the status and schedule of the SSO/ADA. This presentation is available for download on the project website at [www.santaclarariver.org](http://www.santaclarariver.org). She states that the Agricultural Beneficial Uses whitepaper that was earlier issued by the Project Team (also available at [www.santaclarariver.org](http://www.santaclarariver.org)) is the key paper for this effort, and will require input from the Regional Board. The Alternative Compliance Options/Alternative Water Management Options that have been previously discussed are linked to this SSO/ADA effort, and will be an important aspect of the analysis that goes in to the Regional Board's decision-making process.

*Averaging Period Presentation*

Joel Kimmelshue and Stephanie Tillman of NewFields gives a presentation on choosing an averaging period to use for analysis purposes. They recommend a 3 month rolling average be used. C.P. Lai of the Regional Board asks why a weekly averaging period was not considered. Ms. Tillman answers that weekly data was not available, but that NewFields is comfortable recommending that a 3 month averaging period provides good information with a minimum of difficulty and expense. Other TWG

members ask whether a 3-month averaging period would not allow for very high "pulses" of chloride that could damage the crops, despite being in compliance with the quality objective using a 3-month average.

Rob Roy asks how this averaging period information will be used in the overall process. Mr. Kimmelshue explains that a three month rolling average refers to the process for measuring chloride levels in the Santa Clara River. When averaged out over 3 months on a rolling basis, data is "smoothed," removing potential anomalous peaks and valleys in the chloride levels that could distort the measurements. This has advantages and disadvantages, in that it reduces fluctuations and allows for efficient measurement; however spikes or troughs in chloride levels can also be missed by this method of sampling and measuring. The balance between the advantages and disadvantages need to be carefully considered.

Heather Merenda of the City of Santa Clarita asks about gradients used in measuring, and whether any trends can be discerned from the averaged data. The NewFields Team states that patterns in the gradients beyond what one would typically expect have not been identified.

Heather Merenda asks if the NewFields Team feels that this three month average is "very protective" of crops and species in the study area. Mr. Kimmelshue states that his team feels that the 3-month average is the best balance of efficiency and protection, but ultimately there are a wide variety of stresses, including the potential for quick pulses of chloride that are not picked up in the 3-month average. Representatives of the Regional Board state that there are many complex factors involved that make determining an averaging period very difficult, in particular in those instances when damage to the crops may not be visible.

Joel Kimmelshue states that the NewFields Team settled on the 3-month average as the best choice under difficult circumstances. The Ag-TAP Co-Chairs were asked to weigh in on this report and provide their findings to the TWG for this specific reason. The Co-Chairs review of the NewFields report will be available to the TWG shortly, and will be posted to the project website for review.



## ALTERNATIVES FOR COMPLIANCE OPTIONS

Phil Fress  
Technical Services

November 27, 2007

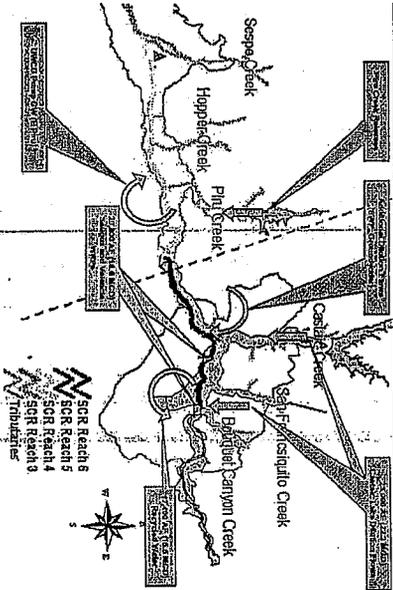
### Alternatives for Compliance Options

- Alternative Water Resource Management
  - Source Control to minimize WRP Chloride loadings
    - SRMS removal incentives
    - Voter referendum
  - UV Disinfection
  - Maximize Recycled Water Uses in Santa Clara Valley
  - Enhance Assimilative Capacity in Reaches 5 and 6
    - Management of local storm-flow releases at Castaic Reservoir
    - Purchase/discharge of additional dilution flows
  - Salt export following drought conditions
    - East Pinu Extraction Works and Blending Facilities
    - Blend with Pinu Creek releases, maintain compliance with source water quality objectives

### Alternatives for Compliance Options

- Advanced Treatment and Brine Disposal
- Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall
- Alternative WRP Discharge Location
- Alternative Water Resource Management

### Alternative Water Resource Management



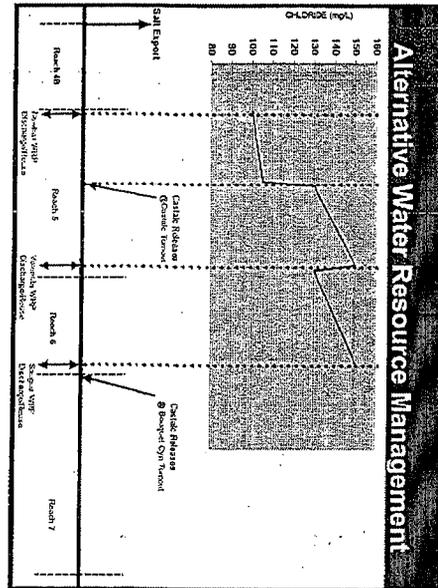
### Alternatives for Compliance Options

- Advanced Treatment and Brine Disposal
  - Advanced treatment to achieve WQO for WRP discharges
  - 43 mile brine-line to ocean outfall through Ventura County
  - 40 mile brine-line to deep well injection field
- Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall
  - Advanced treatment to achieve WQO for minimum flows
  - 43 mile secondary effluent pipeline and ocean outfall through Ventura County
- Alternative WRP Discharge Location
  - Move WRP discharges to upstream location
  - Increase use of SCCR Assimilative Capacity

### Example WQOs for TMDL Compliance Options

Compliance Option	WRP Discharge (M <sup>3</sup> /D)	Chloride (mg/L) (SCLSD WRP)	Chloride (mg/L) (SCLSD WRP)	Dilution Flow (M <sup>3</sup> /D)	Chloride (mg/L) (Reach 4S)	Chloride (mg/L) (Reach 4S)
Advanced Treatment and Brine Disposal	34,800	120	120	0	100	100
Minimal Advanced Treatment and Secondary Effluent Pipeline	11,200	120	120	0	100	100
Alternative Discharge Location (Reaches 6,4,7)	38,200	130	167	0	100	167
Alternative Water Resource Management	20,800	130	167	Up to 25,000	100	117

000-9



- ### TMDL Compliance Option Selection Criteria
- Compliance Certainty
  - Water Quality Benefits
  - Water Resource Benefits
  - Cost Effectiveness



# **ATTACHMENT 95**





## Summary and Overview

*TWG Meeting #27*  
*January 8, 2008*  
*Fillmore, California*

### **Meeting Overview**

On January 8, 2008 the Upper Santa Clara River Chloride TMDL Study Project Team held the 27th meeting of the Technical Working Group in the City Council Chambers of the Fillmore City Hall in Fillmore, California. Paul Downs, of Moore Iacofano Goltsman, Inc. (MIG), facilitated the meeting. The TWG participants and consulting staff in attendance were:

### **Attendance**

- |                        |                                    |
|------------------------|------------------------------------|
| 1. Rob Roy             | VCAWQC                             |
| 2. Steve Bachman       | United Water Conservation District |
| 3. Dan Detmer          | United Water Conservation District |
| 4. Brandon Steets      | Geosyntek                          |
| 5. Heather Merenda     | City of Santa Clarita              |
| 6. Kevin Coyne         | Ventura County                     |
| 7. Bert Rapp           | City of Fillmore                   |
| 8. Cris Perez          | Newhall Land                       |
| 9. Cathy Holloman      | SCWD                               |
| 10. Riel Johnson       | NCWD                               |
| 11. Sam McIntyre       | Beverlywood Water                  |
| 12. Tracy Quinn        | Kennedy Jenks                      |
| 13. Lynn Takaichi      | Kennedy Jenks                      |
| 14. Jeff Weaver        | Geomatrix                          |
| 15. Sorab Panday       | Geomatrix                          |
| 16. Terry Foreman      | CH2M Hill                          |
| 17. Ashli Desai        | Larry Walker and Associates        |
| 18. C.P. Lai           | Regional Board                     |
| 19. Maryam Taiedl      | Regional Board                     |
| 20. Yanjie Chu         | Regional Board                     |
| 21. Sam Unger          | Regional Board                     |
| 22. Brian Louie        | LACSD                              |
| 23. Francisco Guerrero | LACSD                              |
| 24. Paul Downs         | MIG                                |
| 25. Aaron Abrams       | MIG                                |

**Agenda**

- 1:00 I. **Welcome and Introduction**  
A. Meeting Purpose  
B. Agenda Overview
- 1:05 II. **Site Specific Objective / Anti-Degradation Analysis Study**  
A. Overview – Ashli Desai  
B. Agricultural Beneficial Use Clarification – Ashli Desai and Sam Unger  
C. Compliance Averaging Period for Chloride Threshold Guidelines in Avocado  
– Joel Kimmelshue
- 2:00 III. **Alternative Water Resource Management (AWRM) Scenario**  
A. Overview – Sanitation District  
B. Ventura County – Steve Bachman  
C. LA County – Traci Quinn  
D. Relationship of the AWRM to other Studies – Sanitation District
- 2:45 IV. **Groundwater-Surface Water Interaction Model**  
A. Overview of GSWIM Progress  
B. Technical Subcommittee Discussion
- 3:55 V. **Summary and Next Steps**
- 4:00 *Close*

**Summary of Main Points**

The following summary presents the main points of the meeting, generally in the order that they were presented. Comments are paraphrased. The summary presents a record of discussions and does not include official statements of policy, nor any commitments to undertake any regulatory or agency action. During the Upper Santa Clara River Chloride TMDL Collaborative Process, any policy agreements or statements will be published in documents, other than meeting summaries, in which it will be explicitly stated that a policy statement is being presented. MiG drafted this summary, which was then reviewed and approved by staff of the Regional Board and the Santa Clara Valley Sanitation District.

**DECISIONS, PROGRESS UPDATES, AND ACTION ITEMS**

- The GSWI Task 2B-1 report will be submitted on January 21<sup>st</sup>, 2008
- The GSWI 2B-2 report will be released in March/April, 2008
- The LRE Averaging Period report will be released by Joel Kimmelshue and Stephanie Tillman of NewFields in January of 2008
- The TMDL Task 7, 8, and 9 reports will be released in April, 2008
- Several TWG participants express the need for the averaging period study and other efforts of the Collaborative Effort address strawberries and nursery crops, and not just avocado crops
- Terry Foreman of CH2M Hill states that it is important for the Alternative Water Resource Management Study (AWRM) to determine if pumping in the western portion of the basin will adequately induce recharge in the groundwater. The developers of the AWRM will likely need to test this assumption (and others) with the GSWI Model, and so should make sure to ask this question early on in their work.

- The terms used in the AWRM effort are very similar to the GSWI Model naming protocol, i.e., both use the term "scenario". Sam Unger asks that the AWRM use a different method for naming its reports to avoid confusion.

## **II. SITE SPECIFIC OBJECTIVES/ANTI-DEGRADATION ANALYSIS (SSO/ADA)**

### **A. Overview of SSO/ADA Process**

Ashli Desai of Larry Walker and Associates provided an overview of the SSO-ADA process and the interrelationship between studies and gave an update on the progress of the SSO/ADA. Ms. Desai discussed the elements of the SSO-ADA and the Regional Board's regulatory process and the current schedule.

### **B. Agricultural Beneficial Use Clarification**

Ms. Desai provided an overview of the AGR BU Clarification issues and reviewed the two white papers on agricultural beneficial uses that have been prepared - the first, a technical analysis, and the second a regulatory analysis. Ms. Desai's report is available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org). Regional Board staff indicated the planned Regional Board information item has not been scheduled for a future Board meeting and staff believes this may no longer be necessary and that this information could be included in an SSO.

Dan Detmer clarifies that salt sensitive agriculture includes nursery crops, strawberries and avocados and asks if there are nurseries in the reach under question. SCVSD indicated that nursery growers in the SCR are typically wholesalers that are provided nursery stock grown outside of the SCV and they are generally provided "served water." One nursery has been identified in close proximity to Reach 6 of the SCR; however, the nursery is provided water from the SCWD of CLWAY, utilizing imported SWP water. Heather Merenda explains that nurseries also typically pretreat their water in order to customize it for the particular crop they are growing at the time. Mr. Detmer states that nursery operations are a high growth area.

### **Diversions**

Lynn Takaichi asks if diversions in the SCR are only on the mainstem of the river. Participants familiar with the area explain that this is the case. Diversions in the SCR watershed are taken from the mainstem of the river.

### **Impact of Changing the Water Quality Objectives**

Rob Roy of the VCAWQC asks how modification of water quality in Reaches 5 and 6 of the SCR would be protective of the downstream Ventura County reaches of the SCR? Sam Unger of the Regional Board states that the goal is to always keep in mind strategies for ensuring protection of downstream beneficial uses, and that the Groundwater Surface Water Interaction Model will help to clarify and answer this question. He states that the current agricultural beneficial uses may not need to be de-designated, but instead a new SSO could be established that still supports agricultural uses. Heather Merenda asks if the May 2008 Regional Board date to address the USCR TMDL has been delayed. Regional Board staff indicated that the hearing has not been calendared and the intent is to be responsive to the discussion of potential consensus solutions by stakeholders. Given the progress being made on the alternative water resource management (AWRM) compliance option, Regional Board staff feels additional time is necessary to allow this option to be further developed.

### **C. Compliance Averaging Period for Chloride Threshold Guidelines in Avocado**

Joel Kimmelshue and Stephanie Tillman of NewFields join the meeting by conference call to report on the progress of the Averaging Periods study. They state that the technical memorandum has been reviewed and commented on by District and Regional Board staff, and a response to comments report has been prepared. Both reports have been submitted to the TWG for review and comments by January 22, 2008. Additionally, the Agricultural LRE Technical Advisory Panel co-chairs will review the memo and the

response to comments report and will provide their comments shortly. The current recommendation by Newfields is for a three month averaging period. Their presentation and reports are available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org).

#### *Historical Variability*

Lynn Takaichi asks how the averaging period will deal with changes to the historical variability of chloride in the basin as a result of implementation of compliance options, such as the AWRM which is intended to smooth variability and maintain a more consistent chloride level. Mr. Takaichi asked if a longer averaging period could be considered under these conditions. Joel Kimmelshue states that his team was asked to look at effects under current conditions, not under proposed scenarios, but that they would be able to look at the possibility of extending the averaging period under these considerations if requested to do so by the Project Team. SCVSD staff indicated the AG TAP co chairs would be asked to weigh in on the averaging period issue as it relates to the AWRM option. Regional Board staff also indicated that modeling the AWRM scenario might help to answer the questions regarding whether longer averaging periods were appropriate.

#### *Strawberries and Nursery Crops*

Several TWG participants express the need for all efforts of the Collaborative Effort take in to account strawberries and nursery crops, and not just avocado crops. Nursery crops in particular are expected to be important in the study area for the foreseeable future. Newfields indicated that the LRE determined there was insufficient scientific literature to be able to recommend a threshold for strawberries and nursery crops and that without knowing the what the appropriate threshold is, it is not possible to recommend a particular averaging period for these crops. Stakeholders discussed whether the LRE guidelines, although based on avocados, were protective of other salt sensitive crops. MIG indicated that the LRE TAP Critical Review report specifically noted that the guidelines for avocados would be protective of strawberries and nursery crops. MIG was tasked to reference the specific statements in the LRE TAP Critical Review report.

#### *Permitting and the Averaging Period*

Brandon Steets of Geosyntek asks if the Regional Board's future decisions regarding averaging periods will apply only to one discharge permit or to the whole reach. Regional Board staff stated that the averaging period will apply to both, however results of the GSWI model will be needed before a decision can be made. If necessary, the Regional Board can reopen and change the permit.

### **III. ALTERNATIVE WATER RESOURCES MANAGEMENT SCENARIOS (AWRM)**

*Brian Louie, Traci Quinn, and Steve Bachman give a series of presentations on possible alternatives for water management the Ventura County and Los Angeles County. These presentations are available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org).*

#### *A. Overview – SCVSD*

SCVSD gave a presentation on the overview of alternatives being considered for compliance; (1) Advanced Treatment, (2) Minimal Advanced Treatment Discharge plus Secondary Effluent Pipeline/Outfall, (3) Alternative Discharge Location, and (4) Alternative Water Resource Management. Indicated SCVSD working with water agencies (UWCD and CLWA) to retain Kennedy Jenks Consultants and Dr. Steven Bachman to further develop AWRM compliance option. SCVSD presented the proposed development of the AWRM scenario and the roles of Kennedy Jenks and Dr. Bachman in the first phase of the process.

#### *B. Ventura County – Dr. Stephen Bachman*

Dr. Bachman provided an overview of work for assessing salt export for East Piru subbasin using proposed extraction wells to clean up saline conditions in the basin. The extraction wells would then be used to mitigate drought conditions. Dr. Bachman reviewed possible scenarios (1) to operate extraction

wells during precipitation events when flow in the SCR would export salt to the Pacific Ocean (2) to operate extraction wells when Freeman Diversion is operated to divert greater than 80% of flows for "in-lieu" deliveries to agriculture in the Oxnard Plain, and (3) to operate wells for the purpose of drought management to dilute high chloride flows at the Ventura/Los Angeles County Line. Dr. Bachman presented his recommendation to further develop only Scenario 1, due to concerns of salt export to Oxnard Plain and relatively equal cost of Scenario 2. Dr. Bachman discussed the need to model this scenario using the GSWIM as part of next phase of the AWRM study.

*Piru Basin Groundwater Water Quality Objective*

Rob Roy asked if the GW water quality objective would be lowered under this proposal. Regional Board staff responded that there is a possibility that a revision of the Piru groundwater water quality objective, based on knowledge gained from this study, could be considered as part of the TMDL.

*Speed of Groundwater Dispersal*

Lynn Takaichi asks if there is any evidence on how fast chloride moves through the Piru basin. Steve Bachman of United Water states that preliminary results show that it takes approximately 10 years for chloride to disperse in the basin.

*Additional Operation of Piru Extraction Wells*

Lynn Takaichi asked if the Piru extraction wells could be operated more frequently once the groundwater basin was cleaned up. Dr. Bachman responded that the current plan only calls for operation of the wells approximately 10% of the time and consideration could be given to operating the Piru extraction wells for water supply management once the basin is cleaned up.

*C. Los Angeles County – Kennedy Jenks*

Kennedy Jenks provided an overview of their work assessing volume and quality of dilution water, and availability under various possible hydrologic conditions: (1) locally above normal conditions and (2) locally below normal conditions, and considering Northern California SWP conditions under each based on chloride levels within Castaic Lake: (a) wet conditions, between 25-52 mg/L, (b) dry conditions, between 52-75 mg/L, and (c) critically dry, between 75-106 mg/L. Under each condition, a mass balance was used to determine amounts of dilution water required to meet proposed water quality objectives. Kennedy Jenks determined that under non drought conditions (locally above normal and SWP wet or dry conditions) relatively little dilution water was required; however, under drought conditions (locally below normal and SWP wet, dry or critically dry conditions and locally above normal and SWP critically dry conditions) the amount of dilution water required made the AWRM unfeasible.

*Chloride Gradient Assumption*

Regional Board staff questioned whether the assumption used in the study that there was a 20 mg/L gradient in chloride concentrations between the SCVSD WRP discharge and the LA/Ventura County Line was a valid assumption. SCVSD staff indicated that over the entire period of analysis (20 years) the assumption was valid, however, during drought this may not be the case. SCVSD staff indicated this issue would be assessed in the GSWIM study.

*Removal of Self Regenerating Water Softeners (SRWS)*

Stakeholders requested information on the SCVSD's SRWS removal program. SCVSD staff indicated that the District was implementing a voluntary rebate program and pursuing a referendum for the 2008 general election to authorize the District to enact ordinances banning existing SRWS, the earliest possible date for such a ban being January 2009. SCVSD staff indicated that no official ordinance has been drafted yet to require removal of the SRWS. Under the current programs, approximately 1000 have been removed and the District has negotiated agreements with SRWS rental companies for the removal of an additional 1,500 units.

Stakeholders asked if the District believed they would be able to remove additional units or if the current removals are sufficient to help meet objectives. SCVSD staff indicated that since the peak of SRWS usage in 2003, the District is seeing substantial reductions in the chloride loading from the SCVSD WRPs

above the levels in the local water supply (from 100-110 mg/L to approx 75-80 mg/L). SCVSD staff indicated the District is committed to removing all SRWS in its service area because it is the most cost-effective method for removing chloride from the WRP discharges. Cost for advanced treatment to remove chloride is more than \$5 per pound of chloride while cost is much less per pound of chloride removed through source control.

#### *D. Relationship the AWRM to other studies*

SCVSD provided an overview of where this phase of the AWRM study fits in with the SSO/ADA study and the GSWIM study. Discussed that results from the Kennedy Jenks and Dr. Bachman work will be incorporated into a GSWIM predictive scenario as part of Phase II of the AWRM study. Phase III of the AWRM study would analyze the model results and develop a feasible AWRM compliance option to present to the Regional Board.

Terry Foreman of CH2M Hill states that it is important for the AWRM to determine if pumping in the western portion of the basin will adequately induce recharge in the groundwater. The developers of the AWRM will likely need to test this assumption (and others) with the GSWI Model, and so should make sure to ask this question early on in their work.

Other areas that will need to be tested by the GSWI Model include: assumptions of water blending, the effects at the dry gap, the interaction of reused and banked water, and the gradients during extreme drought conditions.

#### *Naming Confusion*

The names of the reports of the AWRM effort are very similar to the GSWI Model naming protocol. Regional Board staff asks that the AWRM use a different method for naming its reports to avoid confusion.

### **GROUNDWATER SURFACE WATER INTERACTION MODEL (GSWIM)**

#### *A. Overview of GSWI Progress*

Terry Foreman of CH2M Hill provides an update on the work of the GSWI Model Team. This presentation is available on the project website at [www.sanataclariver.org](http://www.sanataclariver.org). Mr. Foreman discussed the results of the 17 predictive scenarios that are being analyzed through the GSWIM Model and indicated the full set of results are available on their ftp website for download. Mr. Foreman presented the following key general conclusions from these scenarios:

- No Scenario complied with the existing 100 mg/L WQO at Blue Cut at all times
- There was very little difference in the results between the high reuse and minimal reuse conditions.
- Under high reuse conditions, results at blue cut were worsened due to lack of flow in river from SCVSD WRP discharge diversion to reuse.
- Some scenarios that fixed WRP chloride discharges (120, 150 mg/L at all times) artificially added chloride to the system when compared with scenarios assuming chloride loading from WRP was set as a loading above the potable water supply as predicted by the model.
- Results indicated chloride levels above WQO objective at Blue Cut even when SCVSD WRP discharges are below objective indicated an additional source of chloride exists between Valencia WRP and Blue Cut
- Groundwater Observation points after the model was initially developed reveal unrealistic results due to the model discretization in the area (MW01, MW03).

The GSWI Team will provide a detailed explanation of these results in their upcoming Task 2B-1 report. This report will be tentatively submitted on January 21<sup>st</sup>, 2008.

Sam Unger asks how drought is determined in the model. Terry Foreman says the historical definition of drought is used. Rob Roy asks if the Regional Board will address the 200 mg/L groundwater standard since this was set a long time ago. Sam Unger responds that Regional Board staff will look at the GSWI results and decide whether there is any action needed in this area. On a separate point, Sam Unger suggests that the modelers look at seasonality in the chloride gradient.

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*B. Technical Sub-Committee Discussion*

*Note: At this time, the TWG meeting transitioned in to a meeting of the GSWI Technical Subcommittee. The summary for this separate meeting is available for review.*

Key points discussed during the technical sub-committee:

Stakeholders (Rob Roy) asked the modeling team what level the SCVSD WRPs needed to treat to in order to achieve the existing 100 mg/L WQO during drought. The modeling team indicated that, from their experience with the model and although this has not been run in the model, they estimate a discharge of approximately 80-85 mg/L chloride would achieve compliance with the existing objective.

Dan Detmer with UWCD asked the modeling team whether they determined the cause of the negative chloride gradient during drought conditions. The modeling team (Geomatrix) indicated they believed evapo-concentration effects and the thinning of the shallow alluvium likely resulted in increased chloride concentrations at Blue Cut during drought conditions. This would be further evaluated in the Task 2 reports. Kennedy Jenks indicated another possible source of chloride was agriculture near the LA/Ventura County Line.



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# **ATTACHMENT 96**





## Summary and Overview

*TWG Meeting #28  
February 19, 2008  
Santa Clarita, California*

### **Meeting Overview**

On February 19, 2008 the Upper Santa Clara River Chloride TMDL Study Project Team held the 28th meeting of the Technical Working Group in the City Council Chambers of the Fillmore City Hall in Fillmore, California. Paul Downs, of Moore Iacofano Goltsman, Inc. (MIG), facilitated the meeting. The TWG participants and consulting staff in attendance were:

### **Attendance**

- |                       |                                                             |
|-----------------------|-------------------------------------------------------------|
| 1. Jeff Weaver        | Geomatrix                                                   |
| 2. Sorab Panday       | Geomatrix                                                   |
| 3. Ashil Desai        | LWA                                                         |
| 4. Cris Perez         | Newhall Land                                                |
| 5. Cameron Tana       | HydroMetrics LLC                                            |
| 6. Dan Detmer         | United Water Conservation district                          |
| 7. Heather Merenda    | City of Santa Clarita                                       |
| 8. Ray Tremblay       | LACSD                                                       |
| 9. Francisco Guerrero | SCVSD                                                       |
| 10. Lynne Plambeck    | Santa Clarita Organization for Planning and the Environment |
| 11. Bert Rapp         | City of Fillmore                                            |
| 12. Yanjie Chu        | LA Regional Board                                           |
| 13. C.P. Lai          | LA Regional Board                                           |
| 14. Cathy Hollomon    | SCWD                                                        |
| 15. Jeff Ford         | CLWA                                                        |
| 16. Sam Unger         | RWQCB-LA                                                    |
| 17. Jenny Newman      | RWQCB-LA                                                    |
| 18. Riel Johnson      | NCWD                                                        |
| 19. Bob DiPrimio      | Valencia Water Company                                      |
| 20. Mark Subbotin     | Newhall Land                                                |
| 21. Ed Masterson      | Assemblyman Cameron Smyth                                   |
| 22. Rob Roy           | VCAWQC                                                      |

**Agenda**

- 1:30 pm I. **Welcome and Introduction**
- 1:35 pm II. **Groundwater Surface Water Modeling Effort**
- Subcommittee Recap
  - Technical Advisory Panel Recap
  - Task 2B-1 Report Discussion
- 2:25 pm III. **Alternative Water Resources Management Discussion**
- 3:15 pm IV. **Averaging Periods for Salt Sensitive Agriculture Update**
- 3:30 V. **Self Regenerating Water Softener Update**
- 3:45 pm VI. **Summary and Next Steps**

**Summary of Main Points**

The following summary presents the main points of the meeting, generally in the order that they were presented. Comments are paraphrased. The summary presents a record of discussions and does not include official statements of policy, nor any commitments to undertake any regulatory or agency action. During the Upper Santa Clara River Chloride TMDL Collaborative Process, any policy agreements or statements will be published in documents, other than meeting summaries, in which it will be explicitly stated that a policy statement is being presented. MIG drafted this summary, which was then reviewed and by staff of the Regional Board and the Santa Clara Valley Sanitation District.

**DECISIONS, PROGRESS UPDATES, AND ACTION ITEMS**

- Terry Foreman of CH2M Hill and Paul Downs of MIG reported that the participating GSWI TAP reviewers were in agreement that the GSWI model was a valuable and appropriate tool, and that Task 2B-1 report was of good quality.
- The focus of the Collaborative Process is shifting to the TMDL Task 7, 8, and 9 reports, i.e., the tasks comprising the Site Specific Objective and the Anti Degradation Analysis. The Tasks 7/8 report is due April 1, with comments due April 15.
- The AGTAP CO Chairs were asked to review the question of the length of possible averaging periods and what the impacts of the length would be. They have produced a report. Sam Unger said that AGTAP comments and the results from the NewFields study are technical opinions, and that the Regional Board will set the actual compliance averaging period. (NewFields and AGTAP reports, available for download at [www.santaclarariver.org](http://www.santaclarariver.org).)

**II. GROUNDWATER-SURFACE WATER MODELING**

Terry Foreman and Nate Brown of CH2M Hill presented an overview of the GSWIM modeling effort. Terry reported that the Subcommittee met earlier in the day and provided comments on the model. He also reported that the Technical Advisory Panel held a conference call on February 13, 2008, which was attended by Dennis Williams and Arturo Keller. Terry and Paul Downs reported that the two participants were in agreement that the GSWI model was a valuable and appropriate tool, and that Task 2B-1 report was of good quality.

During the presentation, TWG members provided comments and asked questions:

- Mark Subbotin said he thought that the water supply chart misrepresented Newhall Ranch's water supply; he said that Newhall is not relying on State Water Project water.
- Bob DiPrimio asked what amount of reduction of chloride in the first five years of the scenarios.
- Mark Subbotin asked for clarification of the causes of the chloride to spike in 2018-2020?
- Sam Unger asked how the report defines drought conditions. Lynne Plambeck asked how many inches of rain constitutes a drought? Terry Foreman responded that drought was defined as less than the 31-year average. Bob DiPrimio suggested the use of two drought triggers: One that reflects northern California hydrology, and one that reflects the local hydrology.
- Jeff Ford asked if lowest reclaimed water reuse scenario reduce chloride at Blue Cut. Terry Foreman replied that low reuse actually increases chloride at Blue Cut. Bert Rapp followed up to ask why does low re-use equate to low chloride. Francisco Guerrero replied that high re-use reduces a diluting source. Sorab Panday elaborated that it will take a long time for chloride in recycled water to return to the river.
- Bob DiPrimio suggested that there would be a long time delay in reducing chloride loads at Blue Cut because there is a lot of geology that would retain chloride. He also observed that the reduction of chloride associated with removing SRWS is significant.
- Bob DiPrimio suggested that the quality of the SWP project water will be different because of new operating parameters for the State Water Project. He asked whether the team has assessed the likely impact changes to new projected water quality data, including pumping restrictions in the Delta will decrease chloride. Terry Foreman suggested that the Regional Board will need to take this into consideration when they set the standard.

### **III. ALTERNATIVE WATER RESOURCES MANAGEMENT DISCUSSION**

#### **Compliance Options**

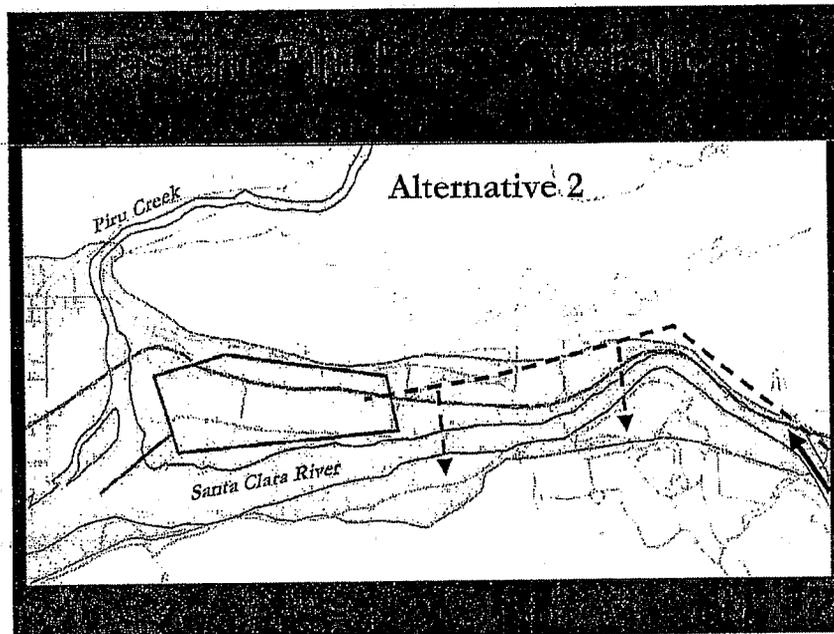
Frank Guerrero and Dan Detmer presented a progress report on the Alternative Water Resource Management alternative. Lynne Plambeck suggested that the approach would require a dedicated source of water because when the Sanitation Districts need water, the other SWP users will need it, too. Ray Tremblay provided background on the District's efforts to secure water in the future. (Power point presentations are available for download at [www.santaclarariver.org](http://www.santaclarariver.org).)

Lynne Plambeck asked what the term "minimal fish issues" meant when it was used in relation to the upper reaches of river. Dan Detmer replied that this phrase meant that fish issues are not as significant in the upper reaches relative to the lower reaches of the river from a regulatory perspective, i.e., United Water has observed that there is more focus on threatened and endangered issues in other reaches than those being considered here.

Yanjie Chu asked what the impact would be to water balance of pumping water to the fish hatchery. He also asked if a constant pumping rate was being used, or is it a faster rate when you draw down the water levels. Pumping rates can be adjusted as needed. Impacts to the water balance will need further examination as the discussions over potential compliance options progress.

#### **Site Specific Objective / Anti Degradation Analysis**

Ashli Desai presented an overview of the work on the SSO/ADA. She reviewed timeline of work conducted and yet to be undertaken. She indicated that with the completion of the Threatened and Endangered Species and Agricultural Chloride Threshold studies, the focus is shifting to the TMDL Task 7, 8, and 9 reports, i.e., the tasks comprising the Site Specific Objective and the Anti Degradation Analysis. The Tasks 7/8 report is due April 1, with comments due April 15.



## Pros and Cons of Alternative 2

### ■ Pros

- Significant increase to yield of our water supply (with minimal fish issues)
- Yield to Oxnard Plain could offset high-priced project
- Camulos is protected from high salts
- Improves salt balance

### ■ Cons

- Eastern Piru basin chloride fluctuations
- Need buy-in from Piru pumpers
- Potential impact to nearby wells

SANITATION DISTRICTS OF LOS ANGELES COUNTY

## ALTERNATIVES FOR COMPLIANCE OPTIONS

Francisco Guerrero – Senior Engineer  
Santa Clarita Valley Sanitation District

February 19, 2008

### Alternatives for Compliance Options

- **Advanced Treatment and Brine Disposal**
  - Valencia and Saugus WRP MF/RO
- **Minimal Advanced Treatment and Secondary Effluent Pipeline and Outfall**
  - MF/RO Discharge to River to Support Habitat
  - Secondary Effluent Pipeline and Ocean Outfall for Balance of WRP Flow
- **Alternative WRP Discharge Location**
- **Alternative Water Resource Management**

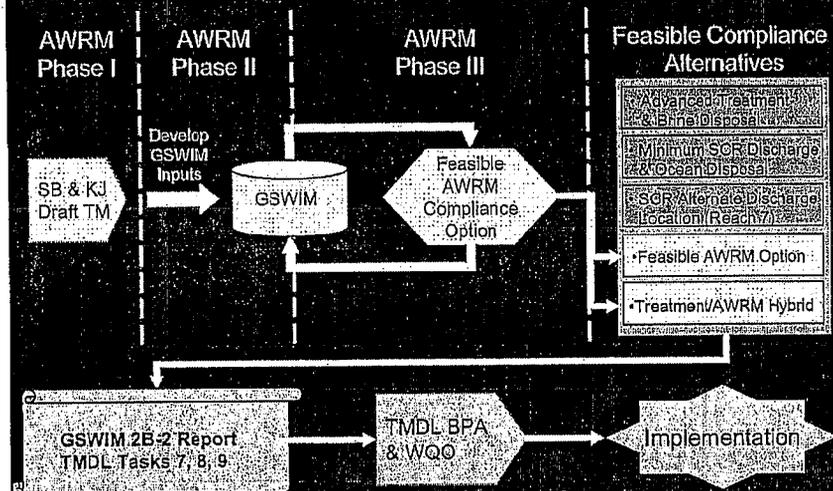
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## Alternative Water Resource Management

- **Phase I Analyses (Nov – Dec 07)**
  - **Dr. Steven Bachman**
    - Salt Extraction Wells for East Piru
  - **Kennedy Jenks**
    - Determine Dilution Water Required to Meet WQO at Blue Cut Under Various Reuse Scenarios
    - Evaluate Potential Sources of Dilution Water
- **Phase II GSWIM Iterative Process (Jan – Feb '08)**
  - Model AWRM Option
  - Assess Feasible AWRM Options
- **Phase III – Feasible AWRM Options (Mar '08)**
  - Add to Feasible Compliance Alternatives List

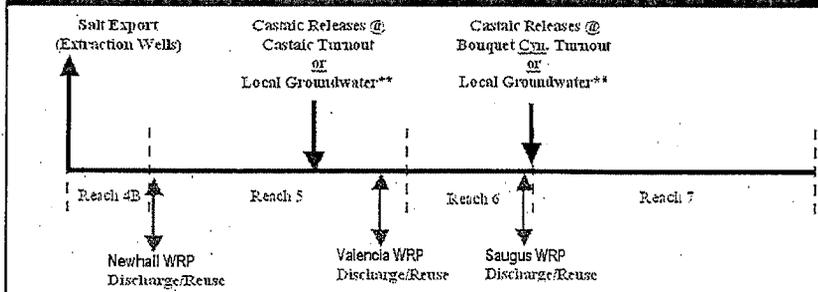
## AWRM and Compliance Alternative Development Process



## AWRM Compliance Alternative(s)

- **Option 1**
  - Provide Dilution Flows (Imported or Local GW)
  - East Piru Basin Extraction Wells
  - Salt export during flow through to ocean
- **Option 2**
  - Small MF/RO Facility at Valencia WRP
  - RO conveyance pipeline to Reach 4A
  - East Piru Basin Extraction Wells
  - Blend RO/GW to comply with 100 mg/L WQO in 4A

## AWRM Compliance Alternative(s) Option 1

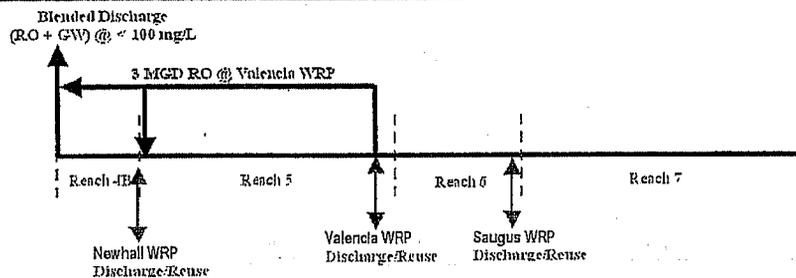


- Release up to 10,000 AFY Banked Dilution Flow during Drought
- Piru Groundwater Extraction Wells
- Alternative Water Supply to Camulos if necessary (> LRE)
- UV Disinfection, SRWS Removal, Support Water Recycling
- Adaptive Drought Response Measures

## AWRM Compliance Alternative(s) Option 1 – Adaptive Drought Response

- Objective
  - Remove Incremental Chloride above Reach 4B WQO
- Tier I
  - 0 – 2 Years after Drought
  - East Piru Extraction Wells
  - Salt export during flow through to ocean
- Tier II
  - 2 – 4 Years after Drought
  - Newhall Ranch WRP Operated 100% RO
  - Salt removal (brine disposal) via deep well injection
- Tier III
  - > 4 Years after Drought
  - MF/RO at Valencia WRP (as needed)
  - Salt removal (brine disposal) via deep well injection

## AWRM Compliance Alternative(s) Option 2



- Small MF/RO Facility at Valencia WRP
- Piru Groundwater Extraction Wells
- Alternative Water Supply to Camulos if necessary (>LRE)
- UV Disinfection, SRWS Removal, Support Water Recycling

6-1020

1945

# **ATTACHMENT 97**





## Summary and Overview

*TWG Meeting #29  
April 8, 2008  
Fillmore, California*

### **Meeting Overview**

On April 8, 2008 the Upper Santa Clara River Chloride TMDL Study Project Team held the 28th meeting of the Technical Working Group in the City Council Chambers of the Fillmore City Hall in Fillmore, California. Paul Downs, of Moore Iacofano Goltsman, Inc. (MIG), facilitated the meeting. The TWG participants and consulting staff in attendance were:

### **Attendance**

- |                           |                                               |
|---------------------------|-----------------------------------------------|
| 1. Rob Roy                | VCAWQC                                        |
| 2. Steve Bachman          | United Water Conservation District            |
| 3. Dan Deimer             | United Water Conservation District            |
| 4. Heather Merenda        | City of Santa Clarita                         |
| 5. Cathy Holloman         | SCWD                                          |
| 6. Bob DiPrimio           | Valencia Water                                |
| 7. Lynn Takaichi          | Kennedy Jenks                                 |
| 8. Ron Bottorff           | Friends of the SCR                            |
| 9. Bert Rapp              | City of Fillmore                              |
| 10. Frank Brommenschenkel | SP Basin                                      |
| 11. Jim Lloyd-Butler      | Lloyd-Butler Ranch                            |
| 12. Martin Hernandez      | Ventura County Supervisor Cathy Long's Office |
| 13. Jeff Weaver           | Geomatrix                                     |
| 14. Sorab Panday          | Geomatrix                                     |
| 15. Terry Foreman         | CH2M Hill                                     |
| 16. Ashli Desai           | Larry Walker and Associates                   |
| 17. C.P. Lai              | Regional Board                                |
| 18. Yanjie Chu            | Regional Board                                |
| 19. Sam Unger             | Regional Board                                |
| 20. Jenny Newman          | Regional Board                                |
| 21. Brian Louie           | LACSD                                         |
| 22. Francisco Guerrero    | LACSD                                         |
| 23. Paul Downs            | MIG                                           |
| 24. Aaron Abrams          | MIG                                           |

**Agenda**

- 1:00    **I. Welcome and Introduction**  
      A. Meeting Purpose  
      B. Agenda Overview
- 1:05    **II. Collaborative Process Updates**  
      A. Overview of the TMDL Study Schedule and Regional Board Process
- 1:30    **III. Groundwater Surface Water Interaction (GSWI) Model Process Updates**  
      A. Task 2B-1 Report Update
- 2:00    **IV. Alternative Water Resources Management (AWRM)**  
      A. Elements of the AWRMP and Water Supply Benefits  
          *(Joint Presentation from LACSD/United Water/Steve Bachman)*  
      B. AWRM Program Water Resource Report
- 3:00    **V. SSO-ADA Status and Progress Report**  
      A. GSWIM Task 2B-2 Report Status and Progress  
      B. SSO-ADA Report Status and Progress
- 3:55    **VI. Summary and Next Steps**
- 4:00    *Close*

## **Summary of Main Points**

The following summary presents the main points of the meeting, generally in the order that they were presented. Comments are paraphrased. The summary presents a record of discussions and does not include official statements of policy, nor any commitments to undertake any regulatory or agency action. During the Upper Santa Clara River Chloride TMDL Collaborative Process, any policy agreements or statements will be published in documents, other than meeting summaries, in which it will be explicitly stated that a policy statement is being presented. MIG drafted this summary, which was then reviewed and by staff of the Regional Board and the Santa Clara Valley Sanitation District.

### **DECISIONS, PROGRESS UPDATES, AND ACTION ITEMS**

- The May Regional Board meeting has been postponed to allow for the Alternative Water Resources Management (AWRM) effort to develop. The May meeting has now been scheduled tentatively for October [please verify] in order to allow for additional time to complete the process and craft the necessary regulatory language.
- Comments from United Water were not included in the initial response to comments report. These comments have been collected, and the responses will be included in the 2B-1 Report as an addendum.
- Brian Louie states that the AWRM development will continue, and that they are working to put specific agreements in to place with individual partners.
- Bob DiPrimio states that the water purveyors will be investigating the information related to the Saugus Aquifer in depth, and may need more than two weeks review time. A joint meeting between the Modeling Team and the water purveyors is needed. The Modeling Team will contact the purveyors to conduct this meeting.
- Terry Foreman asks about the need to apply for permission to change a waste discharge location. This will need to be addressed before implementation can move forward. Sam Unger of the Regional Board agrees that this will be a major point of consideration for the State Board and asks that this be investigated and resolved as soon as possible. Steve Bachman states that the Sanitation districts would be the most likely candidates for holding the permit.

### **II. COLLABORATIVE PROCESS UPDATES**

The May Regional Board meeting has been postponed to allow for the Alternative Water Resources Management (AWRM) effort to develop. The AWRM is making good progress, and the Regional Board would like to see how it progresses. The May meeting has now been scheduled tentatively for October in order to allow for additional time to complete the process and craft the necessary regulatory language.

The Regional Board will follow an independent regulatory process to evaluate the TMDL agreements. A staff report will be submitted outlining a Basin Plan amendment. The Regional Board will then decide whether or not to amend the Basin Plan. Regulatory requirements will be in effect ensuring that all reports are publicly noticed and that public comments are collected and considered.

Rob Roy of the VAWQC inquires if the AWRM effort will interfere with the SSO/ADA process. Sam Unger of the Regional Board states that the AWRM will have significant impacts on the SSO/ADA. The AWRM will be integrated in the SSO/ADA. This will occur using the Porter Cologne Act that requires protection of beneficial uses and improvement to groundwater. The Regional Board is a "certified regulatory program," so it is required to analyze the AWRM and the SSO/ADA under CEQA, but not perform a full EIR. The CEQA scoping meeting will be held some time in the Summer of 2008. After the TMDL is adopted, project level CEQA analyses will be conducted.

### **III. GROUNDWATER SURFACE WATER INTERACTION MODEL (GSWIM)**

Terry Foreman gives the TWG an update on the comments received for the 2B-1 Report. He states that comments received fall in to four categories. First, the bulk of the comments expressed satisfaction with the 2B-1 Report and congratulated the Modeling Team on their work. Second, commenters asked the Modeling Team to provide more background statistics, including plots and charts. This request was fulfilled, and the final draft of the report reflects this change. Similarly, the third category of comments came from commenters asking for additional clarification and explanation on specific issues. Terry Foreman stated that additional clarification/explanation was added to the 2b-1 Report as appropriate. Finally, some commenters asked for more detail on certain issues so that they could conduct their own analysis of these issues. These requests were fulfilled by the Modeling Team.

Comments from United Water were not included in the initial response to comments report. These comments have been collected, and the responses will be included in the 2B-1 Report as an addendum.

### **IV. ALTERNATIVE WATER RESOURCE MANAGEMENT (AWRM)**

Brian Louie gives a presentation on the AWRM process. This presentation is available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org). The AWRM would provide a series of integrated management strategies for protecting beneficial uses in the USCR. These include: removal of water softener systems, some source treatment, acquiring alternate water supplies, and a system of groundwater pumping and injection that would recharge the aquifer and then draw it down when needed. This alternative has been developed through a long process of cooperation and discussion with a wide range of stakeholders in the basin, and is a potential solution to the need for protecting water quality and beneficial uses in the USCR.

Bert Rapp asks for clarification on the timing of potential groundwater pumping in the AWRM plan. He asks if pumping is expected to occur during drought years. Mr. Louie answers that pumping will be conducted when the water is needed, and that this is expected to occur during drought conditions.

Mr. Rapp asks about potential pump tax costs and who will be responsible for these taxes. Mr. Louie states that the AWRM has not yet reached the point of discussing this issue.

Rob Roy adds some clarification on the AWRM, stating that agriculture is not anticipated to use irrigation water pumped directly from the river in reaches 5 and 6, while in reach 4b water would be shipped in to protect beneficial uses as needed.

Mr. Louie states that the chloride concentrations expected under the AWRM plan are well below thresholds for protection of threatened and endangered species.

Martin Hernandez asks if there is sufficient water supply available to make the AWRM feasible. Brian Louie responded by saying that this issue has been investigated by Bob DiPrimio of United Water, and that the yields under consideration are expected to be sustainable over time. Steve Bachman adds that the AWRM calls for banking water in wet years to ensure that there is adequate supply.

Frank Brommenschenkel inquires if there are contingencies in the event that a well needed for the AWRM process goes offline. Brian Louie responds that there are three potential wells that are candidates to be the recharge/discharge wells under the AWRM proposal. Mr. Louie states that the Sanitation Districts and the team developing the AWRM are confident that these wells should be adequate for the long term. Bob DiPrimio adds that the AWRM is also investigating drawing from the Saugus Aquifer which is not linked to the alluvium or the potential Newhall build out, and so should stay viable. Also, the AWRM will bank water outside the Santa Clara River valley and can be brought in when there is additional need. This will be adequate back up for the wells.

Brian Louie states that the AWRM development will continue, and that they are working to put specific agreements in to place with individual partners.

Steve Bachman of United Water gives a presentation on the impacts of the AWRM on Ventura County. This presentation is available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org). Mr. Bachman explains

that he examined several scenarios to understand the potential impacts on downstream users. He began by examining the impacts of implementing just a reverse osmosis plant with a brine line to the sea (an option that had been discussed early in the collaborative process). His investigations show that this method actually decreases the amount of water flowing in to groundwater basins in Ventura County, and increases seawater intrusion as these aquifers are drawn down. The AWRM, on the other hand, flushes much larger amounts of water in to downstream aquifers and helps to recharge the aquifers and protect against seawater intrusion.

Mr. Bachman states that a chloride pulse from a high chloride discharge year seems to flush through Piru Basin in approximately 15 years.

Mr. Bachman states that his interactions with pumpers in Ventura County have been very positive. The AWRM has received great interest, and they seemed excited to begin working with Los Angeles County and hear more about the potential benefits.

Rob Roy states that his organization has worked to develop some guiding principles for dealing with agricultural user's concerns. The AWRM is satisfying these principles. He also states that the AWRM has required a large amount of cooperation between man agencies and people to reach the stage it has. Its success is owed to this spirit of cooperation amongst multiple parties. He continues by adding that there is a "safety valve" in the AWRM. If, in 10 to 15 years, the AWRM is not effective, the State Board can determine that the Basin Plan should return to a TMDL.

Ron Bottorff of Friends of the Santa Clara River asks what the potential impacts are of the AWRM on fish. Steve Bachman responds that the AWRM team will need to check to see what the impacts are at critical times, but that information gathered so far indicates that there will not be any negative impacts on fish. In fact, the AWRM will be adding water to the basin during drought periods, which can be expected to help the fish. This issue will be an important aspect of the CEQA work.

Bert Rapp inquires about the capacity for pumping in the USCR. Steve Bachman replies that the capacity is approximately 20,000 gallons; however this occurs only during wet periods, so draw down of the aquifers does not occur. He adds that pumping operation protocols would be put in place to protect the aquifers, and reduce or stop pumping if conditions would lead to a harmful draw down.

Sam Unger asks if the planned small scale reverse osmosis plant is expected to run continuously. It will need to run continuously, as the filtration membranes need to stay wet to maintain effectiveness.

Sam Unger asks if the City of Santa Clarita is supportive of the AWRM process. Heather Merenda of the City of Santa Clarita states that the City is interested in finding solutions, and is supportive of the AWRM if it offers such a solution.

Rob Roy states that the original TMDL for the USCR was imposed on the watershed. This AWRM solution has been developed by many partners throughout the watershed, and it seems as if the process is on the verge of developing a won/win alternative to the TMDL.

Jeff Weaver of Geomatrix gives a presentation on the AWRM Water Resources Report. This presentation is available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org). The Task 2b-2 Report will be available at the end of April, 2008.

Bob DiPrimio states that the water purveyors will be investigating the information related to the Saugus Aquifer in depth, and may need more than two weeks review time. Sam Unger asks if the purveyors can begin a preliminary review for now. Ultimately though, a joint meeting between the Modeling Team and the water purveyors is needed. The Modeling Team will get in touch with Bob DiPrimio after the meeting.

#### **V. SSO-ADA STATUS UPDATE AND PROGRESS REPORT**

Ashli Desai gives a presentation on the SSO-ADA process. This presentation is available on the project website at [www.santaclarariver.org](http://www.santaclarariver.org).

  
 VENTURA COUNTY  
 DEPARTMENT OF WATER RESOURCES  
**USCR CHLORIDE TMDL  
 AND  
 ALTERNATIVE WATER  
 RESOURCES MANAGEMENT**

Brian Louie  
 Steve Bachman  
 April 8, 2008

### Presentation Overview

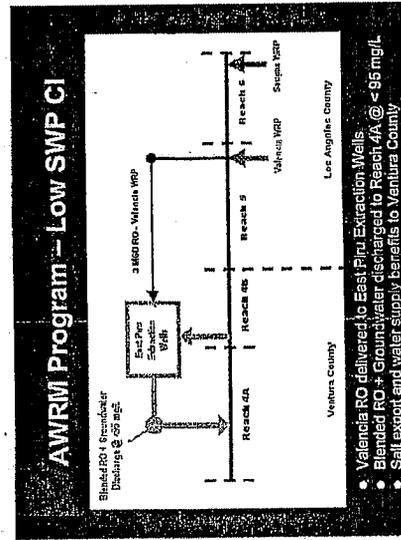
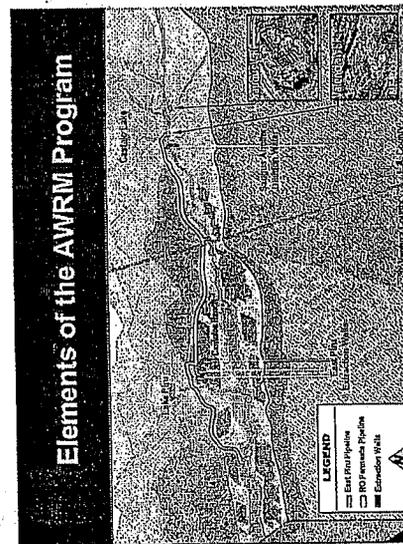
- SCVSD Compliance Options for TMDL - 100 mg/L vs. AWRM
- Elements of the Alternative Water Resources Management (AWRM) Program
- Water Supply Benefits of AWRM Program (Steve Bachman, United Water)
- Next Steps

### Compliance Options for Regional Board Alternatives

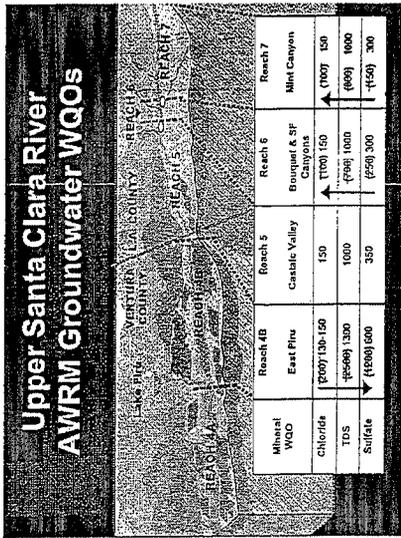
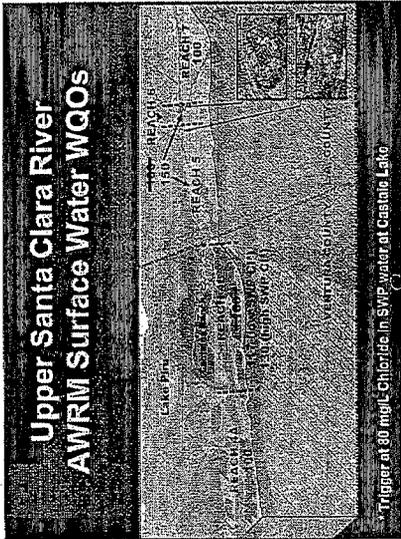
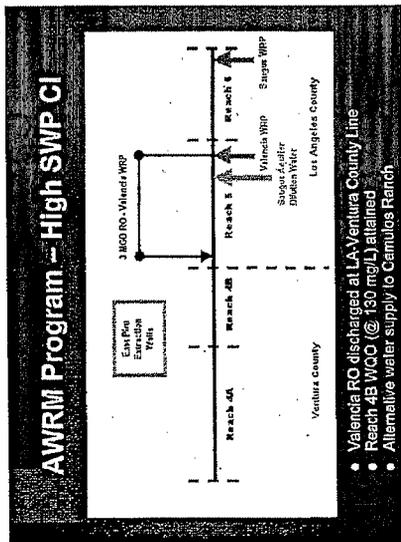
Alternative 1 (100 mg/L)	Alternative 2 (AWRM)
<ul style="list-style-type: none"> <li>• Advanced Treatment at Suisun and Valencia WRP</li> <li>• 43-mile intake line and ocean outfall</li> </ul> <p style="text-align: center;">Or</p> <ul style="list-style-type: none"> <li>• Minimal Advanced Treatment</li> <li>• 43-mile effluent disposal pipeline and ocean outfall</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce Chloride in WRP Effluent</li> <li>• 3 MGD Advanced Treatment Facility</li> <li>• Dilution Water (as necessary)</li> <li>• Ventura County Water Supply Facilities</li> <li>• Protect Existing Beneficial Uses</li> <li>• Support Water Recycling</li> </ul>

### Elements of the AWRM Program

- Reduce Chloride in WRP Effluent
  - Remove all SRWS
  - Convert to UV/Disinfection Technology
- Build 3 MGD MF-RO Facility
  - Brine disposal via deep well injection (abandoned oil fields)
- Purchase dilution waters from CLWA to achieve WQO as needed
- Build Water Supply Facilities in East Pitru
  - 10 Extraction Wells
    - Water Supply Conveyance Pipelines
    - RO pipeline to East Pitru
    - Extended groundwater RO line and pipeline
- Alternative Water Supply to Camulos Ranch
- Support Water Recycling in the Santa Clara Valley
- AWRM Surface Water and Groundwater WQOs



0-10514



Ventura County  
 Water Supply and Water Quality Benefits  
 Steve Bachman

- ### Next Steps
- Brief Key Stakeholders** (Ongoing)
    - Upper Basin Water Purveyors (L.A. County)
    - City of Santa Clarita
    - United Water Conservation District
    - Ventura County Agricultural WQ Coalition
    - Ventura County Board of Supervisors
    - Camulos Ranch, Cities of Piru, Fillmore and Santa Paula
    - Ventura County Watershed Protection District
    - Calleguas Creek TMDL Water Resources Subcommittee
    - Fox Canyon Groundwater Management Agency
    - Friends of the Santa Clara River / SCOPE
  - Complete TMDL Studies** (May 2008)
  - Regional Board Processes** (June - Oct 2008)
    - Staff Report
    - Regional Board Hearing

0-19001



## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 8/1/2011  
List Print Date: 08/01/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Email: achinnrcrs@aol.com Fax: (916) 939-7801
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EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

## Exhibit C

July 29, 2011

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

### Test Claim 10-TC-09 "Upper Santa Clara River Chloride Requirements"

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the test claim on the Upper Santa Clara River Chloride TMDL regulations submitted by the Santa Clarita Valley Sanitation District of Los Angeles County. The claimant alleges the TMDL regulations are a reimbursable state mandate because the Regional Water Board was not required to issue the regulations under federal law.

Finance asserts the TMDL regulations do not impose a reimbursable state mandate because 1) the regulations are required by section 303(d) of the federal Clean Water Act, 2) the regulations by themselves do not require the claimant to act, and 3) even if the regulations required action, claimant has fee authority sufficient to pay its costs. Government Code section 17556, subdivisions (c) (federal mandate) and (d) (fee authority) provide bases for denying the claim if the Commission finds the regulations require claimant action.

However, Finance believes the TMDL regulations alone, without further administrative action in the form of a permit issuance, for example, do not require claimant conduct. In *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4<sup>th</sup> 1392, 1414-1415, the court said "[a] TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls. A TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and water bodies." Consistent with this case law, the claimed TMDL regulations do not require action that would be subject to a mandates analysis.

Even if the Commission were to conclude the regulations required any action, fee authority in Health and Safety Code section 5471 is sufficient to cover costs of any activities not found to be federal mandates. Further, while claimant mentions "fierce public opposition" in the face of attempts to exercise its fee authority, there is no information in the claim that such opposition even came close to the majority protest required to stop the fee imposition.

Mr. Drew Bohan  
July 29, 2011  
Page 2

Also, Finance asserts this test claim may be barred by the statute of limitations in Government Code section 17551. Subdivision (c) of that section specifies that "local 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." Claim 10-TC-09 was filed on March 30, 2011. The claimant asserts the TMDL regulations had an effective date of December 11, 2008. The claimant further asserts that eligible costs under the claim include those for the entire fiscal year 2009-10. If no allegedly state-mandated costs were incurred until fiscal year 2009-10, all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred. Such an unlikely scenario is not presented in the claim.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the June 24, 2011 mailing list have been provided with copies of this letter via either United States Mail or email. Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,



NONA MARTINEZ  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF NONA MARTINEZ  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-09-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7/29/11

at Sacramento, CA

Nona Martinez

Nona Martinez

PROOF OF SERVICE

Test Claim Name: Santa Ana Region Water Permit – Orange County  
Test Claim Number: CSM-09-TC-03

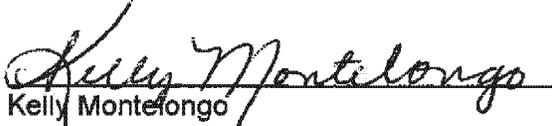
I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On 7-29-11, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16  
Mr. Drew Bohan, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

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 7-29-11 at Sacramento, California.

  
Kelly Montefongo

## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 August 1, 2011, I served the:

**LARWQCB and DOF Comments**

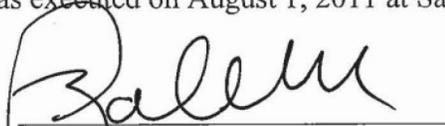
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

**Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008**

**Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

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 August 1, 2011 at Sacramento, California.

  
\_\_\_\_\_  
Heidi J. Palchik

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 8/1/2011  
List Print Date: 08/01/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Exhibit D

KIMBERLY A. HUANGFU  
DIRECT DIAL: 213.580.907  
E-MAIL: huangfu@lbbsslaw.com

September 28, 2011

File No.  
17-8177

**VIA E-FILE**

Drew Bohan, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Re: **Santa Clarita Valley Sanitation District of Los Angeles County's ("Claimant")  
Rebuttal Regarding Upper Santa Clara River Chloride Requirements Imposed by  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008, Test Claim No. 10-TC-09.**

Dear Mr. Bohan:

On behalf of our client, the Santa Clarita Valley Sanitation District (the "District"), attached please find a copy of the District's rebuttal, concerning Test Claim No. 10-TC-09, in response to the Los Angeles Regional Water Quality Control Board and the California Department of Finance's comments filed on July 29, 2011.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list." In accordance with the Commission's regulations, a "Proof of Service" is not necessary in this instance since all of the parties listed on the August 22, 2011 service list have provided e-mail addresses.

If you have any questions regarding the District's submittal, please contact me at (213) 580-3907.

Very truly yours,

/s/  
Kimberly A. Huangfu of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

KAH  
Attachments  
cc: Service List

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BRISBOIS  
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September 28, 2011

File No.  
17-8177

**VIA E-FILE**

Drew Bohan, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

**Re: Santa Clarita Valley Sanitation District of Los Angeles County's ("Claimant")  
Rebuttal Regarding Upper Santa Clara River Chloride Requirements  
Imposed by Los Angeles Regional Water Quality Control Board Resolution  
No. R4-2008-012, Effective December 11, 2008, Test Claim No. 10-TC-09.**

Dear Mr. Bohan:

**I. INTRODUCTION.**

The Santa Clarita Valley Sanitation District of Los Angeles County (the "District") has filed a test claim ("Test Claim") seeking a subvention of funds from the state to comply with orders made by the California Water Quality Control Board - Los Angeles Region ("Regional Board"). These orders (the "Chloride Orders") require the District to meet excessively stringent chloride limits for the Valencia and Saugus Water Reclamation Plants that will require the construction of facilities providing a new and advanced level of wastewater treatment at a projected cost of up to \$250 million.

The Regional Board's decisions to issue these orders are discretionary acts of the Regional Board that impose unfunded mandates for which the District is entitled to subvention. The standards that the Regional Board has imposed on the District exceed the requirements of the federal Clean Water Act ("CWA"). The District neither proposed nor requested those standards. Any attempt by the District to raise the funds necessary to meet these unnecessary mandates through substantial rate increases on its ratepayers will

Drew Bohan, Executive Director  
September 28, 2011  
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be unsuccessful. The Regional Board's attempt to disclaim responsibility for its own mandate is without merit.<sup>1</sup>

## II. THE DISTRICT IS ELIGIBLE FOR SUBVENTION.

### A. The Chloride Orders are Not Federal Mandates.

The Respondents erroneously contend that the Regional Board's issuance of orders adopting water quality objectives for chloride and the total maximum daily load ("TMDL") for chloride were nondiscretionary duties imposed on the state by the CWA and therefore constitute a federal mandate. The Respondents support this incorrect contention with a generalized discussion of the framework of the CWA and the federal regulations implementing the CWA. The applicable statutes and regulations show that the Regional Board's Chloride Orders were discretionary actions performed by the Regional Board under authority granted to it by the Porter-Cologne Act.

#### 1. **The CWA Delegates Significant Discretion to States to Regulate Water Quality under the Clean Water Act.**

The Regional Board repeatedly cites Section 303 of the CWA (33 U.S.C. §1313) as its basis for asserting that the CWA mandates all state action taken to adopt water quality standards (beneficial uses and/or water quality objectives) and TMDLs, and that its own actions are outside of its discretion. (*See* Regional Board's Response at pp. 23-24). Although water quality standards adopted by the states are a foundational element of the CWA, and states must prepare TMDLs for waters that fail to attain water quality standards, the CWA does not prescribe any specific outcome or standard. Instead, the CWA authorizes each state to exercise its discretion and independent legal authority to regulate water quality within this general framework. (*See, e.g.*, 33 U.S.C. §§1313(c) and (e); *see also* 40 C.F.R. §130.0(a) ["The water quality management process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving, and protecting water quality while allowing [s]tates to implement the most effective individual program"] and §130.0(b) ["water quality standards are the [s]tate's goals for individual water bodies and provide the legal basis for control decisions under the Act"].)

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<sup>1</sup> The Department of Finance, along with the Regional Board, submitted comments opposing the Test Claim. Because that department's response letter mirrors the arguments articulated in the Regional Board's response, all references made throughout the rebuttal address assertions made by both entities (collectively referred to, "Respondents").

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September 28, 2011  
Page 3

The Regional Board's Response seeks to obscure the discretionary authority granted to it by the CWA and applicable regulations by generally citing inapplicable provisions of that act and those regulations. The Regional Board's frequent changes to the water quality objective for chloride in the Santa Clara River, as well as its changes in implementing and enforcing the objectives described in the Test Claim<sup>2</sup>, discredit its hollow claim that it has "no true choice" with respect to water quality decisions. (See Regional Board's Response at p. 23). The Regional Board admits that it does not take a "one-size-fits-all approach" to setting these objectives, and that "water quality standards are specific to each individual waterbody, and often to individual segments of that water body." (See Regional Board's Response at pp. 25-26) Application of these standards, by definition, requires discretion by the Regional Board, not the United States Environmental Protection Agency ("U.S. EPA").

An example of discretionary actions taken by regional boards throughout California is their adoption of varying water quality objectives. For instance, this Regional Board and others throughout the state have adopted a wide-array of chloride water quality objectives to protect similar salt-sensitive agricultural uses.<sup>3</sup> (See Test Claim at p. 7.) Numerous regional watersheds have a chloride water quality objective of 150 to 190 mg/L, including two watersheds within this Regional Board's jurisdiction - the Calleguas Creek and Los Angeles River, respectively. The Regional Board's standards reflect its discretion. In this case, the Regional Board exercised its discretion under the Porter-Cologne Act to impose unreasonable and costly requirements without providing a subvention of funds to reimburse the District. This is contrary to the constitutional provisions that regulate this type of mandate.

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<sup>2</sup> See District's Test Claim at pp. 4-9.

<sup>3</sup> The Regional Board implies that the heightened Chloride TMDL threshold was set because of the allegedly "serious environmental problem of chloride discharged from the Claimant's point sources into the Santa Clara River." (Regional Board's Response at p. 1.) This is a gross misrepresentation of the current water quality trends concerning chloride discharges into the Santa Clara River. Current chloride levels for 2011 are approximately 125 mg/L, measured at discharge points for the Valencia and Saugus Water Reclamation Plants. Current chloride levels for the Santa Clara River measured at the county line (after which the agricultural beneficial use commences), however, are approximately 105 mg/L. (See *Supplemental Exh. "A"* - Attachment 1 to District Letter re Upper Santa Clara River Chloride TMDL to Regional Board, May 9, 2011 at p. A-3.) In fact, as demonstrated by *Figure 1* attached hereto, surface water chloride concentrations in the Santa Clara River have improved over recent years. There is absolutely no data to support the Respondents' belief that the Chloride TMDL is somehow necessary to maintaining water quality levels.

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September 28, 2011  
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The Regional Board possesses substantial discretion with respect to all aspects of the TMDL process. CWA section 303(d), cited by the Regional Board to support its contention that it lacks discretion, simply describes the framework used by states to identify water bodies that have not attained water quality standards (called “impaired water bodies”). The relevant federal mandate requires that regional boards prepare TMDLs for impaired water bodies. 40 C.F.R. §130.2(i), also cited by the Regional Board, simply defines the term “TMDL”. Neither of these provisions mandates any specific TMDL, waste load allocation (“WLA”), or other discharge constraint that the state must enact or restricts the state’s discretion in either evaluating its waters for impairment or for determining appropriate provisions of a TMDL. Instead, federal regulations specifically promote the states’ independent role in all facets of the TMDL process. (See 40 C.F.R. §130.7 [identifying “the State” as the entity with the responsibility and authority for making all TMDL-related determinations consistent with the Clean Water Act’s framework].)

The Regional Board has previously stated that, while it “has no discretion not to establish a TMDL, the Board exercises discretion in assigning WLAs and load allocations, determining the program implementation, and setting various milestones in achieving the water quality standards.” (Exh. 23 to District’s Test Claim, October 8, 2009 Memorandum re: Chloride TMDL at p. 7, emphasis added.) Further, *Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir. 2002) (“*Pronsolino*”), also cited by the Regional Board, expressly recognizes the independent role of the states in creating TMDLs.<sup>4</sup> *Pronsolino* states that “the CWA leaves to the states the responsibility of developing plans to achieve water quality standards if the statutorily-mandated point source controls will not alone suffice . . . States must implement TMDLs only to the extent that they seek to avoid losing federal grant money; there is no pertinent statutory provision otherwise requiring implementation of §303 plans or providing for their enforcement.” (*Pronsolino*, 291 F.3d at 1129, 1140.)

Further, as noted in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581-1582, a determination as to whether a state’s participation in a federal program is “truly voluntary” depends on “such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any assessed for withdrawal or refusal to participate or comply and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (*Ibid.*) As is the case in California, the Porter-Cologne Water Quality Control Act establishes a comprehensive statewide program for water

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<sup>4</sup> Other case law cited by the Regional Board also supports the District’s claim. In *Alaska Center for the Environment v. Reilly* (W.D. Wash. 1991) 762 F.Supp. 1422, the court cited to a GAO report that highlights the breadth of discretion of the states in the TMDL process, including the states’ authority to determine that compliance with water quality standards is infeasible.

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September 28, 2011  
Page 5

quality control and regulation of discharges to waters of the state. Therefore, California maintains flexibility in determining the scope and type of discharge restriction that may be necessary given the particular water body or region at issue.

This case is easily distinguished from the recent, non-precedential Los Angeles County Superior Court case, *State of California Department of Finance, et al. v. County of Los Angeles*, Case No. BS130730, (Sept. 6, 2011). That case involved claims of unfunded mandates in the context of a municipal storm water National Pollutant Discharge Elimination System ("NPDES") permit that imposed various actions pursuant to the CWA's specific mandate that such stormwater discharges be regulated to "reduce the discharge of pollutants to the maximum extent practicable ("MEP")." (*See* 33 U.S.C. §1342(p)(3)(B).) In that case, the Superior Court determined that the Regional Board had "no real choice" in implementing the CWA's targeted MEP requirement for the storm water discharges at issue, and that the requirements imposed upon the permittees were not inconsistent with or more stringent than the MEP requirement. (*See Supplemental Exh. "B", Smt. of Decision at pp. 7-8*).

The regulatory framework and role of the Regional Board in the *County of Los Angeles* case are quite different from those relating to the unfunded mandates described in the Test Claim. The court in that case explicitly recognized that different factual circumstances could support a claim for subvention. (*Id.* at p. 9, fn. 14 ("While there may be other cases in which the state agencies may impose standards that clearly exceed those imposed under a 'maximum extent practicable' approach to storm water pollutants in the Clean Water Act, this case does not present that situation.")) In contrast to the Regional Board's implementation of a narrow, specific MEP standard in the *County of Los Angeles* case, the Regional Board in this case maintains absolute discretion and "choice" by: (1) designating beneficial uses beyond the mandated "fishable/swimmable" uses; (2) selecting ultra-conservative water quality objectives for chlorides in the Santa Clara River to protect the most sensitive salt-sensitive use; and, (3) creating WLAs in a TMDL and related compliance schedules designed to attain the Regional Board's objective. Since the Regional Board's actions, by definition, exceed the regulatory floor set by the CWA, its actions are more stringent than those required by the CWA. Therefore, subvention of funds is appropriate with regard to the mandate described in the Test Claim.

## **2. The Regional Board Exercises its Discretion by Designating and Protecting Certain "Beneficial Uses".**

The Regional Board also contends that it has no discretion regarding the designation and protection of beneficial uses. (*See* Regional Board's Response at pp. 24 - 25). This argument is based on two underlying theories: (1) that the CWA imposes upon the Regional Board a mandatory duty to designate and protect all beneficial uses equally; and, (2) that the CWA requires the Regional Board to protect the most sensitive aspect of a

Drew Bohan, Executive Director  
September 28, 2011  
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beneficial use. (*Id.*) Both premises are demonstrably false and legally unsupported by the CWA and related regulations.

(a) *The CWA Does Not Mandate Equal Protection of all Beneficial Uses.*

The Regional Board's assertion that the CWA creates a mandatory duty to protect all beneficial uses with the same priority ignores federal regulations and guidance from the U.S. EPA. The Test Claim, while acknowledging that the CWA mandates the designation and protection of "fishable/swimmable" beneficial uses where attainable (*e.g.*, fish, shellfish, and wildlife and recreation), noted that no similar *mandatory* duty exists for the remaining beneficial uses. (*See* District's Test Claim at pp. 8-9.) For example, an applicable federal regulation provides, in part, that:

"...water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water, and take into *consideration* their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in and on the waters, and agricultural, industrial, and other purposes including navigation."

(*See* 40 C.F.R. §131.10(a), emphasis added.)

This language is echoed in 40 C.F.R. section 131.2, and supports the position that the state retains flexibility and discretion with respect to non-"fishable/swimmable" uses. (*See Kansas Natural Resource Council, Inc. v. Whitman*, 255 F.Supp.2d 1208, 1209 (D. Kansas 2003), citations omitted ["Under 33 U.S.C. § 1313(c), states are responsible for developing, adopting, and maintaining intrastate and interstate water quality standards . . . States must designate a use for each body of water and determine the level of water quality necessary to support such use. In developing water quality standards, states must consider water bodies' 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and . . . their use and value for navigation.'"]; *Idaho Mining Ass'n, Inc. v. Browner*, 90 F.Supp.2d 1078, 1080 (D. Idaho 2000).) Federal courts in California have confirmed this interpretation of the CWA and federal regulations. (*See Cities of Los Angeles, Burbank, and Simi Valley and the Los Angeles County Sanitation District v. U.S. EPA*, December 18, 2001 Order Granting Plaintiffs' Motion for Summary Judgment and Remanding Action to EPA, ["Except as necessary to protect existing uses, the CWA does not require any water quality standard more stringent than necessary for the protection of the CWA's default fishable/swimmable use."].)

Drew Bohan, Executive Director  
September 28, 2011  
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The U.S. EPA provides similar guidance in its Water Quality Standards Handbook. “States **must** provide water quality for the protection and propagation of fish, shellfish, and wildlife, and provide for the recreation in and on the water (“fishable/swimmable”) where attainable.” (See U.S. EPA Water Quality Standards Handbook: Second Edition (Aug. 1994), §2.1, emphasis added.) Other beneficial uses are to be taken *into consideration* - a clearly distinct category from the mandated “fishable/swimmable” use designation. The Handbook illustrates this point by separating the two categories of uses (the “must provide” and the “take into consideration”) into bullet points and addressing each separately. The Regional Board cannot credibly assert that the designation of the agricultural beneficial use and the conservative protection of downstream salt-sensitive crops are mandated by the CWA.<sup>5</sup>

The Regional Board also blatantly mischaracterizes the Test Claim by asserting that the District’s interpretation of the relevant federal regulations would require that agricultural uses not be protected “at all.” (See Regional Board’s Response at p. 24.) Actually, the District asserts only that the Regional Board’s choice to exercise its discretion to designate the agricultural beneficial use and its imposition of an excessively-stringent water quality standard to protect the most sensitive aspect of that use are not mandated by federal law. Therefore, the state should provide a subvention of funds to reimburse the District for the actions necessary to comply with this state mandate.

(b) *The CWA Does not Mandate Protection of the Most Sensitive Aspect of a Beneficial Use.*

The Regional Board’s second argument similarly misconstrues federal regulations. Federal law does not require the Regional Board to protect the most sensitive agricultural use or require the Regional Board to set chloride standards at any specific amount. The standards established in the CWA only require that the waters of the U.S. be “fishable and swimmable” and only provide for “consideration” of other beneficial uses. Even if the CWA could be construed to require protection of agriculture, the Act does not require protection of the most salt-sensitive agriculture or the accomplishment of such a result through the imposition of an instantaneous maximum “end of pipe” limit. The Regional Board invoked

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<sup>5</sup> The Regional Board’s discussion of “existing” and “designated” uses is irrelevant to the District’s claim. (See Regional Board’s Response at pp. 24-25.) The mandates imposed by the Regional Board seek to protect a “designated” use as specified in water quality standards found in the Regional Board’s Basin Plan. The Regional Board’s Response provides no evidence to support its contention that the agricultural beneficial use at issue here is an “existing” use as defined by the CWA.

Drew Bohan, Executive Director  
September 28, 2011  
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its discretion in setting a 100 mg/L chloride standard for the Santa Clara River. As previously stated, other basins in California have 150 to 190 mg/L objectives and discharge limits.

One regulation cited by the Regional Board to support its argument, 40 C.F.R. section 131.11(a), states that water quality criteria and objectives promulgated by states must support the most sensitive use for waters with "multiple use designations". Water bodies with multiple use designations are those that contain, for instance, cold and warm aquatic habitat and shellfish harvesting, where the most sensitive of those uses must be protected when water quality objectives are adopted for aquatic life protection. The regulation does not require strict protection of the most sensitive subcategory of a use (*e.g.*, salt-sensitive crops, as opposed to those more salt tolerant). This protection effort by the Regional Board is not federally-mandated and has resulted in the application of unreasonable water quality standards and compliance requirements to the District.

Contrary to the Regional Board's assertion, the CWA does not mandate specific designation or protection of agricultural beneficial uses. These uses are simply raised by the CWA as matters for the each state to consider in making its own, discretionary, site-specific determinations as to beneficial uses that will be protected through the regulatory process and the enactment of water quality objectives. In this case, the Regional Board initially elected to adopt water quality standards of 100 mg/L for Reaches 5 and 6 of the Santa Clara River to protect off-stream agricultural beneficial uses and to protect the most salt-sensitive crops grown in the downstream region. The Regional Board's regulatory choices reflect a state mandate, for which the District must be reimbursed.

**B. The Regional Board's Discretionary Mandate Requires the District to Comply with the TMDL Threshold.**

The Regional Board contends that the District is not mandated to comply with the Chloride TMDL because "TMDLs are not self-implementing" and because "EPA cannot directly enforce implementation of a TMDL once it is established."<sup>6</sup> (Regional Board's

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<sup>6</sup> The Regional Board further contends that if U.S. EPA were to have adopted the Chloride TMDL for the Santa Clara River, it would have done so without an implementation plan (*e.g.*, a schedule for compliance) and the District would not have the benefit of the schedule imposed by the Regional Water Board. (See Regional Board's Response at p. 26.) The argument is irrelevant to the instant claim, but given the inaccuracy of the assertion, a reply is appropriate. When importing a wasteload allocation from a TMDL adopted by U.S. EPA in an NPDES Permit, the state is nonetheless required to address implementation. (See 33 U.S.C. §1313(e); Cal. Water Code §13242; *see accord* (footnote continued))

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Response at p. 7.) However, the Regional Board incorporated all of the provisions of the TMDL into the District's NPDES permits, which require the District to act in accordance with the permits' requirements. The Regional Board acknowledges that "[o]nce set and approved, the regional water boards implement water quality objectives *through waste discharge permits and other programs.*" (Regional Board's Response at p. 8, emphasis added.) Accordingly, the District has an affirmative obligation to comply with the Regional Board's TMDL requirements.

TMDLs are, as the Regional Board acknowledges, "program[s] of implementation" pursuant to Water Code section 13242 that are state actions to implement existing water quality standards determined by the state and regional boards. (Regional Board's Response at p. 8.) Even though the U.S. EPA must approve basin plan amendments, the Regional Board's decision to set the TMDL threshold at 100 mg/L mandates action by the District that constitutes a new "project" within the parameters of California Constitution Article XIII B, section 6.

C. The District Does Not Have Unlimited Fee Authority and Has Been Unable to Impose Rate Increases.

Respondents erroneously assert that the District has the unfettered ability and authority to impose rate increases to fund compliance with the Regional Board's mandates, and that the District is, therefore, exempt from reimbursement under Article XIII B, section 6. The term "authority" implies that the District has the requisite support among its ratepayers to pass the proposed rate increases without the increases later being nullified by the ratepayers. The Regional Board's Chloride Orders lacked the requisite support. In order to fund the planning and design of the AWRM Program and to cover the then-current operation and maintenance costs, the District's staff proposed a rate increase from \$16.58 per month per single family home to \$24.67. Before the hearing, the District received 7,732 written protests from property owners in response to Proposition 218 notices. After considering all of the public input, the District's elected officials could not implement the proposed rate increase in the face of fierce public opposition.

The Regional Board relies on *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382 ("*Connell*"). In that case, local water districts claimed that they lacked sufficient fee authority to cover the costs of a state-mandated program because it was not economically feasible for them to raise fees sufficient to cover the costs of the program. The court held that Government Code section 17556(d) precludes subvention

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*Pronsolino v. Nastri*, 291 F.3d 1123, 1140 (9th Cir. 2002).) This further illustrates the important and independent role of the Regional Board in the TMDL process.

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when a local agency has the “authority” to raise fees, not when it is not “economically feasible” for the local agency to do so.

*Connell* dealt with regulatory requirements enacted in 1978 that mandated higher costs on local water agencies to produce reclaimed water, but it did not consider the effects of Proposition 218, as codified at Section XIID of the California Constitution. Proposition 218 was adopted by the voters in November, 1996, and its express purpose was to limit local government revenue and enhance taxpayer consent. Proposition 218 substantially limits local agencies’ ability to raise fees and charges to cover state mandates. In view of the provisions of and the intent underlying Proposition 218, local governments may not have effective “authority” to raise fees where they cannot obtain the requisite approval to implement proposed fee increases but are still burdened with expensive state-imposed mandates.<sup>7</sup>

Under section 3 of Proposition 218, the voters within the District may reduce or repeal any fee or charge by an initiative that will be qualified for the ballot by gathering the signatures of five percent of the total number of voters in the District who cast votes for governor in the 2010 election. (Cal. Election Code section 9035; Cal. Const. Art. XIIC and XIID.) The District received 7,732 written protests of the proposed rate increase. This number of written protests exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase.<sup>8</sup> Accordingly, the District’s Board quite reasonably believed that this large rate increase would be rejected if challenged by initiative because the benefits of the mandated levels of treatment would be received by downstream Ventura County farming interests who did not pay for them.

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<sup>7</sup> Though this potential conflict appears to be an issue of first impression for the appellate courts, this question was addressed by the Commission in March 2010. Pursuant to the Commission’s Statement of Final Decision concerning the Discharge of Stormwater Runoff, this Commission found that the fee exception does not apply when a local agency is unable to leverage fees from its taxpayers. (Commission Stmt. of Dec. re: Discharge of Stormwater Runoff, Claim No. 07-TC-09 at p. 106.) This finding supports a broad interpretation of when an agency is able or has the requisite “authority” to levy charges. Oddly, the Regional Board makes no mention of this recent decision issued by the Commission.

<sup>8</sup> The total gubernatorial vote during the last election for the 38<sup>th</sup> Assembly District, which includes the City of Santa Clarita, was approximately 130,000, 5% of which would be about 6,500 votes. The Assembly District appears somewhat larger than the District, so this number is conservative.

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D. The District Neither Proposed nor Requested the Chloride TMDL Threshold as Mandated by the Regional Board.

Since the early 2000s, the District has struggled to collaborate with the Regional Board to obtain reasonable chloride standards for the Santa Clara region. Because of the ever-changing nature of the Regional Board's approach to assigning chloride WLAs to the Saugus and Valencia Water Reclamation Plants (which is clearly delineated in the Regional Board's lengthy recitation of the "regulatory history"), the District attempted to work with the Regional Board and other stakeholders to develop a reasonable and scientifically-supportable alternative compliance plan.<sup>9</sup>

Though the District is committed to complying with all applicable legal and regulatory requirements, the District exhausted all avenues of appeal outside of litigation to negotiate a reasonable standard that would adequately protect water quality in the Santa Clara River. The District began to actively engage in negotiations with the Regional Board, which ultimately led to the Chloride Orders only to protect, to the best of its ability, the interests of its ratepayers. The Regional Board's incorrect categorization of the District's involvement in the regulatory process as rising to the level of "enthusias[ti]c support . . ." grossly oversimplifies actual events and is a smoke screen designed to obscure the Regional Board's own mandate to pass fiscal obligations for funding massive water treatment programs onto the District, including those necessary to meet the requirements set forth in the Chloride Orders.

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<sup>9</sup> The Regional Board further contends that the provisions of the Chloride TMDL do not implement a new program because "[t]he Los Angeles Water Board first established water quality objectives for chloride in the Upper Santa Clara River in 1975. Despite the various revisions to the Chloride TMDL over the years, the water quality objective of 100 mg/L for chloride designated in 1978 remains the water quality objective today." (Regional Board's Response at p. 22.) The Regional Board fails to note, however, that in 1994 it revised the Basin Plan and deleted a footnote, which changed the standard from 100 mg/L at end of a reach of the river from an "annual average" to an "instantaneous maximum" requirement at all locations in the river. This seemingly small change significantly alters the scope of the District's proposed plan to ensure TMDL compliance.

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The District, following directives from the State Water Quality Control Board<sup>10</sup>, after years of protracted discussions regarding appropriate TMDL levels, actively engaged in negotiations concerning the Chloride Orders only to protect the interests of its ratepayers under the threat of crippling fines that could be imposed by the Regional Board. Contrary to the Regional Board's misguided representation that the District staff "expressed an unprecedented level of cooperation and support for the Chloride Orders, the fact remains that the District did not "request" or "initiate" the implementation of the Regional Board's stringent 100 mg/L chloride threshold. While the alternative compliance plan that is reflected in the Chloride Orders seemed at the time to require a lower-cost compliance option with potentially relaxed chloride limits, new information regarding state and local water quality indicates that the District could now, if permitted, meet the site-specific chloride objectives associated with the alternative compliance plan without the need for costly and energy-intensive advanced wastewater treatment facilities.

E. The Applicable Filing Period Does Not Bar the Test Claim Because the District is Seeking Reimbursement for Expenses Incurred Within One Year.

The Respondents argue that the test claim is barred by the applicable limitation period set forth in Government Code section 17551, subdivision (c) ("Section 17551"). That subdivision provides that claims must be filed within 12 months following the effective date of a statute or within 12 months of incurring increased costs as a result of the statute or executive order. The latter provision means that costs that can be recovered are those incurred no more than 12 months prior to or after the filing of the test claim. In this instance, various costs were incurred during fiscal year 2009-2010 that were set forth in the Test Claim, as well as additional projected costs for fiscal year 2010-2011.

As the District has not yet approved a project to comply with the state mandate, little expense was incurred in the year after the TMDL was adopted. Therefore, the District's Test Claim was timely filed to include actual costs expended in during fiscal year 2009 through 2010 and thereafter. In accordance with the statutory framework set forth in Section 17551, the District intends to seek reimbursement on an annual forward-going basis for costs incurred during the prior fiscal year. This approach is necessary in this instance since the final timeline of the project and projected costs remain uncertain.

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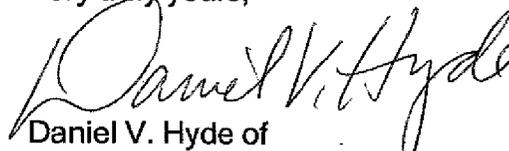
<sup>10</sup> At the May 2007 State Water Quality Control Board ("State Board") hearing, whereby the State Board was to consider the Regional Board's 2006 Chloride TMDL revisions (which the District vehemently opposed), the State Board members directed the District to coordinate with the Regional Board and interests within Ventura County interests to reach a mutually agreeable resolution.

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### III. CONCLUSION

As a result of the Regional Board's Chloride Orders, the District will be required to construct facilities that will cost up to \$250 million. The Regional Board's discretionary actions cannot reasonably be construed as a federal mandate. The Regional Board maintains discretion in this area of CWA regulation, and the Regional Board's actions are clearly more stringent than the CWA's minimum requirements. Not surprisingly, the District's ratepayers will not approve substantial rate increases to pay for the construction of these facilities, which are designed to benefit agricultural interests in Ventura County. The Regional Board's Chloride Orders are a paradigm of an unfunded state mandate. Therefore, the District is entitled to subvention of the costs that have been and will be incurred as a result of this mandate.

Very truly yours,



Daniel V. Hyde of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

DVH:kah  
Attachments

cc: Service List

**SUPPLEMENTAL EXHIBIT A**

**1983**



## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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STEPHEN R. MAGUIN  
Chief Engineer and General Manager

May 9, 2011

Mr. Samuel Unger, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

Dear Mr. Unger:

### Upper Santa Clara River Chloride TMDL

The Santa Clarita Valley Sanitation District of Los Angeles County (Sanitation District) submits this letter in response to concerns raised in letters from Ventura County Supervisor Kathy Long, the Ventura County Agricultural Water Quality Coalition (VCAWQC) and the United Water Conservation District (UWCD) to the California Regional Water Quality Control Board – Los Angeles Region, dated April 26, April 29, and April 29, 2011, respectively. The letters from the Ventura County stakeholders cite a perceived lack of progress by the SCVSD toward compliance with the Upper Santa Clara River Chloride TMDL (Chloride TMDL) and request that the Regional Board take punitive actions against the Sanitation District at its next board meeting. While the Sanitation District recognizes the Ventura County stakeholders' concern with the Sanitation District's decision not to implement certain elements of the Alternative Water Resources Management Plan (AWRM, also known as the Alternative Compliance Plan or ACP), action on the part of the Regional Board is not necessary at this time as substantial progress is continuing and water quality has improved greatly since the Chloride TMDL was adopted.

Improvement to water quality is the direct result of the Sanitation District's unprecedented removal of nearly all automatic water softeners in the community and a lowering of the chloride level in imported water. Effluent quality from the Sanitation District's Water Reclamation Plants has greatly improved in recent years as shown in the attached Figure 1. These improvements in effluent quality have also contributed to chloride levels at the point of compliance in the Santa Clara River being close to or below the 117 mg/L site specific objective for the last several years as shown in the attached Figure 2.

The letters submitted by Ventura County stakeholders generally claim threats to Ventura County interests that are not and cannot be supported factually and are clearly meant to incite the Regional Board. There has never been a threat to public health as a result of chlorides in the Santa Clara River as claimed by Supervisor Long. The secondary drinking water maximum contaminant level for chlorides established by the State (for aesthetics only, not protection of public health) is 250 mg/L yet the highest observed levels at the Los Angeles / Ventura County line have not exceeded 160 mg/L in decades. Further, UWCD has never provided the Regional Board or the Sanitation District any scientifically valid analysis of their claims of westward progression of an elevated groundwater chloride front. Even if movement of

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Mr. Samuel Unger, Executive Officer

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a front could be proven, the effect of the substantial improvement in water quality the last several years would not be observed due to the very slow travel time in groundwater. Finally, the condition and sustainability of the Ventura County agricultural industry has only a limited connection to Sanitation District discharges to the Santa Clara River. It is hard to corroborate the alleged damage associated with the Sanitation District's discharge as agricultural crop values continue to increase from year to year.

Although there is no apparent impairment of the agricultural beneficial use, the Sanitation District is not suggesting it halt its efforts to reduce chloride levels and continues to work toward a compliance solution in good faith. The Sanitation District has proposed a Revised ACP that, if approved by the Regional Board, will maintain the water quality the stakeholders and the Regional Board sought with the original ACP while preserving and enhancing the environment with a lower carbon footprint at a lesser cost to the ratepayers.

The suggestion in the Ventura County's stakeholders' letters that the Regional Board require the Sanitation District to comply immediately with a 100 mg/L effluent standard is not based on good science or policy and will only result in a waste of limited public funds. The Sanitation District urges the Regional Board instead to continue to work with Sanitation District staff and other stakeholders and allow the Sanitation District to complete the studies your staff requires to evaluate the merits of the Revised ACP before taking further action. This request, further elaboration of the Sanitation District's position, and the Sanitation District's responses to some of the assertions made in the Ventura County Stakeholders' letters are detailed in the Attachment.

Very truly yours,

Stephen R. Maguin



Raymond Tremblay  
Assistant Department Head  
Technical Services

Attachment

cc: Regional Board Members  
E. Michael Solomon, UWCD  
Rob Roy, VCAWQC  
Ventura County Supervisor Kathy I. Long

Attachment 1

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**Sanitation District's Position**

**Implementation of All of the Elements of the ACP is No Longer Necessary To Protect Water Quality**

As you are aware, the stakeholder-led process that developed the original ACP was based on the best available information at the time and was approved by the Regional Board under Resolution R4-2008-012. In the 2.5 years since then, water quality at the Los Angeles/Ventura County line where the beneficial use must be protected has been generally in compliance with the Site Specific Objective (SSO) for chloride of 117 mg/L (See Figure 2). This is especially remarkable given the fact that the period of 2007 through March 2011 was a drought<sup>1</sup>. This improvement can be attributed to removal of automatic water softeners and improved quality of imported water.

Historically, chloride levels in the Santa Clara River at this location have been much higher due in part to high levels of chloride in imported State Water Project deliveries during drought periods. The local State Water Project (SWP) water wholesaler, the Castaic Lake Water Agency (CLWA) has provided new information regarding the assumptions of future water quality in imported SWP water. CLWA has indicated that changes in SWP operation due to recent Biological Opinions for the protection of endangered species (Wanger Decision) and completion of water banking programs have and will continue to result in lower peak chloride levels in the imported water delivered to the Santa Clarita Valley. This is evidenced in the data (Figure 3) which indicate that chloride levels in imported water were as high as 140 mg/L in 1987-1992, only reach the low 80's during the most recent drought (2007-2011). This indicates that some elements of the ACP may no longer needed since the original ACP was designed to provide compliance with the Chloride TMDL assuming the worst observed conditions from the 1987-1992 drought that are not likely to repeat themselves.

**Revised ACP Proposal Will Ensure Compliance and Provide Similar Quality and Supply Benefits**

The Sanitation District has already done considerable work in developing the preliminary elements of a Revised ACP for Regional Board and Ventura County stakeholder consideration. Immediately following the service charge hearings in July 2010, during which rates to support chloride reduction facilities were not approved, the Sanitation District met with CLWA and local water agencies in order to validate the predictions of improved future SWP water quality. The Sanitation District believes this will enable compliance with the SSOs adopted by the Regional Board in 2008 under future hydrological conditions and provide a similar level of water quality and water supply benefits as the original ACP, without the need for costly and energy-intensive advanced wastewater treatment facilities (Reverse Osmosis or RO). Elimination of RO from the ACP will also eliminate the need for associated brine disposal and RO permeate conveyance facilities. This will reduce the construction impacts and energy intensity of the compliance project. The Revised ACP is fully outlined in the Sanitation District's May 2, 2011 submittal to the Regional Board.

**The Sanitation District Needs Time to Evaluate the Revised ACP In Accordance with Regional Board Requirements**

The Ventura County stakeholder letters contend there is a lack of progress on compliance on the part of the Sanitation District but this only speaks to the Sanitation District's lack of progress on some of the original ACP program elements Ventura County stakeholders desire that are no longer necessary to

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<sup>1</sup>In 2008, Governor Arnold Schwarzenegger signed Executive Order S-06-08, which proclaimed a condition of statewide drought beginning in 2007. In March 2011, Governor Jerry Brown issued a proclamation declaring the statewide drought at an end.

Attachment 1

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achieve the same water quality the original ACP was designed to achieve. The Sanitation District continues to vigorously enforce the automatic water softener ban in an attempt to remove the remaining units. Furthermore, the Sanitation District is moving forward with an evaluation of future SWP water quality as suggested by the Regional Board. As you recall, the Sanitation District met with Regional Board staff to discuss conditions under which the Regional Board would consider new alternatives for compliance with the Chloride TMDL. The feedback received from the Regional Board indicated that any Chloride TMDL compliance alternative would have to provide similar benefits as the original ACP in order to justify water quality objectives in the range of the conditional SSOs adopted by the Regional Board in December 2008. The Regional Board also indicated additional scientific studies supporting the predicted improvements to future SWP water quality would be required in order for the Regional Board to consider revisions to the Chloride TMDL based on these predictions. Accordingly, the Sanitation District funded a study conducted by the CLWA to provide the required scientific basis to support the predictions of improved SWP water quality. In addition, the Santa Clarita Valley water agencies are evaluating changes in groundwater management practices that would limit chloride levels in the groundwater portion of the local water supply. In combination, these changes are likely to result in maximum chloride levels of 80-85 mg/L in the overall water supply to the community, which would enable the Sanitation District to meet the 2008 conditional SSOs through the Revised ACP proposed by the Sanitation District.

The Sanitation District expects the CLWA study to be completed by late summer 2011 and, if the results are favorable, the Sanitation District proposes to evaluate the Revised ACP using the GSWI Model and prepare SSO and anti-degradation studies in support. As discussed in the May 2, 2011 report, the Sanitation District proposes to confirm feasibility of the Revised ACP and establish revised regulatory requirements through a collaborative process. These steps would allow finalization of the Revised ACP, further development of the facilities plan, completion of associated CEQA analysis, and implementation of the final ACP.

**Ventura County Stakeholder Requests for Regional Board Action Are Not Warranted and Will Not Ensure Compliance**

In the letters sent to the Regional Board, the Ventura County Stakeholders requested the Regional Board take immediate action on the Chloride TMDL to bring the Sanitation District into compliance. These include requests for punitive remedies, immediate reversion to the 100 mg/L standards and issuance of a Cease and Desist Order to the Sanitation District with "a short as possible time schedule to comply. These requested actions are all punitive in nature and will not lead to more rapid achievement of better water quality. As you are aware, the SSOs adopted by the Regional Board were conditioned on implementation of the original ACP. The Chloride TMDL is clear in that if these criteria are not met, the existing water quality objectives in the Basin Plan revert back to 100 mg/L. Pending the results of the Sanitation District's studies, the Sanitation District has requested the Regional Board reopen the Chloride TMDL to incorporate the Revised ACP. This likely cannot happen until 2012 after the studies are completed and the Regional Board has reviewed them. Therefore, no action is required by the Regional Board to rescind the conditional SSOs adopted in 2008 at this time.

Further, the requests by Ventura County stakeholders to impose immediate effluent limits of 100 mg/L in the Sanitation District's NPDES permits is inappropriate as this would go far beyond the need to protect the beneficial uses of the river. The Literature Review Evaluation study conducted as part of the Chloride TMDL found that a protective range for salt sensitive agricultural crops from 100 – 117 mg/L for chloride in irrigation water. Chloride levels in the Sanitation District's Saugus and Valencia Water Reclamation Plant discharges are typically 15-20 mg/L higher than chloride levels in the Santa Clara River near the point of compliance. It is very clear that dilution occurs between the discharges and the point of use over the long term. Failing to consider this fact would result in overstringent regulation. Specifically, imposing effluent limits of 100 mg/L for the WRPs would require large expenditures of

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public funds without providing additional protection to beneficial uses. This would also result in substantially more environmental impacts associated with the construction of facilities to convey and dispose of brine and the greenhouse gas emissions from the energy needed to operate the necessary treatment and disposal facilities.

Compliance with a strict 100 mg/L chloride effluent limits requires implementation of advanced treatment facilities that would require considerable time for planning, design and construction. The Sanitation District could not immediately comply and would in fact need a time extension from the 2016 date contemplated in the Chloride TMDL for compliance with 100 mg/L.<sup>2</sup> The original Chloride TMDL Implementation Schedule provided an eight-year period for the planning, design and construction of the required facilities. In 2006, the Regional Board reduced the Chloride TMDL implementation period but kept intact the eight-year period required for planning, design and construction of the required facilities. In 2008, the original ACP, which included a smaller-scale advanced treatment facility and local brine disposal, allowed the Chloride TMDL implementation schedule to be revised to include only six years for planning, design and construction of the required facilities. If the Regional Board requires 100 mg/L as an effluent limit, the Sanitation District will likely need eight years to comply.

**Sanitation District's Responses to Specific Points in Ventura County Stakeholder Letters**

The following comments are in response to specific comments made by Supervisor Long (April 26, 2011), the United Water Conservation District (UWCD, April 29, 2011), and the Ventura County Agricultural Water Quality Coalition (VCAWQC, April 29, 2011).

*VCAWQC and UWCD Comment (Page 2, last paragraph):*

*... **the chloride problem has continued unabated in the East Piru Basin** along Reaches 4A and 4B and is beginning to contaminate groundwater wells farther west and adjacent to the Santa Clara River.*

Response:

The VCAWQC letter inaccurately states that the chloride problem has continued unabated. As shown in Figure 1, chloride levels in the Sanitation District's WRP discharges have decreased since 2002. Chloride levels in the WRP discharges when the Regional Board originally adopted the Chloride TMDL in 2002 were approximately 190 mg/L. Current chloride levels in the WRP discharge for 2011 are approximately 125 mg/L. During the same periods, chloride in SWP water averaged 83 mg/L in 2002 and 72 mg/L in 2011, a decrease of only 11 mg/L while chloride in the WRP discharges decreased approximately 65 mg/L.

In addition, there is no clear evidence of groundwater well contamination further west based on available data provided by the UWCD, shown in the tables below. Presentations made by UWCD staff at past Regional Board meetings claiming to demonstrate increases in chloride levels are misleading and based on an incomplete data set. UWCD has presented figures that seem to indicate an increase in the number of wells over 100 mg/L in the West Piru basin, however, these figures are misleading as the increase in the number of wells is a direct result of this increase in sampling of additional wells (two wells sampled in 2008 and eight in 2010), not evidence of an "unabated" chloride problem. As shown in the tables below, the sampling frequency in the Piru Basin has been inconsistent and therefore it is difficult to

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<sup>2</sup> Regional Board Resolution No. R4-2006-016 revised the TMDL Implementation plan to achieve compliance with final waste load allocations for chloride of 100 mg/L by May 4, 2016.

Attachment 1

discern a trend of chloride in groundwater. Furthermore, it's inappropriate to look at a set of well data without also considering hydrology and other potential sources of chloride.

Year	West Piru Groundwater Wells												# Wells Sampled		
	V-0039	V-0042	V-0049	V-0051	V-0052	V-0053	V-0060	V-0061	V-0062	V-0070	V-0077	V-0093		V-0095	V-0121
1995															0
1996						46									1
1997															0
1998								59							1
1999						46				87					2
2000						99	45								2
2001						88	48			100					3
2002						84	50	44							3
2003						122		64							2
2004	138						69	74							3
2005	132					62	51	87			67			100	6
2006	96					91	45	39	55		67			103	7
2007	115					91	47	49	62		81			99	7
2008	124	67			81	100		77	69		104			88	8
2009	130	93			120	113			75		90			76	7
2010	128	106			120	115			100		113			83	7

Year	East Piru Groundwater Wells				# Wells Sampled
	V-0012	V-0013	V-0031	V-0036	
1992			110		1
1993			137		1
1994			120		1
1998			100	96	2
1999	108		103		2
2000	119				1
2001	126			119	2
2002	136				1
2003	143				1
2004	140	146		153	3
2005	148			147	2
2006	142			128	2
2007	117			130	2
2008	143		121	131	3
2009	148			131	2
2010	160			126	2

Attachment 1

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*VCAWQC and UWCD Comment (Page 3, third paragraph):*

*In July 2010, the Sanitation District sent a Prop 218-style notice to approximately 35,000 ratepayers in the Santa Clarita Area serviced by the Sanitation District. The Coalition is informed and believes that approximately 7,000 ratepayers responded negatively to the proposed increase. Accordingly, the rate increase should have gone into effect. However, the Sanitation District, responding to a vocal minority outcry of citizens, unilaterally rejected the rate increase thereby eliminating the key source of funding for the Sanitation District to comply with its obligations under the AWRM.*

Response:

While the Sanitation District is exempt from the voting requirements, it must still follow the process specified under Proposition 218. Implementation of rates under Prop 218 is a multi-step process involving individual noticing, a public hearing, and then introduction and adoption of the implementing ordinances. Specifically, the process begins when the Sanitation District Board receives and files a service charge report pursuant to the requirements of the California Health & Safety Code. The service charge report itself does not set the rates; however, it does provide information on what charges are being proposed for collection on the property tax roll. At the same time the Board receives and files the service charge report, it will also authorize the printing and mailing of the public notices required under Prop 218.

Under Prop. 218, an individual notice must be mailed to every property owner whose parcel is connected to the sewer system. In addition to information about the proposed rate increase, the notice provides information to the property owners on how to submit a protest. While most fees and charges are subject to a vote of the property owners, Prop 218 specifically exempts water, wastewater, and trash collection fees from this requirement. Before any action can be taken to implement new rates, the Sanitation District Board must hold a public hearing to consider all public input received. Under the provisions of Prop 218, the Sanitation District Board can take no action on the proposed rates if written protests are submitted by more than 50% of the owners of the impacted parcels. After considering all of the public input, the Sanitation District Board can vote either to introduce a service charge rate ordinance and consider adoption of the ordinance at a subsequent Board meeting, requiring a two-thirds vote, or not approve the rate increases.

In 2009 and 2010, the Sanitation District attempted to implement the Prop 218 process by proposing increased sewer service charge rate increases necessary to implement the original ACP program. Upon providing notice to the affected property owners, the Sanitation District received strong opposition from its constituents. The Sanitation District's elected officials could not support the proposed rate increase in the face of this public opposition, declining to adopt the proposed rate increases.

*VCAWQC and UWCD Comment (Page 4, second paragraph) in VCAWQC letter:*

*One of the arguments being made is that economic hardship to the Sanitation District's ratepayers will result if the Sanitation District is required to proceed with the AWRM program. While the Coalition is sympathetic to these rate payers during recent economic times, it should be noted that the Sanitation District's sewer rates, compared with other water/wastewater rates in California, are one of the lowest in Southern California, even taking into account the proposed rate increase that includes the AWRM program. Indeed, the rate proposed by the Sanitation District would have been phased in over a 5-year period and would not have exceeded approximately \$50.00 per month per ratepayer.*

Attachment 1

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and

*Supervisor Long's Comment (Page 2, fourth paragraph):*

*One of the arguments being made is that economic hardship to the SCVSD-LA County ratepayers will result if they proceed with the AWRM program. While I am sympathetic in these economic times, it should be noted that the SCVSD-LA County's rates, compared with other water/wastewater rates in California, are one of the lowest in Southern California, even taking into account the proposed rate increase that includes the AWRM program.*

Response:

The Sanitation District takes pride in providing a high level of service in the most economical way possible. It should be noted that in addition to the Sanitation District's service charge, ratepayers pay a portion of their property tax, which comes to the Sanitation District, as well as fees for local sewer service. The reason the Sanitation District has been able to maintain competitive service rates is that the Sanitation District's ratepayers supported an investment in modern water recycling facilities and have paid for them over the last several decades, in part with federal funding that was available at the time. Communities that are currently implementing wastewater facilities equivalent to those currently operated by the Sanitation District would be expected to require significant rate increases due to increased costs of construction and lack of available federal funding. The Regional Board should not attempt to penalize the Sanitation District for making these environmentally and financially sound investments many years ago, resulting in the current service charge rates. It should be noted, however, that adoption of the rates necessary to implement the original ACP would not have left the Sanitation District with rates among the lowest in Southern California, as the most recent data indicates the statewide average charge for sewer service is approximately \$33.82 (2007-08).

*VCAWQC and UWCD Comment (Page 4, third paragraph):*

*The efforts of the Sanitation District to avoid its obligations under the AWRM, do not end there. In a recent Notice of Public Hearing regarding a proposed sewer service charge rate increase in Santa Clarita, the Sanitation District conducted still another Prop 218 vote with respect to a proposed sewer service charge rate increase in April 2011. In the Notice of Public Hearing it states in pertinent part:*

*"None of this increase will fund development of facilities to control chlorides in the Santa Clara River. While the District staff will continue to work with the regulators, pursuant to Board direction, to resolve the chloride issue in the most cost-effective and reasonable manner possible, no rate increase to support chloride-related facilities will be proposed until an acceptable plan is developed..."*

*Clearly, the Sanitation District's Board has evinced a clear intent to not comply with the terms of the AWRM.*

Response:

As previously explained, while the Sanitation District must follow certain requirements, Prop 218 specifically exempts water, wastewater, and trash collection fees from requiring a vote of the ratepayers.

**Attachment 1**

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The Sanitation District must ensure sufficient funding to maintain continued operation of its existing treatment facilities to protect public health and the environment. Due to the strong public opposition to raising service charge rates to pay for implementation of Chloride TMDL compliance projects, the Sanitation District declined to adopt any increase in service charge rates as necessary to cover existing operations and maintenance costs for its facilities. In order to ensure adequate funding for these costs, it was necessary to separate the rate increase necessary for these additional expenses to facilitate public understanding of the difference between the rate increases needed for existing facilities with the rate increases needed for Chloride TMDL compliance.

The Sanitation District fully understands the necessity of future rate increases to implement Chloride TMDL compliance measures. However, as the Sanitation District continues to work on developing the Revised ACP, there remains considerable uncertainty as to cost. The Sanitation District is unable to propose increased service charge rates until additional work is completed.

*VCAWQC and UWCD Comment (Page 4, fifth paragraph):*

*Furthermore, in a recent meeting conducted at the offices of the United Water Conservation District in February 2011, representatives of the Sanitation District had the audacity to propose still a new alternative, with no specific plan in mind, and no basic studies supporting their supposed alternative plan. The Coalition believes that this meeting was scheduled for the sole purpose of providing the Sanitation District with a reason to go back to the Board's staff to indicate that the stakeholders were receptive to still another alternative that was more amenable to the Sanitation District and its constituents.*

Response:

The Sanitation District did have a specific plan that it presented to the Ventura County stakeholders in February 2011, which does provide very substantial benefits to Ventura County.

*VCAWQC and UWCD Comment (Pages 4-5, sixth paragraph):*

*As if this were not a compelling story already, there is one last piece of the puzzle that has recently surfaced demonstrating that the chloride situation in the upper Santa Clara River will worsen without the LA Board's intervention. The Coalition is in receipt of the attached letter dated March 16, 2011, from the Santa Clarita Organization for Planning and the Environment ("SCOPE") to the Los Angeles County Region Planning Commission with reference to a proposed development of approximately 6,000 homes in a proposed Mission Village development that would have been treated by the Newhall Ranch Water Treatment Plant. As the attached letter demonstrates, in a letter dated 2003, commenting on this issue for the specific plan DEIR for this proposed development project, the LA Board stated that the chloride issue would be addressed in the permitting process by requiring releases to the Santa Clara River to meet the chloride TMDL. The permit, granted in 2007, in fact required that the 100 mg/L TMDL be met, with the thought that this water treatment plant, promising to be operated with reverse osmosis, would reduce the overall chloride level in the River. Now, however, Newhall is instead proposing to run the first 6,000 units in this project development through the existing Valencia Sanitation District!*

Response:

**Attachment 1**

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The interconnection Agreement with Newhall Ranch was executed in 2002. The Sanitation District does not itself approve growth but it is the Sanitation District's obligation to serve approved growth. The wastewater from Newhall Ranch will be similar in quality to the wastewater from the Valencia WRP and will not raise the chloride concentration of the Valencia WRP discharge.

*VCAWQC and UWCD Comment (Page 5, fourth paragraph):*

*The foregoing process, which began in 2002, remains unabated for the last nine years, and if left to the control of the Sanitation District, will continue unabated through the end of the Chloride TMDL Implementation Plan in 2015. Clearly, the foregoing actions of the Sanitation District evince an intent to delay and fail to comply with the mandates under the AWRM and Chloride Implementation Plan under the guise of economic difficulties. This argument is wearing thin on the stakeholders of Ventura County and should be acknowledged by this Honorable Board as nothing more than a ploy to delay the Sanitation District's obligations under the foregoing laws.*

Response:

As indicated above, the Sanitation District has made considerable progress in reducing chloride levels in its WRP discharges to the Santa Clara River. As shown in Figure 1, chloride levels in the Saugus and Valencia WRPs have been reduced from approximately 190 mg/L in 2002 down to approximately 125 mg/L in 2011, a decrease of approximately 65 mg/L. During the same period, chloride in SWP water averaged 83 mg/L in 2002 down to 72 mg/L in 2011, a decrease of only 11 mg/L. Much of the decrease in chloride levels is a direct result of the Sanitation District's efforts.

Additionally, chloride levels in SWP water during the most recent drought, 2007 to 2010, averaged approximately 75 mg/L, whereas chloride levels during the previous statewide drought, 1987 to 1992, averaged nearly 110 mg/L. CLWA has indicated that this is a result of changes in SWP operation due to recent Biological Opinions for the protection of endangered species (Wanger Decision) and completion of water banking programs along the SWP.

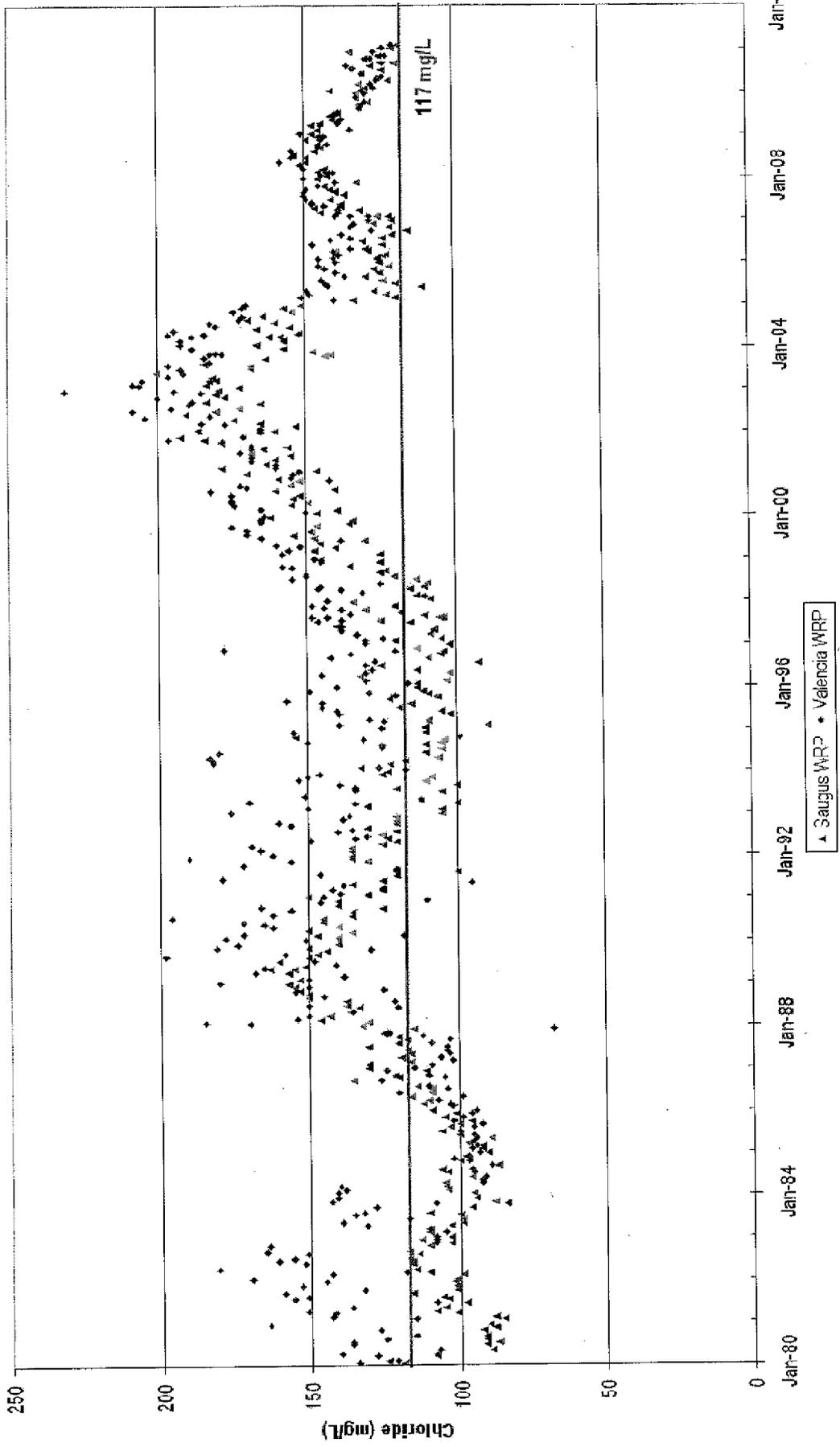
*Supervisor Long's Comment (Page 2, fifth paragraph):*

*Unfortunately, further delay in the implementation and compliance with the Chloride TMDL results in daily degradation of our water resources, and continual impairment of Ventura County's agricultural beneficial uses.*

Response:

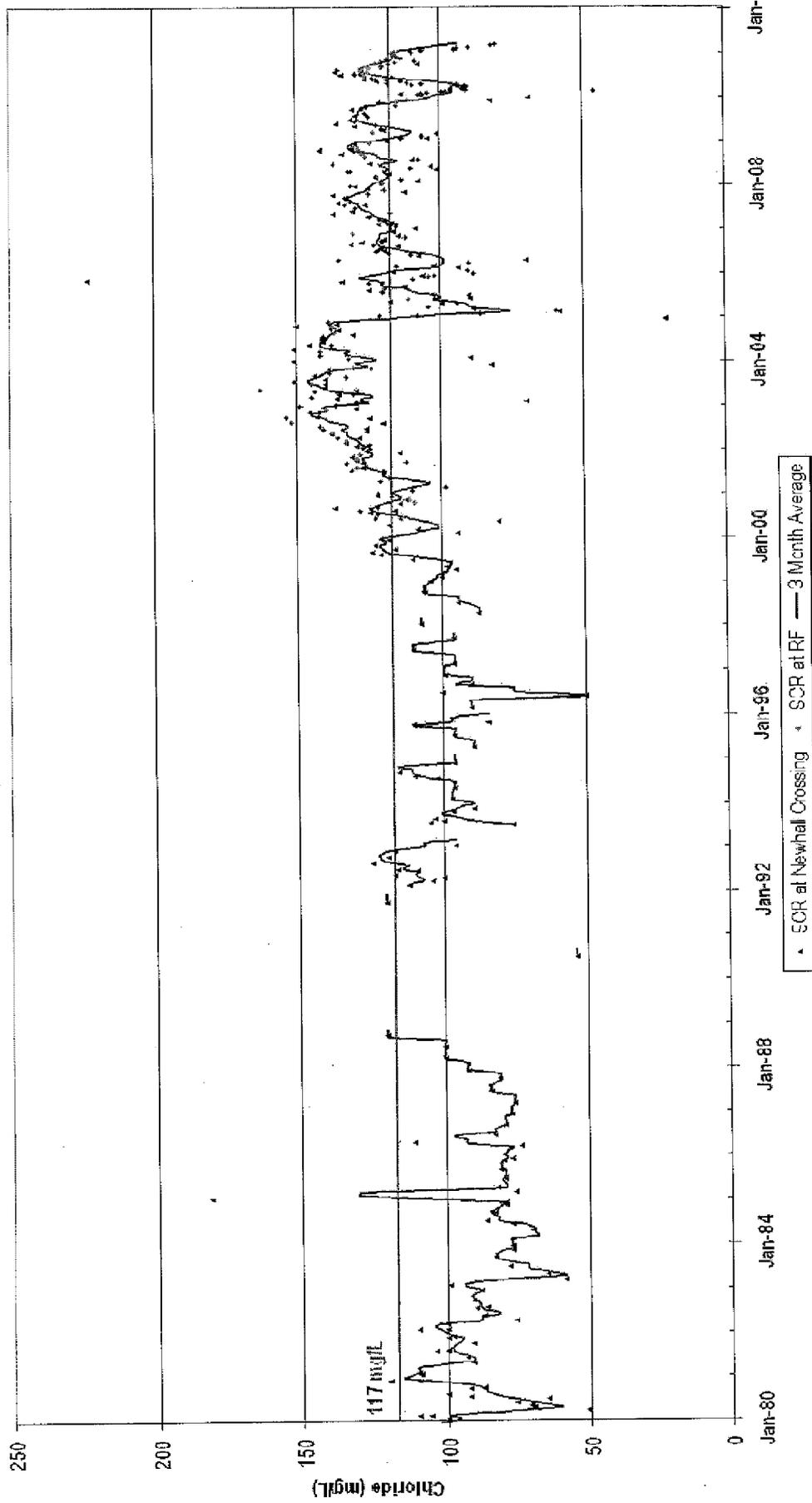
As previously indicated, evidence of "daily degradation" in the Piru basin has not been provided. Chloride levels in the Sanitation District's discharges and the Santa Clara River continue to improve as a direct result of the Sanitation District's efforts as shown on the attached figures. This substantial improvement in water quality over the last several years would not be expected to be immediately observed in groundwater further downstream due to the very slow travel time in groundwater. Furthermore, as discussed above, there is no evidence of continual impairment based on data available today. Please see response above to VCAWQC and UWCD letters.

Figure 1. Saugus and Valencia WRPs Chloride Levels



1994

Figure 2. Santa Clara River near Los Angeles – Ventura County Line Chloride Levels



1995

Figure 3. CLWA SWP Historic Chloride Levels

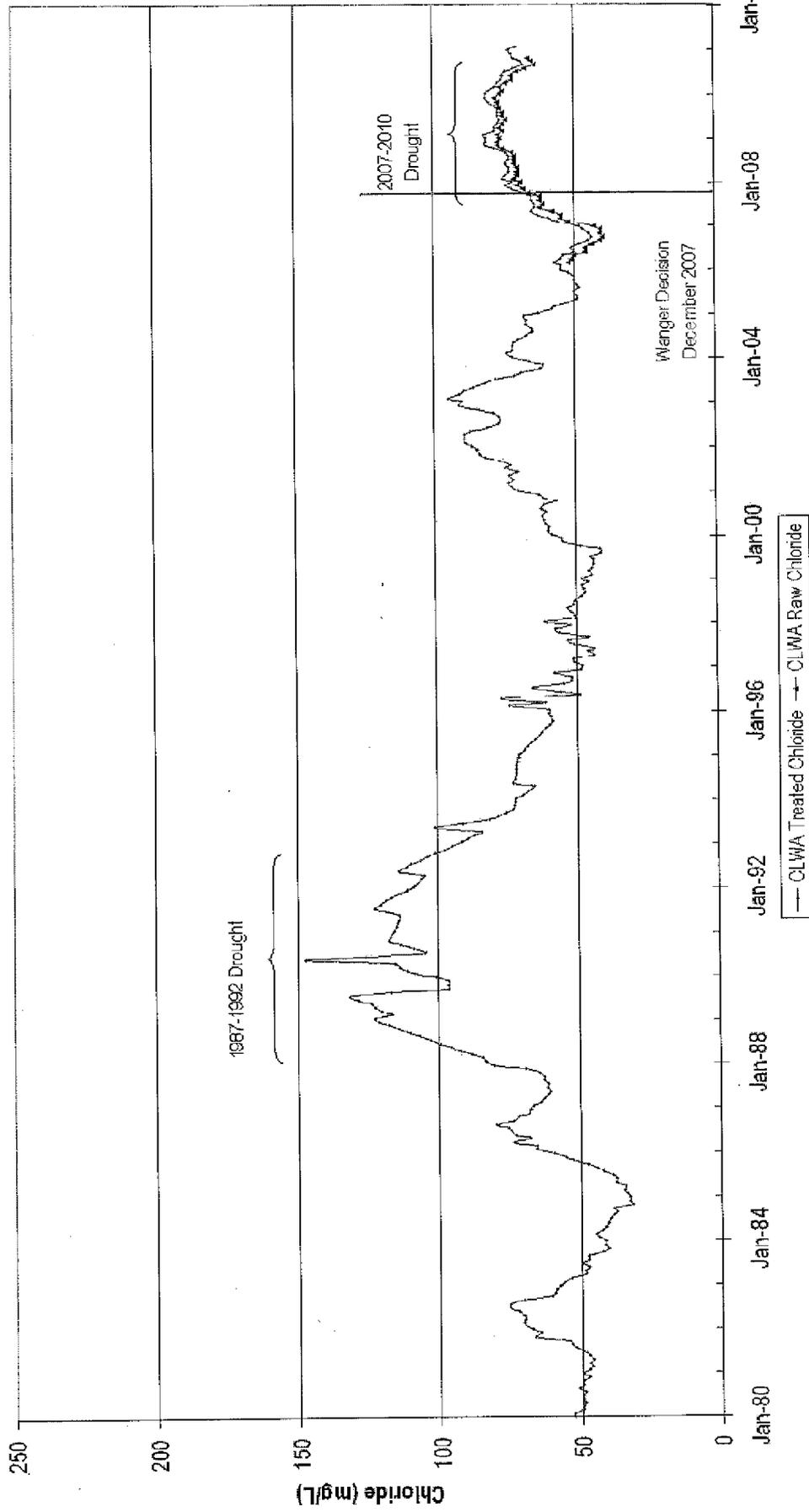
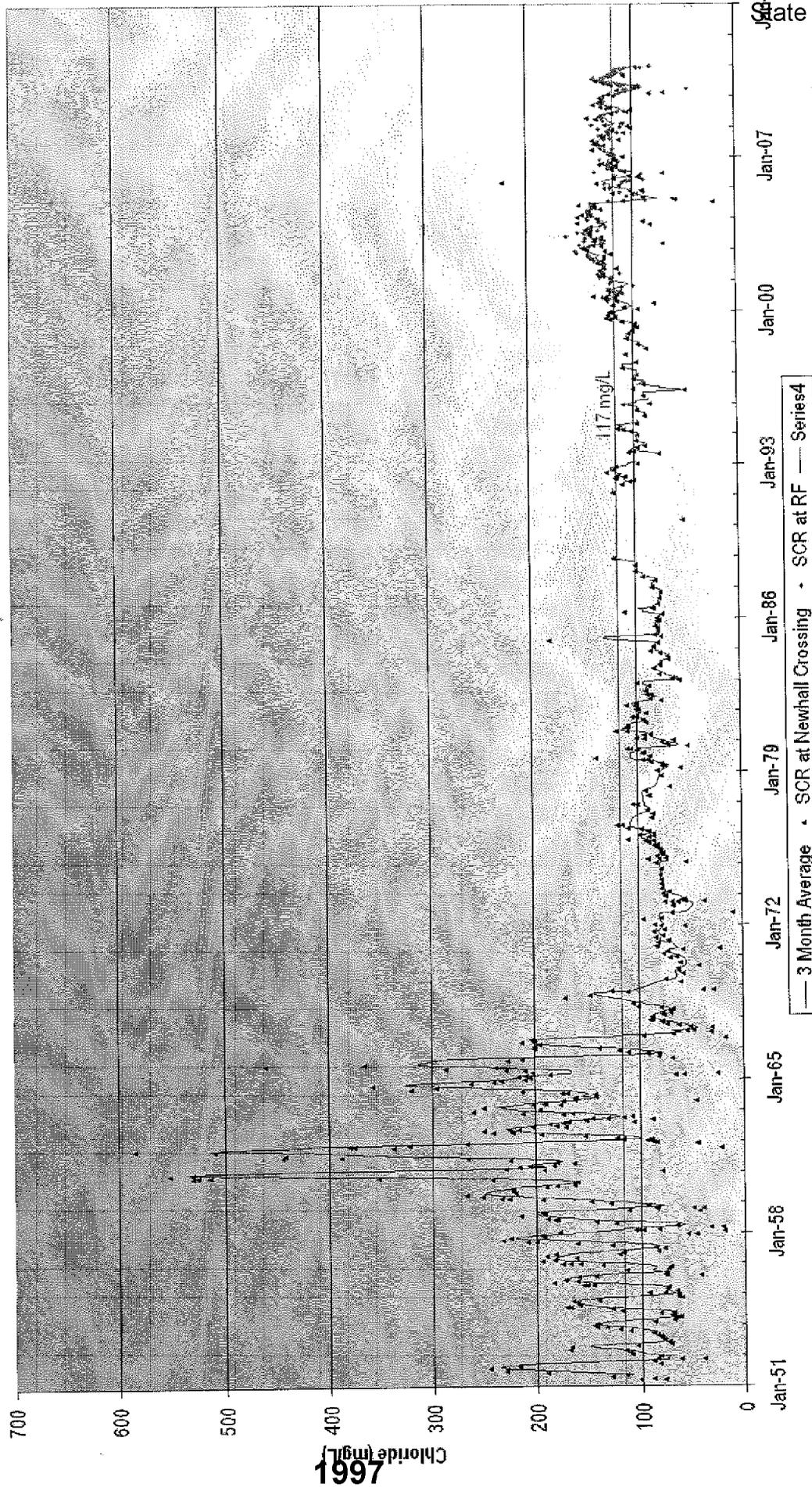


FIGURE 1: CHLORIDE CONCENTRATIONS IN SANTA CLARA RIVER NEAR LOS ANGELES-VENTURA COUNTY LINE



# **SUPPLEMENTAL EXHIBIT B**

**1998**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED

AUG 15 2011

LOS ANGELES  
SUPERIOR COURT

STATE OF CALIFORNIA DEPARTMENT )  
OF FINANCE, ET AL )  
Petitioners )

vs )

COUNTY OF LOS ANGELES, ET AL )  
Respondents )

CASE NO. BS130730

**COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON  
AUGUST 10, 2011**

Petitioners State of California Department of Finance, the State Water Resource Control Board ("State Board") and the Los Angeles California Regional Water Quality Control Board ("Regional Board") seek to set aside a decision of the Respondent Commission of State Mandates ("Commission").

After considering the parties' briefs and relevant evidence<sup>1</sup>, having heard argument and having taken the matter under submission, the Court rules as follows:

**Statement of the Case**

This case involves the efforts of the Real Parties in Interest to obtain a subvention of funds for costs resulting from an executive order mandated by a state agency and contained in a storm water permit issued in 2001 to these cities and other cities in Los Angeles County and the Los Angeles Flood Control District.

An understanding of the interplay of the varied regulatory schemes underlying these orders and permits is necessary to an evaluation of the matters before the Court.

1. Environmental Regulations Under the Clean Water Act.

In 1972, Congress passed the Clean Water Act. The Clean Water Act sought to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33

<sup>1</sup> In addition to the administrative record, the court takes judicial notice of the matters sought to be noticed by Petitioners and Real Parties.

U.S.C. § 1251(a). The Clean Water Act prohibits the discharge of pollutants from “point sources” to waters of the United States unless provided for under the national Pollutant Discharge Elimination System (“NPDES”). 33 U.S.C. § 1311, 1342; Communities for a Better Environment v. State Water Resources Control Board, 109 Cal. App. 4th 1089, 1092-93 (2003).

Either the United States Environmental Protection Agency (“EPA”) or a U.S. EPA-approved state may issue NPDES permits.<sup>2</sup> 33 U.S.C. § 1342(a)(1) & (b). Congress concluded that the U.S. EPA could not only issue permits, but also allowed states to elect to take on that federal responsibility. Environmental Protection Agency v. California ex rel. State Water Resources Board, 426 U.S. 200, 219 (1976). California has the approval of the U.S. EPA to issue NPDES permits. Building Industry Association of San Diego County v. State Water Resources Control Board, 124 Cal. App. 4th 866, 875 (2004).

If a state elects to issue NPDES permits, it must ensure that the permits comply with many different federal requirements, including effluent limitations and national standards, and states must also provide for the continued inspection and monitoring of pollutants into the waters. 33 U.S.C. §§ 1342(b)(1), 1311, 1312, 1316, 1317, 1319(a)(1), (3) and 1365(a)(1). And, to ensure that the state programs comply with these federal mandates, the EPA maintains oversight and supervision of these programs. For example, the state must provide the U.S. EPA with proposed permits and notice of any action related to a discharger’s permit application. 33 U.S.C. § 1342(d)(1). The EPA may object to the permit and should the federal agency find that a state program does not comply with NPDES program guidelines, it may withdrawal approval of the state program. 33 U.S.C. § 1342(c)(3).

While many types of discharge require NPDES permits under the Clean Water Act, this case deals only with one type – discharge of pollutants through municipal storm sewer systems. This type of discharge is referred to as either MS4 or storm sewer systems. Controlling municipal storm water runoff is important because it constitutes one of the most significant sources of water pollution. Environmental Defense Center, Inc. v. EPA, 344 F.3d 832, 840 (9th Cir. 2003).

The Clean Water Act requires municipal storm water discharges, such those from the County of Los Angeles, “to reduce the discharge of pollutants to the maximum extent practicable,” including management practices, control techniques and system, design and

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<sup>2</sup> In 1973, pursuant to an amendment to the Porter Cologne Water Quality Control Act, California became the first state to be approved by the U.S. EPA to administer the NPDES permit program. County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern, 127 Cal. App. 4th 1544, 1565-66 (2005). As amended, the Porter-Cologne Act mandates that “waste discharge requirements for discharge from point sources to navigable waters shall be issued and administered in accordance with the currently applicable federal regulations for the . . . (NPDES) program.” 23 Cal. Code of Regulations § 2235.2. Nine regional boards, including the Los Angeles California Regional Water Quality Control Board, administer the program, with oversight by the State Board. See Water Code §§ 13140, 13200 et seq.. While the Porter-Cologne Act requires that Chapter 5.5 be “construed to ensure consistency with the requirements for state programs,” state regulators may impose restrictions in NPDES permits that go beyond the requirements of the Clean Water Act. Water Code section 13377.

engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” 33 U.S.C. § 1342(p)(3)(B). The “maximum extent practicable” standard is a technology-forcing requirement designed to foster innovation. See, e.g., Chemical Mfrs. Ass’n v. Natural Resources Defense Council, 470 U.S. 116, 155-56 (1985).

But, unlike many other technology-based requirements, the U.S. EPA directed that permit writers would identify the municipal storm water requirements on a permit-by-permit basis.<sup>3</sup> Natural Resources Defense Council v. U.S. EPA, 966 F.2d 1292, 1308 n. 17 (9th Cir. 1992); 55 Fed. Reg. 47990, 48043 (Nov. 16, 1990). “

“Unlike NPDES industrial wastewater permits which typically contain specific end-of-pipe effluent limits based on . . . available treatment technology, MS4 permits usually include programmatic requirements involving the implementation of best management practices (BMP) in order to reduce pollutants discharged to the maximum extent practicable (MEP).

(AR 3393). See also Natural Resources Defense Council, *supra*, 568 F. 2d at 1380. Federal regulations define these practices to mean, *inter alia*, “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States’.”<sup>4</sup> 40 C.F.R. § 122.2. Permittees are often allowed flexibility in the types of BMP and activities implemented to meet permit requirements. (AR 3393).

Before discharging pollutants from point sources under an MS4 permit, a public entity must file an application that addresses, among other things, the management programs in place to reduce the discharge of pollution using the maximum extent practicable standard. 40 C.F.R. § 122.26 et seq. These management programs must address discharges into the storm system from both the general population and from industrial and construction activities within the jurisdiction. *Id.*

Starting in 1990, the Regional Board issued municipal storm water permits to the County of Los Angeles.<sup>5</sup> At issue in this case is Regional Order No. 01-182, NPDES permit

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<sup>3</sup> Regulating storm water discharges is generally considered to be more difficult than regulating traditional point resources, e.g. effluent levels discharged at factories or from sanitary treatment systems. (AR 5151). These traditional point sources have engineered treatment systems and the NPDES permits for these facilities generally contain numeric effluent limitations that must be met at the end of the discharge pipe. (*Id.*) By contrast, municipal storm water systems require controls to reduce the discharge of pollutants to the maximum extent practicable. (*Id.*)

<sup>4</sup> The U.S. EPA issues guidance documents that discuss the types of “best management practices.” At the time that the claims at issue in this case were considered by Commission, the U.S. EPA had an MS4 Program Evaluation Guide. (AR 3391-94). In that Guide, the EPA addressed inspections of businesses and refuse-related issues. (AR 3468-69, 3440).

<sup>5</sup> Before 1990, storm water discharges were not regulated under either state or federal law. On June 18, 1990, the first permit (90-079) was issued. This NPDES permit for the discharge of municipal storm water

number CAS004001, adopted on December 31, 2001. (AR 3495-3576). As part of that permit, the Regional Board made 66 findings concerning the permit's factual and legal basis. (AR 3505-19). For example, the Regional Board found that the proposed permit "[was] intended to develop, achieve and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable . . . ." (AR 3507).

2. Subvention and the Commission on State Mandates.

In November 1979, the voters adopted Proposition 4, which added article XIII B to the State Constitution. Hayes v. Commission on State Mandates, 11 Cal. App. 4th 1564, 1580 (1992). Article XIII B, called the "Gann limit," restricts the amounts that state and local governments may appropriate and spend each year from the proceeds of taxes. City of Sacramento v. State of California, 50 Cal. 3d 51, 58-59 (1990). Section 6 of article XIII B calls for state subvention by requiring the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. County of Los Angeles v. State of California, 43 Cal. 3d 46, 56 (1987).

But, constitutional subvention is not required when the costs implement federal law. Article XIII B, section 9, subdivision (b) excludes from the state or local spending limit any "appropriations required to comply with mandates of the . . . federal government." See also Sand Diego Unified School Dist. v. Commission on State Mandates, 33 Cal. 4th 859, 879-80 (2004) (the Gann limit provides for reimbursement of state-mandated costs, not federal ones). This prohibition against reimbursement for activities imposed by federal law is specifically stated in Government Code section 17556, subdivision (c). Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, 55 Cal. App. 4th 976, 984 (1996). The Commission shall not find "costs mandated by the state" if "the statute or executive order "imposes a requirement that is mandated by federal law or regulation and results in costs mandated by the federal government, *unless the statute or executive order mandates costs that exceed the mandate in the federal law or regulation.*"<sup>6</sup> Gov't Code section 17556, subdivision (c) (emphasis added).

The Commission on State Mandates is a quasi-judicial agency vested with the sole and exclusive authority to adjudicate all disputes over the existence and reimbursement of state-mandated programs within the meaning of article XIII B of the California Constitution. Kinlaw v. State of California, 54 Cal. 3d 326, 342-43 (1991). Local agencies file claims with the Commission for reimbursement of state-mandated costs under article XIII B, section 6. Gov't Code §§ 17551, 17560. The first claim filed by a local agency alleging that a statute or executive order imposes a reimbursable cost is a

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was replaced on July 15, 1995 (96-054). (AR 3501). In addition, the State Board has issued two general NPDES permits for storm water discharges from industrial and construction sites. (AR 3511).

<sup>6</sup> "Costs mandated by the federal government" is defined as "any increased costs incurred by a local agency or school district after January 1, 1975, in order to comply with the requirements of a federal statute or regulation." Gov't Code section 17514.

“test claim.” Gov’t Code § 17521. A public hearing is held on the test claim at which time evidence may be presented by the claimant, the Department of Finance, or any other state agency affected by the claim, and any interested organization or individual. Gov’t Code § 17555.

The Commission determines in the first instance if a state-mandated program exists. Gov’t Code § 17551. If so, the Commission adopts parameters and guidelines for the reimbursement of claims submitted by eligible claimants. Gov’t Code § 17557, subdivision (a). Thereafter, the Controller issues claiming instructions for each mandate that requires reimbursement. Gov’t Code § 17558, subdivisions (a) and (c). Judicial review of the final Commission decision is available through a petition for writ of mandate filed pursuant to Cal. Code of Civ. P. section 1094.5. Gov’t Code § 17559.

### 3. The Test Claims at Issue Here

The County of Los Angeles and several cities, who are the Real Parties in Interest, presented “test claims” to the Respondent Commission in September 2003. The Real Parties sought subvention of state funds for four requirements contained in the NPDES permit number CAS004001, adopted on December 31, 2001: (1) to place and maintain trace receptacles at transit stops; (2) to inspect certain commercial facilities; (3) to inspect certain industrial facilities; and (4) to inspect construction sites.<sup>7</sup> (AR 13-14). These parties asserted that these requirements exceeded the federal mandate under the law and regulations of the Clean Water Act.

The Commission initially rejected the claims, citing Government Code section 17516(c), exempting from the term “executive order” any orders issued by regional quality control boards or the State Board. The Commission’s ruling was ultimately reversed by the Superior Court, and that decision was affirmed by the Court of Appeal. See also County of Los Angeles v. Commission on State Mandates, 150 Cal. App. 4th 898, 904 (2007).

The test claims were re-filed with the Commission. (AR 5557). On July 31, 2009, Respondent issued a Statement of Decision. (AR 5555- 5625). In relevant part, the Commission determined that the challenged permit provisions were not federal mandates. (AR 5574-5603). And, the Commission determined that the permit activities challenged here imposed new programs or higher level of services on the County of Los Angeles.<sup>8</sup> (AR 5603-04).

With respect to the federal mandate findings, the Commission found that these four challenged provisions exceeded the requirements of the CWA and federal regulations and

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<sup>7</sup> None of these challenged requirements was proposed by the Real Parties when they applied for the NPDES permit at issue in this case. (AR 3663-3794). Rather, these requirements were added by the Regional Board, over the real parties’ objections. (AR 3553, 3533-338, 3546-49).

<sup>8</sup> The Commission further found that the state was required to reimburse the real parties for the trash receptacle obligation, but not for the inspection obligations as the real parties had the ability to raise fees to pay for these inspections. This aspect of the Commission’s decision necessarily fails under the analysis described below, but will not be specifically considered as the subject of this petition involves whether these inspections are state mandates in the first instance, not whether they are properly reimbursable.

that the state “freely chose” to impose them on the Real Parties. (AR 5578, 5582-86). The Commission analyzed the federal regulations, including 40 CFR 122.26 *et seq*, and concluded that these rules did not expressly require the installation and maintenance of receptacles, or conducting certain inspections. (AR 5578, 5584, 5590, 5591, 5595, 5601). As for the conclusion that these four permit requirements were “new programs,” the Commission noted that these activities were not contained in the previous permits issued to the County of Los Angeles, and were imposed only on local agencies and not on the general public. (AR 5603-04).

On July 20, 2010, Petitioners filed this Petition.

### Standard of Review

Petitioner seeks review of the Board’s decision under CCP section 1094.5. CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ann’s for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514-15 (1974).

The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP § 1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(c).

A review of the Commission’s factual determinations proceeds under the substantial evidence test. City of Richmond v. Commission on State Mandates, 64 Cal. App. 4th 1190, 1194-95 (1998). Applying that test, the Court must ensure that findings are legally relevant as well as supported by the evidence. See City and County of San Francisco v. Board of Permit Appeals, 207 Cal. App. 3d 1099, 1110 (1989). Substantial evidence review also includes a duty to determine whether the agency committed errors of law in applying the facts before it. *Id.* at 1111. Whether a statute creates a reimbursable state mandate is a question of law. Connell v. Superior Court, 59 Cal. App. 4th 382, 395 (1997); Long Beach Unified School Dist. v. State of California, 225 Cal. App. 3d 155, 174 (1990). Questions of law are subject to *de novo* review. City of Richmond, supra, 64 Cal. App. 4th at 1105.

An agency is presumed to have regularly performed its official duties. (Ev. Code § 664). The Petitioner, therefore, has the burden of proof to demonstrate wherein the proceedings were unfair, in excess of jurisdiction, or showed prejudicial abuse of discretion. Alford v. Pierno, 27 Cal. App. 3d 682, 691 (1972).

### Analysis

Petitioners assert two arguments in support of their contention that the Commission erred and must be reversed. They shall be evaluated separately.

1. The Challenged Receptacle Requirement Is a Federal Mandate.

There is a two-step test to determine whether a particular program is mandated by federal law and not, therefore, subject to state subvention.

First, did the state have “no real choice” in deciding whether to comply with the federal act? Hayes, supra, 11 Cal. App. 4th at 1594. A federal mandate exists even if “the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no true choice in the manner of implementation of the federal mandate. Id. at 1593. But, “[t]his reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state.” Id. For example, in City of Sacramento, supra, 50 Cal. 3d at 73-74, the Supreme Court explained that certain regulatory standards imposed by the federal government are “coercive . . . in every practical sense.” But, there is no requirement of such compulsion under article XIII B. Id. at 76 (there is “no final test for ‘mandatory’ versus ‘optional’ compliance with federal law.”) Rather, the standard depends on a number of factors, such as the nature and purpose of the federal program; whether its design suggests an intention to coerce; when state participation began, and the practical consequences of non-participation, non-compliance or withdrawal. Id.

Second, did the program exceed the requirements of a compulsory federal law? San Diego Unified School Dist. v. Commission on State Mandates, 33 Cal. 4th 859, 880 (2004).

Petitioners assert that the Commission’s entire analysis is analytically defective as a matter of law. For the reasons set forth below, the Court agrees.

First, the Commission’s conclusion that the state has “freely chosen” to implement the storm water permit program is legally incorrect. The reasons given, *i.e.*, (1) that California “voluntarily adopts the [NPDES] permitting program” and (2) because federal law “does not expressly require states to have this program,” do not equate with a conclusion that the NPDES permitting program at issue here is optional.

A review of the Clean Water Act clearly dictates that NPDES permits issued – by either the U.S. EPA or a qualified state agency – are not voluntary. Federal law requires the County of Los Angeles to have an NPDES permit for municipal storm water discharges. That same federal law compels those permits to educe the discharge of pollutants to the maximum extent practicable.<sup>9</sup> This federal statutory scheme mandates NPDES permitting, even if California took no action at all. And, if California did not administer its own water quality program through the Porter-Cologne Act, California’s dischargers,

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<sup>9</sup> Congress established the maximum extent practicable standard because municipal storm water runoff, unlike other pollutant discharges, could not be adequately addressed by blanket effluent limitations. Building Industry Ass’n of San Diego County v. State Water Resources Control Board, 124 Cal. App. 4th 866, 884 (2004).

both private and governmental, would still have to comply with federal law – and be directly regulated by the federal government.<sup>10</sup>

Second, there is no substantial evidence in the administrative record to support the Commission's conclusion that the state's mandate in this instance was inconsistent with or more stringent than the Clean Water Act's "maximum extent practicable" requirement.<sup>11</sup> Rather, the Commission simply concluded that the claimed permit requirements were in excess of federal mandates because they could not be located in certain identified federal regulations.<sup>12</sup> (AR 5584, 5591, 5595). Unless expressly dictated by an identifiable federal regulation, the Commission concluded that such requirements are state mandates.

The search for a comparable federal regulation as the pre-condition for finding a federal mandate utterly ignores and misapplies the flexible regulatory standard inherent in the Clean Water Act. The "maximum extent practicable standard" is designed to provide administrative bodies the "tools to meet the fundamental goals of the Clean Water Act in the context of storm water pollution." Building Industry Ass'n of San Diego County v. State Water Resources Control Board, 124 Cal. App. 4th 866, 884 (2004). That flexible standard was designed to allow permit writers to use a combination of pollution controls that may be different in different permits. In re City of Irving, Texas, Municipal Storm Sewer System, (July 16, 2001), 10 E.A.D. 111 (E.P.A.), \*6. And, the flexible standard provides an agency to tailor permits to the "site-specific nature of MS4," and the ability

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<sup>10</sup> And, such an outcome would be clearly contrary to the Legislative intention behind Porter-Cologne. "It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act. Water Code § 13370, subdivision (c).

<sup>11</sup> The Real Parties assert that the State Board has held that the "maximum extent practicable" standard does not apply to permit requirements that address the entry of pollutants into the storm sewer system. See In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association, State Water Board Order WQ 2001-15. A review of that case, however, fails to support that contention. The administrative decision presented different circumstances and involved different permit requirements. That order concerned an attempted prohibition on all discharges into the municipal storm sewer system until the pollutants had been reduced to the maximum extent practicable. The State Board found the order too broad because it restricted all discharges and, therefore, necessarily interfered with a flexible approach to the mix of pollutant reductions before reaching the storm sewer system, and after – so long as the overall reductions are to the maximum extent practicable. Water Quality Order WQ 2001-15 does not undermine the EPA's recognition that municipal storm water programs will include requirements that reduce pollutants before reaching the storm sewer, including *inter alia*, the capacity to direct permit requirements at the sources of pollution, rather than solely at the end of the pipe. City of Irving, *supra*, 10 EAD 111 at \* 6. The Water Board Order simply did not consider the issue of whether the maximum extent practicable standard contained in the Clean Water Act prohibits control of discharges into a municipal storm sewer system.

<sup>12</sup> The Commission's reliance on Long Beach School Dist. v. State of California, 225 Cal. App. 3d 155, 173 (1990) is misplaced. In that case, the court concluded that a state executive order mandating desegregation was a state mandate because it required schools to provide a higher level of service than was required by the federal constitution. *Id.* at 187. In this case, the federal applicable law, *i.e.*, the maximum extent practicable standard, directly mandates the type of requirements included in the instant permit.

to direct permit requirements “at the sources of pollution in the MS4 rather than solely at the end of the pipe.” Id.

To ignore this flexible standard imposed and mandated under the Clean Water Act, and instead to require a comparable federal regulatory dictates, is legally erroneous.<sup>13</sup> Under the Commission’s approach, a permit requirement that is merely practicable or easy (not even practicable to the maximum extent) would be a state mandate if the U.S. EPA failed to express the requirement as a regulation.<sup>14</sup> Such an approach is clearly erroneous.

Third, the Commission erred in isolating a specific requirement to conclude that the issued NPDES permit was a state mandate. One permit provision cannot exceed the “maximum extent practicable” standard imposed by the Clean Water where the permit as a whole does not. (AR 3517). For example, the placement and maintenance of trash receptacles is fairly included within those management practices for maintaining public streets in such a way to reduce the impact on receiving waters of discharges from municipal sewer systems. See, e.g., 40 C.F.R. § 122.26(d)(2)(iv)(A)(3).

That the receptacle and inspection requirements were not included in previous permits issued by the County does not take this regulation out of the purview of the Clean Water Act. The U.S. EPA “anticipates that storm water management programs will evolve and mature over time.” 55 Fed. Reg. 48052. Thus, the permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. Id. Given that the federal regulatory scheme anticipates changing permit requirements, that these requirements have not yet been articulated does not mean that the requirement exceeds the “maximum extent practicable” standard.

As Petitioners argue, if litter and debris cannot be properly disposed of by persons waiting at transit stops, the inevitable downstream result will be the introduction of pollutants into the streets and, thereafter, into the storm drains – leading inevitably to the discharge of pollutants into the nearby waterways. It cannot be seriously doubted that the placement and maintenance of trash receptacles at transit stops will help prevent the introduction of these known contaminants into the water. As the trash receptacle requirement is an obvious remedy, it is clearly within the maximum extent practicable

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<sup>13</sup> “The permitting agency has discretion to decide what practices, techniques, methods, and other provisions are appropriate and necessary to control the discharge of pollutants.” City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region, 135 Cal. App. 4th 1377, 1389 (2006). The only requirement is that the Regional Board comply with federal law requiring detailed conditions for NPDES permits. Id.

<sup>14</sup> While there may be other cases in which the state agencies may impose standards that clearly exceed those imposed under a “maximum extent practicable” approach to storm water pollutants in the Clean Water Act, this case does not present that situation. See, e.g., Water Code § 13377 (allowing for more stringent state effluent standards); 33 U.S.C. § 1370 (allowing for more stringent state pretreatment standards). See also City of Burbank v. State Water Resources Control Board, 35 Cal. 4th 613, 628 (2005). There is nothing in the administrative record here to support a conclusion that placing receptacles at transit stops is not practicable, much less not practicable to the maximum extent.

standard. In fact, the County's own proposal recommended minimizing trash from entering waterways by removing trash from open channels, and controlling litter and debris in the street. (AR 3677-78).

As the trash receptacle requirement of the NPDES permit is within the maximum extent practicable standard under the mandatory provisions of the Clean Water Act, it is imposed by federal law and is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

2. The Inspection Provisions in the Permit Are Not State Mandates.

The remaining challenged permit activities related to the inspection of certain commercial and industrial facilities and construction sites. A portion of the permit pertains to inspections of commercial facilities, such as restaurants, automotive service facilities and retail gasoline stations. While each commercial property has unique inspection requirements, the permit requires that all facilities be inspected on a regular basis, twice during the five year permit period, to confirm that best management practices are being effectively implements with the law. (AR 3533-36). Another portion of the permit requires the inspection of certain industrial facilities referred to in the permit as Phase I Facilities. (AR 3535-36). And, a third part of the permit provides that a program be implemented to control runoff from construction activity to storm drains at all construction sites within its jurisdiction. (AR 3546-47).

As with the receptacle requirement, these inspection mandates are clearly pursuant to the maximum extent practicable standard under the Clean Water Act.<sup>15</sup> And, in addition, federal regulations also specifically contemplate inspections of industrial facilities (40 C.F.R. § 122.26 (d)(2)(iv)(B) & (C)), and construction sites (40 C.F.R. § 122.26 (d)(2)(iv)(D)). As discussed above, the Commission's rationale that these are not federal mandates because they are not expressly dictated by federal regulation is erroneous.<sup>16</sup> (AR 5591, 5600). A federal mandate does not require explicit mention of every mandated activity. Rather, the relevant inquiry is whether these inspection activities fall within the Clean Water Act's maximum extent practicable standard. As there is nothing in the record to suggest that they exceed this standard, the Commission's conclusion to the contrary must fail.

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<sup>15</sup> The County of Los Angeles acknowledged that site inspections are within the maximum extent practicable standard because they recommended inspections in their permit applications as well. (AR 3671).

<sup>16</sup> Nor does the Commission's reliance upon the existence of a statewide general industrial permit (GIASP) to negate the existence of a federal mandate make sense. (AR 5594). The issue properly framed is whether the inspection requirements are mandated under the federal Clean Water Act, not whether they may also be required under the GIASP permit. At most, "the GIASP permit may add additional inspections at the time and expense of the state." Opening Brief at 28. Although extensively argued to the Court, the existence of mutual inspection schemes does not constitute a derogation of state responsibilities to the real parties, in violation of Hayes. There is only a single question (asking for a certain permit number) that is obtained by the real parties under the existing permits that would otherwise be obtained by the state under its separate inspection obligations.

Nor are these inspections create requirements in excess of the federal mandate because they were not previously imposed.<sup>17</sup> While they had not been previously required, this fact does not dictate the conclusion that they are not federal mandates. A requirement that the discharge of pollutants requires a NPDES permit is neither new nor different. And, the inclusion of new and advanced measures is clearly anticipated under the Clean Water Act. 55 Fed. Reg. 48052. As conditions and technologies change, the maximum extent practicable standard will similarly change. *Id.* Given that the federal regulatory scheme anticipates changing permit requirements, that these requirements have not yet been articulated does not mean that the requirement exceeds the “maximum extent practicable” standard.

Accordingly, these inspection requirements are federal, not state, mandates and are not subject to reimbursement under article XIII B, section 6 of the California Constitution.

### **Conclusion**

For these reasons, the writ is GRANTED and the matter is remanded for further proceedings consistent with this decision and judgment.

Counsel for Petitioners is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

The Court’s ruling, signed and filed this date, shall be deemed to be the Court’s Statement of Decision.

DATED: AUGUST 15, 2011

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ANN I. JONES, JUDGE OF THE SUPERIOR COURT

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<sup>17</sup>Although not previously required, the County of Los Angeles specifically included the inspection of commercial and industrial facilities in its application. (AR 3680-71). Essentially, the County admitted that its “site visit program” was clearly mandated under the maximum extent practicable standard. The County also included extensive and detailed measures relating to the control and containment of construction site wastes and erosion, including inspection of these sites. (AR 3672-74).

## COMMISSION ON STATE MANDATES

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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

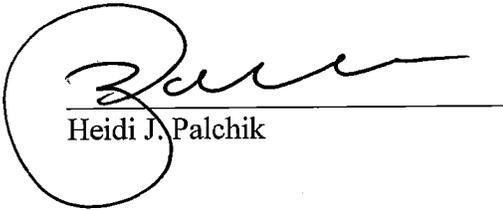
I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 29, 2011, I served the:

**Claimant Rebuttal Comments*****Upper Santa Clara River Chloride Requirements, 10-TC-09*****Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008****Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2011 at Sacramento, California.



Heidi J. Palchik

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 9/29/2011  
List Print Date: 09/29/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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## COMMISSION ON STATE MANDATES

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September 20, 2013

Mr. Daniel V. Hyde, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
221 N. Figueroa Street, Suite 1200  
Los Angeles, CA 90012

*And Interested Parties and Affected State Agencies (See Mailing List)*

Re: **Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

Dear Mr. Hyde:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

#### Written Comments

Any party or interested person may file written comments on the draft staff analysis by **October 11, 2013**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

#### Hearing

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 22, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Matt Jones at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM  
TEST CLAIM  
DRAFT STAFF ANALYSIS**

**AND**

**PROPOSED STATEMENT OF DECISION**

Los Angeles Regional Water Quality Control Board  
Resolution No. R4-2008-012, adopted December 11, 2008,  
approved by United States Environmental Protection Agency  
April 6, 2010.

*Upper Santa Clara River Chloride Requirements*

10-TC-09

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission's regulations.

**EXECUTIVE SUMMARY**

**Overview**

This test claim alleges a reimbursable state mandate resulting from Resolution R4-2008-012, adopted December 11, 2008 by the Regional Water Quality Control Board for the Los Angeles region (Regional Board). To assist the reader, there is a glossary of frequently used water quality related terms and acronyms on page 50. The prior Basin Plan had imposed a maximum pollutant concentration for chloride, or total maximum daily load (TMDL) of 100 mg/L for the Santa Clara River and waste load allocations (WLAs) of 100 mg/L for the Santa Clarita Valley Sanitation District's (District) two Water Reclamation Plants (WRPs). The test claim Resolution revised that Basin Plan and TMDL to include a revised, less stringent, TMDL and WLAs, providing greater flexibility to claimant with regard to chloride discharges into the river. The amended Plan also significantly reduced the costs to comply with the TMDL and WLAs when compared to the prior TMDL. The revised TMDL calls for the implementation of an Alternative Water Resources Management program (AWRM), in order to meet conditional site-specific objectives (SSOs) for water quality in Reaches 4B, 5, and 6 of the Santa Clara River, and conditional WLAs of 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B for the District's two WRPs.

The District alleges, however, that meeting the SSOs and WLAs will require significant advanced treatment and other technological upgrades, and a number of other water supply control measures to control chloride concentrations in the Santa Clara River, especially during periods of higher concentration in the water supply and groundwater (i.e., during periods of lower precipitation). The District alleges that these upgrades and control measures result in costs

of approximately \$250.7 million. R4-2008-012 also includes a number of Implementation Tasks, consisting primarily of requirements to perform technical and scientific studies of the surface and groundwater, and evaluation of appropriate chloride thresholds, which the District alleges impose costs of approximately \$6.6 million.

Staff recommends the Commission deny this test claim on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program does not impose a new program or higher level of service, but a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

Because staff recommends that this test claim be denied on the grounds stated above, the proposed statement of decision does not make findings on whether claimant is practically compelled to implement the Alternative Water Resources Management activities or whether the Alternative Water Resources Management activities, TMDLs or WLAs are mandated by federal law.

### Background

The federal Clean Water Act (CWA) states that it is the policy of Congress “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution...” The CWA employs two primary mechanisms for the control and prevention of water pollution: identification and standard-setting for bodies of water, and identification and regulation of dischargers of pollutants. Section 1313 provides for standard-setting for both intra- and inter-state bodies of water, “such as to protect the public health or welfare, enhance the quality of water,” and take into consideration the waters’ “use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.” Section 1313(d) provides that each state shall identify those waters for which the applicable water quality standards are not being met, and establish “the total maximum daily load [TMDL]...at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” A TMDL is defined as the sum of the amount of a pollutant allocated to all point sources (or WLAs), plus the amount of a pollutant allocated for nonpoint sources and natural background; a TMDL should be set for each pollutant identified by the [EPA] Administrator, and constitutes, essentially, a plan or objective setting the amount of a pollutant that will attain the water quality standard necessary for the protection of beneficial uses.<sup>1</sup> The CWA also expressly provides that effluent limitations for a point source discharger may not be renewed or revised to contain limitations less stringent than the previous discharge permit.

In addition to the federal requirements of the CWA, in 1968, the State Water Resources Control Board (SWRCB) adopted Resolution 68-16, formally entitled, “Statement of Policy With

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<sup>1</sup> Code of Federal Regulations, title 40, section 130.2.

Respect to Maintaining High Quality of Waters In California,” to prevent the degradation of surface waters where background water quality is higher than the established level necessary to protect beneficial uses. This executive order is commonly referred to as the California Antidegradation Policy and has been continuously in effect since 1968.

The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates in the San Gabriel Mountains in Los Angeles County, runs through Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Reaches 5 and 6 of the Santa Clara River are located upstream of the Blue Cut gauging station near the Los Angeles/Ventura County line, between the cities of Fillmore (in Ventura County) and Santa Clarita in Los Angeles County; Reach 4B is in Ventura County.

The Regional Board first established water quality objectives for chloride in the Santa Clara River in 1975, and in 1978 the Board set the water quality objectives for chloride at 100 mg/L for both reaches. In 1998 the Santa Clara River was first listed as an impaired water body under section 1313(d) of the federal Clean Water Act. Reaches 5 and 6 of the Upper Santa Clara River did not meet the 100 mg/L water quality objective, and “[b]eneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired.” The Valencia and Saugus Water Reclamation Plants, which are owned and operated by claimant, Santa Clarita Valley Sanitation District, are responsible for approximately 70 percent of the chloride loading to the River. The Valencia and Saugus WRPs were not designed to remove chloride from waste water, and in fact have been contributing to elevated chloride concentrations due to the use of chlorine disinfection.

In October of 2002, the Regional Board adopted a TMDL for chloride in the Santa Clara River, including WLAs on the two WRPs of 100 mg/L chloride in their discharge into the River, to be fully implemented within two and one half years. The District appealed the decision to the State Water Resources Control Board (SWRCB), which remanded the TMDL to the Regional Board in 2003, for reconsideration of various items including: (1) an extension of the interim effluent chloride limits, and (2) re-evaluation of the water quality objectives accounting for the beneficial uses to be protected, the quality of the imported water supply, and the impacts of drought periods. In response, the Regional Board adopted Resolution No. 03-008 which included interim WLAs and an implementation plan for the chloride TMDL, extending the time for full implementation of the limits to thirteen years and calling for various studies. Claimant again filed a petition with the SWRCB, but the matter was settled between claimant and the Regional Board, resulting in further amendments to the interim WLA and Implementation Plan for the Chloride TMDL that were adopted by the Regional Board in Resolution No. 04-004.

The version of the TMDL adopted by Resolution No. 04-004 was approved by the EPA on April 28, 2005. In 2006, the Regional Board revised the TMDL, by shortening the time for completing the special studies and implementing the control measures required by the TMDL by two years, and in 2008, the Regional Board shortened the time for full implementation by an additional year, but relaxed the chloride requirements as described in the next paragraph. That 2008 Resolution, as discussed below, is the subject of this test claim.

Alleged Executive Order, Resolution No. R4-2008-012

Between 2005 and 2008 several special studies were conducted, as required under the TMDL adopted in Resolution No. 04-004. “The completion of these TMDL special studies...has led to the development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater.”<sup>2</sup> The alternative plan, which was adopted by the Regional Board in a basin plan amendment effected by Resolution No. R4-2008-012 (the alleged executive order in this test claim), is known as the Alternative Water Resources Management program (AWRM); the AWRM includes:

...the development of site-specific objectives [SSOs] for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP’s effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with[in] the Santa Clarita Valley.<sup>3</sup>

The new SSOs adopted are 150 mg/L in Reaches 5 and 6, and 117 mg/L for Reach 4B, which is adjusted to 130 mg/L when the supply water has chloride levels above 80 mg/L.<sup>4</sup> The new conditional WLAs for the Valencia and Saugus facilities are also 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B.<sup>5</sup> Resolution No. R4-2008-012 provides for the construction and implementation of advanced treatment (reverse osmosis desalination) at the Valencia facility, as well as a number of water supply control measures designed to attain the site specific objectives as a condition of the relaxed TMDL and WLAs.<sup>6</sup> The newly relaxed requirements are conditioned upon “the Claimant’s full and ongoing implementation of the AWRM program.”<sup>7</sup> If claimant fails to implement or chooses not to implement AWRM program, the TMDL reverts to the prior TMDL and WLAs of 100 mg/L. Resolution No. R4-2008-012 was approved by SWRCB, the Office of Administrative Law (OAL), and the U.S. EPA, and became effective on April 6, 2010.<sup>8</sup>

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<sup>2</sup> Exhibit B, LA Regional Board Comments, Attachment 63, at p. 591 [Resolution R4-2008-012, at paragraph 15].

<sup>3</sup> Exhibit B, LA Regional Board Comments, at p. 15. See also, Exhibit A, Test Claim, at p. 12.

<sup>4</sup> Exhibit B, LA Regional Board Comments, at p. 17.

<sup>5</sup> Exhibit A, Test Claim, at pp. 49-51.

<sup>6</sup> Exhibit A, Test Claim, at p. 51.

<sup>7</sup> Exhibit B, LA Regional Board Comments, at p. 17. See also, Exhibit A, Test Claim, at p. 11 [“If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L.”].

<sup>8</sup> Exhibit A, Test Claim, at p. 11; Exhibit B, LA Regional Board Comments, at p. 17.

**Procedural History**

This test claim was filed by Santa Clarita Valley Sanitation District on March 30, 2011. On July 29, 2011, the Regional Board filed comments on the test claim. On August 8, 2011, the Department of Finance (Finance) filed comments on the test claim. On August 28, 2011, the Claimant filed rebuttal comments.

**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 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. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

**Claims**

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

Subject	Description	Staff Recommendation
Implementation Tasks 4, 5, 6, 7, 8, 9, 17a (Resolution R4-2008-012, Attachment B), and the default waste load allocations of 100 mg/L for both water reclamation plants operated by the District.	The District is required to conduct a literature review to evaluate an appropriate chloride threshold; develop a groundwater/surface water interaction model to evaluate impacts of the chloride TMDL; evaluate the appropriate chloride threshold for the protection of sensitive agricultural supply water and endangered species protection; develop site-specific objectives for chloride for sensitive agriculture; develop an anti-degradation analysis for revision of the chloride objectives; develop pre-planning report on compliance to meet different hypothetical final waste load allocations; complete an	Deny – The required activities do not impose a new program or higher level of service. Implementation Tasks 4, 5, 6, 7, 8, 9, and 17a and the default TMDL and WLAs were required by prior law. The 100 mg/L TMDL, including 100 mg/L WLAs, have been in effect since Resolution 02-018, which was adopted by the Regional Board October 24, 2002 and approved by U.S. EPA April 28, 2005. Tasks 4-9 were required by Resolution 04-004 and task 17a was added by Resolution R4-2006-016. Therefore these activities are not new, and by definition cannot impose a reimbursable <i>new</i> program or

	<p>environmental impact report for facilities to comply with final effluent permit limits for chloride.</p> <p>If the AWRM is not fully and continually implemented, the prior TMDL is triggered, including the default WLAs of 100 mg/L chloride.</p>	higher level of service.
Implementation Task 20 (Resolution R4-2008-012, Attachment B).	Implementation task 20 accelerates the implementation period for final WLAs by one year. The prior TMDL provided for interim WLAs to apply for no more than 11 years, Resolution R4-2008-012 provides for interim WLAs to apply for no more than 10 years.	Deny – Implementing the underlying final WLAs one year sooner is not a new program or higher level of service; the final WLAs are not made more stringent or more costly by this resolution, and a mere increase in costs is not tantamount to a higher level of service in any event. Furthermore, the claimant has not alleged increased costs due to implementing final WLAs one year sooner.
Conditional site-specific objectives and waste load allocations of 117 mg/L for Reach 4B, and 150 mg/L for Reaches 5 and 6.	Attachment B to Resolution R4-2008-012 provides for conditional SSOs and WLAs for the two WRPs of 117 mg/L for Reach 4B, and the water discharged by the WRPs into Reach 4B; and 150 mg/L for Reaches 5 and 6 and the water discharged into Reaches 5 and 6. The SSOs and WLAs contemplate facilities upgrades and advanced treatment technologies at the two WRPs, and outline certain water management activities to reach and maintain the SSOs and WLAs, including during periods of higher chloride concentrations in the supply water.	Deny –The Conditional SSOs and WLAs are a lower level of service than was required under the prior TMDL, and result in reduced costs to claimant.
Costs incurred as a result of the	The facilities upgrades and other technological controls and water	Deny – Even if the test claim executive order, Resolution R4-

Implementation Tasks and AWRM steps to comply with the SSOs and WLAs, totaling approximately \$257 million.	management activities are estimated to result in approximately \$250 million in increased costs. The Implementation Tasks are alleged to result in approximately \$7 million in increased costs.	2008-012, imposed a new program or higher level of service resulting in state-mandated increased costs, such costs would not be reimbursable because the District has sufficient fee authority to cover the costs of any additional activities, unconstrained by the voter approval requirements of Proposition 218.
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**Analysis**

Staff finds that this test claim should be denied on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program does not impose a new program or higher level of service, but a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

**A. Threshold Issues: the Santa Clarita Valley Sanitation District is an Eligible Claimant Before the Commission; Resolution R4-2008-012 is an Executive Order within the Meaning of Article XIII B, Section 6; and the Test Claim is Timely Filed.**

1. The Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

Staff finds that SCVSD receives *at least some amount* of its funding from local taxes, and is subject to an appropriations limit for at least a portion of its revenues, and is therefore an eligible claimant. The State Controller’s Special Districts Annual Report for 2010-2011 indicates that SCVSD was subject to an appropriations limit for approximately one-third of its total revenue (nearly \$11 million), and made total appropriations subject to the appropriations limit in the amount of \$5,778,450. While a substantial amount of the District’s revenue comes from user fees and other sources not considered “proceeds of taxes,” it cannot be said categorically that the District’s revenue is not subject to the limitations of articles XIII A and XIII B.

Based on the foregoing, the staff finds that the Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

2. The Regional Water Board’s order is an executive order within the meaning of Article XIII B, section 6.

Article XIII B, section 6 provides that “[w]henver 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...” Government Code section 17514 provides that costs mandated by the state includes “any increased costs which a local agency or school district is required to incur... as a result of... any executive order implementing any statute... which mandates a new program or higher level of service of an existing program...” Government Code section 17516 defines an “executive order” as “any order, plan, requirement, rule, or regulation issued by...[a]ny agency, department, board, or commission of state government.” Because Resolution No. R4-2008-012 is an order of a state board, it is an executive order for purposes of Government Code 17516 and may result in a reimbursable state-mandated program under article XIII B, section 6 if all required mandates elements are established.

### 3. The test claim was timely filed.

Section 17551 provides that “[l]ocal agency and school district 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.” Section 1183 of the Commission’s regulations states that “within 12 months,” for purposes of test claim filing, “means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the claimant.”

Finance has raised the statute of limitations found in section 17551, arguing that the test claim was filed on March 30, 2011, while the Resolution had an effective date of December 11, 2008. Finance further argues that “all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred.”

Finance’s first point, that the effective date of the Resolution would place this test claim beyond the time bar, has some merit. An effective date of December 11, 2008 would require that a valid test claim be filed by June 30, 2010. However, because TMDLs and waste load allocations must be approved by the SWRCB, OAL, and the Administrator of U.S.EPA,<sup>9</sup> there is an open question, for purposes of applying section 17551, whether the Resolution at issue is “effective” on the date it was approved by the Regional Board or on the date that it is approved by the Administrator (here, April 6, 2010). Fortunately, that issue need not be resolved by the Commission at this time, because the Government Code states that a test claim shall be filed not later than 12 months following the effective date of the test claim statute or executive order, or not later than 12 months following the first costs incurred. The section allows a claimant to take advantage of “whichever is later,” and here the District has declared that it first incurred costs in fiscal year 2009-2010. There is no evidence in the record to rebut the District’s declaration.

Based on the foregoing, the staff finds that this test claim was timely filed.

### **B. The Regional Water Board’s Resolution and Order does not Mandate a New Program or Higher Level of Service within the Meaning of Article XIII B, Section 6.**

The District states that “Regional Board Resolution No. R4-2008-012, the revised TMDL, requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs’ NPDES permits; and (2) specific ‘implementation tasks’ necessary for compliance.” The Implementation Tasks, along with the final waste load allocations, “are the subject of this test

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<sup>9</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c)]. See also, Exhibit A, Test Claim, at p. 6.

claim.”<sup>10</sup> Attachment B to Resolution R4-2008-012 outlines the conditional SSOs for Reaches 4B, 5, and 6, and conditional WLAs for the water discharged from the Valencia and Saugus WRPs to Reaches 4B, 5, and 6. The WLAs for the District’s WRP facilities are based on, and numerically identical to, the SSOs for the respective reaches (117 mg/L for Reach 4B, and the discharge into Reach 4B; 150 mg/L for Reaches 5 and 6, and for the discharge into Reaches 5 and 6). All other point sources are assigned WLAs equal to 100 mg/L. Attachment B also outlines the operation of reverse osmosis treatment at the Valencia WRP, the provision of supplemental water to Reach 4B when chloride concentrations exceed 117 mg/L, and the design and construction of advanced treatment facilities. In addition, Attachment B outlines a number of implementation tasks, primarily consisting of technical studies to assess the appropriate threshold for chloride to protect agricultural uses and to determine how best to reach that threshold, including preparation of an Environmental Impact Report (EIR) for the advanced treatment facilities and other upgrades necessary to meet the SSOs and WLAs.

The District has alleged the required activities resulting from Resolution R4-2008-012 impose costs of approximately \$257 million. Though claimant alleges that this \$257 million constitutes *increased costs*, claimant does acknowledge that the costs would be nearly double, approximately \$500 million, if it operated under the prior TMDL. The analysis below concludes that none of the Implementation Tasks, or the AWRM program elements, of Resolution R4-2008-012 constitutes a mandated new program or higher level of service, because the alleged activities and costs either are not new or they impose a lower level of service and reduced costs when compared to prior law. In addition, the claimant has fee authority sufficient to cover the costs of any required activities and, thus, pursuant to Government Code section 17556(d), there can be no costs mandated by the state.

1. Some of the Implementation Tasks described in the Resolution are not new.

Implementation Tasks 4, 5, 6, 7, 8, and 9 of Resolution R4-2008-012 are found also, in nearly identical language, in Resolution 04-004, and again in Resolution R4-2006-016. These prior TMDLs were approved by EPA on April 28, 2005, and June 12, 2008, respectively. Additionally, Implementation Tasks 4-9 all are listed in the revised TMDL as having completion dates *prior to* the adoption and approval of the 2008 Resolution. Moreover, these tasks had in fact *been completed* prior to the adoption of the revised TMDL incorporating the AWRM: the Resolution states that “[t]he Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c).” Therefore none of these implementation tasks, or the costs alleged, are reimbursable, both because they are not new, and because the costs incurred are outside the period of eligibility for this test claim (prior to July 1, 2009).

Implementation Task 17a, “Implementation of Compliance Measures, Complete Environmental Impact Report...” was required by identical language in Resolution R4-2006-016. Resolution R4 2006-016 is stated as having an effective date (presumably meaning the date approved by the U.S. EPA) of June 12, 2008. It is unknown, from the test claim exhibits, or any other information in the record, exactly when costs might first have been incurred to complete the Environmental Impact Report; but the direction to implement compliance measures and to

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<sup>10</sup> Exhibit A, Test Claim, at p. 13.

complete an EIR is not *new*, with respect to prior law.<sup>11</sup> In fact, claimant was required to prepare the draft EIR by May 4, 2010 under prior law and was fined “for the failure to complete Wastewater Facilities Plans and Programmatic Environmental Impact Reports by the required due date in 2011,”<sup>12</sup> and Resolution R4-2006-016 which first required this activity was not pled in this test claim.

Finally, the default TMDL, including WLAs of 100 mg/L for the Saugus and Valencia WRPs, which takes effect “if the District cannot comply with the AWRM program,” is not a new requirement. The Regional Board adopted a TMDL for Reaches 5 and 6 of the Santa Clara River in 2002, “which became effective May 4, 2005,” and includes WLAs of 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP.”

Based on the foregoing, staff finds that Implementation Tasks 4, 5, 6, 7, 8, 9, and 17a, and the waste load allocations, are not new, but rather were required by prior law. Therefore none of these provisions imposes a state-mandated new program or higher level of service.

2. Implementation Task 20 only accelerates the schedule of implementation of final waste load allocations and is not a new program or higher level of service resulting in increased costs mandated by the state.

Implementation Task 20 shortens the applicable period of the interim WLAs for the Saugus and Valencia WRPs from 11 years to 10 years, commencing with the effective date of the 2002 TMDL. The interim WLAs are designed to accommodate the time needed for the WRPs to implement desalination and other chloride reduction improvements to meet the final WLAs. For the Saugus WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. For the Valencia WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. There is no new program inherent in shortening the time frame for the interim WLAs. The requirements of the interim WLAs remain the same, but are shortened, and the final WLAs attach one year sooner. It may be argued that it costs more to implement the final WLAs one year sooner, but this change does not of itself constitute a new program or higher level of service.

The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*” The Supreme Court has also spoken on the requirement of a new program, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.” Finally, not only is an increase in costs not tantamount to a higher level of service, but there is no evidence in the record of the incremental cost increase which might be alleged based on accelerating the implementation of the final WLAs by one year.

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<sup>11</sup> Resolution R4-2006-016.

<sup>12</sup> LA Regional Board, Enforcement News, November 26, 2012.

Based on the foregoing, Implementation Task 20 does not impose any new state mandated activities and does not result in a new program or higher level of service.

3. The Alternative Water Resources Management program is not a new program or higher level of service.

The California Supreme Court, in *County of Los Angeles I*, articulated a multi-faceted test for “new program or higher level of service:” reimbursement requires (1) a new task or activity; (2) which constitutes an increase in service as compared to prior law; (3) and which either provides a service to the public, or imposes requirements uniquely upon government, rather than upon all persons and entities equally.

The Regional Board argues that the test claim executive order, Resolution R4-2008-012, cannot impose a new program or higher level of service because it “amended the Basin Plan to, among other things, adopt site-specific objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara River...” The LA Regional Board argues: “thus, if anything, the 2008 Resolution imposes a *lower level of service* in order to make it less expensive for the Claimant to implement” the TMDL. In 2002, the 100 mg/L objective was incorporated into a TMDL, pursuant to the impairment listing of certain reaches of the Santa Clara River, and the threat to salt-sensitive agriculture uses both within Reaches 5 and 6 and downstream. Both the District and the Regional Board agree that the AWRM contains “relaxed” requirements, as compared with the current water quality objectives.

In addition, both the District and the Regional Board recognize that under the prior TMDL “implementation actions to attain this level would require advanced treatment – that is, reverse osmosis – of the full effluent from the Saugus *and* Valencia plants with discharge into the ocean through a 43-mile brine line.” The District estimated the costs of the facilities upgrades and other compliance tasks at approximately \$500 million. Under the AWRM, reverse osmosis desalination is only required at the Valencia WRP, and the waste is permitted to be disposed of through deep well injection. The District estimates that implementing the advanced treatment upgrades at only one of the two facilities, along with other tasks, will cost just over half of the amount of compliance with the prior TMDL, or approximately \$250 million.

Staff finds that there is nothing in the AWRM that imposes a higher level of service on this claimant. Resolution R4-2008-012 calls for the implementation of less-stringent requirements than under prior law, which the District has acknowledged will be less expensive to implement.

Based on the foregoing, staff finds that Resolution R4-2008-012, which includes the AWRM, does not impose a new program or higher level of service, and the costs and activities thereunder should be denied.

**C. Even if Resolution R4-2008-012 Did Impose a State Mandated New Program or Higher Level of Service, it Would Not Impose Costs Mandated by the State Under Section 17556(d) Because the Claimant has Sufficient Fee Authority to Fully Fund the Costs of the Required Activities.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514...if...the local agency or school district has the

authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

The California Supreme Court held, in *County of Fresno v. State of California*, that “read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.” Accordingly, in *Connell v. Superior Court of Sacramento County*, the Santa Margarita Water District, among others, was denied reimbursement on the basis of its authority to impose fees on water users. The Districts argued that they did not have “sufficient” authority to levy such fees, because the cost of reclaimed water would make it impractical to market to the users if the Districts were forced to raise fees. The court concluded that the “Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees ‘sufficient’ to cover their costs,” and that “[t]hus, the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry.” Similarly, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court stated: “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.” The court endorsed the Controller’s view that “‘Claimants can choose not to require these fees, but not at the state’s expense.’”

Here, the LA Regional Board argues that the District “is authorized to impose and increase fees and charges for wastewater management services under Health and Safety Code section 5471.” The District argues that it is constrained by the “the Proposition 218 process... [and] fierce public opposition.” The District further argues that *Connell*, discussed above, “ignored the then-recent passage of Proposition 218.”

Health and Safety Code section 5471 provides “authority,” within the meaning of section 17556(d), “to prescribe, revise and collect, fees tolls, rates, rentals, or territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.”

Proposition 218, adopted by the voters in 1996, added articles XIII C and XIII D to the Constitution; the plain language of article XIII D, section 6 provides that an agency seeking to impose or increase fees must identify the parcels and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to “consider all protests.” Section 6 further provides that if written protests are submitted by more than half of the owners of parcels affected, a fee or assessment may not be raised. In addition, new or increased fees are required to “not exceed the funds required to provide the property related service;” “not be used for any purpose other than that for which the fee or charge was imposed;” “not exceed the proportional cost of the service attributable to the parcel;” and be “actually used by, or immediately available to, the owner of the property in question.” Finally, voter approval is required “[e]xcept for fees or charges for sewer, water, and refuse collection services.”

The District asserts that the case law related to fee authority is no longer on point “because the most significant cases predate the passage of [Proposition 218].” The District asserts that it “attempted to implement the Proposition 218 process, but the elected public officials could not

support the proposed rate increase in the face of fierce public opposition.” The District claims that the “political realities... limit the ability of local government to raise fees in a way that makes it impossible for a local agency to raise sufficient funding for state mandate projects.”

Here, the fee authority is that of a sanitation district, and relates to the fees charged to users of the sewerage system; based on the plain language of article XIII D, section 6, voter approval is not required for increases to water and sewer rates. However, the other requirements of XIII D do apply, requiring the District to ensure that any fee increase is noticed to the affected property owners, that the increase is directly related to and proportional to the service provided, and that at a public hearing the District considers all protests. In addition, the voters have the power, either by referendum, or by written protests of a majority of owners of the affected parcels, to defeat a fee increase. Only the “written protests” provision is raised by the parties’ comments. The LA Regional Board argues that there are nearly 69,000 parcels connected to the District’s sewerage system, and therefore “at least 34,449 written protests” would be a majority required under XIII D to defeat a rate increase. At the May 26, 2009 and July 27, 2010 hearings the District received “203 written protests and 7,732 written protests, respectively.”

The District does not dispute the number of written protests needed to defeat a fee increase, or the number received (the Regional Board’s argument assumes, without evidence, that all 69,000 parcels represent a single voting property owner); rather the District argues that the District’s Board “quite reasonably believed that this large rate increase would be rejected if challenged by initiative.”<sup>13</sup> The District implies that because an initiative to overturn the fee increase would qualify for the ballot with approximately 6,500 votes, the 7,732 written protests “exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase.”<sup>14</sup>

But written protests are not tantamount to an initiative petition, and an initiative petition is not a successful referendum. The District’s board “declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum.” Nothing in the California Constitution requires a local legislative body to bend to political pressure. As the Regional Board concluded, “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).

It is true, as the District argues, that *Connell* did not discuss Proposition 218, because the water districts did not allege that their authority to raise fees was impacted by Proposition 218. The water districts in *Connell* instead urged an interpretation of “authority” under section 17556(d) that required a “practical ability in light of surrounding economic circumstances,” and the court rejected that interpretation. Here, as in *Connell*, “the plain language of the statute defeats the Districts’ position.” The District here would have the Commission recognize political undesirability as an element of the District’s “authority” under Health and Safety Code section 5471 to raise fees. In the same way that the court in *Connell* declined to find that economic considerations undermine the “sufficiency” of the water districts’ authority to raise fees, staff recommends that the Commission here decline to make a finding that *political opposition* undermines the authority of a sanitation district to raise fees.

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<sup>13</sup> Exhibit D, Claimant Rebuttal Comments, at p. 11.

<sup>14</sup> *Ibid.*

Based on the foregoing, staff finds that the District has not incurred increased costs mandated by the state, pursuant to section 17556(d).

**Conclusion**

Based on the foregoing discussion and analysis, staff concludes that Resolution No. R4-2008-012, adopted December 11, 2008, by the Los Angeles Regional Water Quality Control Board, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010

Filed on March 30, 2011

By Santa Clarita Valley Sanitation District of Los Angeles County, claimant.

Case No.: 10-TC-09

*Upper Santa Clara River Chloride Requirements*

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

*(Proposed for Adoption: December 6, 2013)*

**DRAFT PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 6, 2013. [Witness list will be included in the final statement of 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 statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

**Summary of the Findings**

This test claim alleges a reimbursable state mandate resulting from Resolution R4-2008-012, adopted December 11, 2008 by the Regional Water Quality Control Board for the Los Angeles region (Regional Board). To assist the reader, there is a glossary of frequently used water quality related terms and acronyms on page 50. The Resolution amended the prior Basin Plan, which had imposed a total maximum daily load (TMDL) of 100 mg/L for the Santa Clara River and waste load allocations (WLAs) of 100 mg/L for the District's two Water Reclamation Plants (WRPs), to include a revised, less stringent, TMDL and WLAs, providing greater flexibility to claimant with regard to chloride discharges into the river and significantly reducing the costs of claimant to comply with the TMDL and WLAs for the Upper Santa Clara River. The revised TMDL calls for the implementation of an Alternative Water Resources Management program (AWRM), in order to meet conditional site-specific objectives (SSOs) for water quality in

Reaches 4B, 5, and 6 of the river, and conditional WLAs of 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B for the District's two WRPs.

The District alleges that meeting the SSOs and WLAs will require significant advanced treatment and other technological upgrades, and a number of water supply control measures to control chloride concentrations in the Santa Clara River, especially during periods of higher concentration in the water supply and groundwater (i.e., during periods of lower precipitation). The District alleges that these upgrades and control measures result in increased costs of approximately \$250.7 million. R4-2008-012 also includes a number of Implementation Tasks, primarily consisting of requirements to perform technical and scientific studies of the surface and groundwater and evaluation of appropriate chloride thresholds, which the District alleges imposed increased costs of approximately \$6.6 million.

The Commission finds that Resolution R4-2008-012 does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on the following grounds: (1) several of the Implementation Tasks included in the TMDL are not new and so cannot impose a *new* program or higher level of service; (2) accelerating the implementation of final waste load allocations (discharge limitations) by one year is not a new program or higher level of service, and no increased costs are alleged; (3) the Alternative Water Resources Management program is not a new program or higher level of service, but a lower level of service, and reduced costs with respect to prior law; and (4) even if the Alternative Water Resources Management program did impose a new program or higher level of service, there are no costs mandated by the state, because the claimant has sufficient fee authority to cover the costs of any required activities.

Because this test claim is denied on the grounds stated above, the Commission declines to make findings on whether claimant is practically compelled to implement the Alternative Water Resources Management activities or whether the Alternative Water Resources Management activities, TMDLs or WLAs are mandated by federal law.

## COMMISSION FINDINGS

### I. Chronology

03/30/2011	Claimant, Santa Clarita Valley Sanitation District, filed test claim <i>Upper Santa Clara River Chloride Requirements</i> (10-TC-09) with the Commission on State Mandates (Commission) <sup>15</sup>
04/14/2011	Commission staff issued a completeness review letter for the test claim and requested comments from state agencies.
05/02/2011	California Regional Water Quality Control Board of Los Angeles (LA Regional Board) filed request for extension of time for comments on test claim.
05/04/2011	Commission Staff granted the LA Regional Board's extension of time for comments to July 15, 2011.

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<sup>15</sup> Exhibit A, Test Claim.

06/23/2011 LA Regional Board filed request for extension of time for comments on test claim.

06/24/2011 Commission Staff granted the LA Regional Board’s extension of time for comments to July 29, 2011.

07/ 29/2011 LA Regional Board filed comments on test claim.<sup>16</sup>

08/01/2011 Department of Finance (Finance) filed comments on test claim.<sup>17</sup>

08/19/2011 Claimant requested for extension of time for rebuttal comments to September 28, 2011.

08/22/2011 Commission staff granted claimant’s extension of time for rebuttal comments.

09/28/2011 Claimant filed rebuttal comments to agencies’ comments.<sup>18</sup>

## II. Introduction

### A. History and Framework of Federal Water Pollution Control

Regulation of water pollution in the United States finds its beginnings in the Rivers and Harbors Appropriation Act of 1899, which made it unlawful to throw or discharge “any refuse matter of any kind or description . . . into any navigable water of the United States, or into any tributary of any navigable water.”<sup>19</sup> This provision survives in the current United States Code, qualified by more recent provisions discharge permits issued by the U.S. EPA or by states on behalf of the EPA.<sup>20</sup>

In 1948, the Federal Water Pollution Control Act “adopted principles of state and federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance.”<sup>21</sup> Pursuant to further amendments to the Act made in 1965, “States were directed to develop water quality standards establishing water quality goals for interstate waters.” However, “[d]ue to enforcement complexities and other problems, an approach based solely on water quality standards was deemed insufficiently effective.”<sup>22</sup> The Federal Water Pollution Control Act was therefore significantly expanded in 1972. Later, major amendments to the Federal Water Pollution Control Act were enacted in the Clean Water Act of 1977, and the federal act is now commonly referred to as the Clean Water Act (CWA). The CWA states:

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<sup>16</sup> Exhibit B, LA Regional Board Comments.

<sup>17</sup> Exhibit C, Department of Finance Comments.

<sup>18</sup> Exhibit D, Claimant’s Rebuttal Comments.

<sup>19</sup> United States Code, title 33, section 407 (Mar. 3, 1899, c. 425, § 13, 30 Stat. 1152).

<sup>20</sup> See United States Code, title 33, sections 401; 1311-1342.

<sup>21</sup> Statutory History of Water Quality Standards, available at <http://water.epa.gov/scitech/swguidance/standards/history.cfm>.

<sup>22</sup> *Ibid.*

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title.<sup>23</sup>

The United States Supreme Court observes the cooperative nature of the regulation of water quality for the waters of the United States through the CWA as follows:

The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” (33 U.S.C. § 1251(a).) Toward this end, the Act provides for two sets of water quality measures. “Effluent limitations” are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. (See §§ 1311, 1314.) “[W]ater quality standards” are, in general, promulgated by the States and establish the desired condition of a waterway. (See§ 1313.) These standards supplement effluent limitations “so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.” (*EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).)<sup>24</sup>

The CWA thus employs two primary mechanisms for controlling water pollution: identification and standard-setting for bodies of water, and identification and regulation of dischargers.

With respect to standard-setting for bodies of water, section 1313(a) provides that existing water quality standards can remain in effect unless the standards are not consistent with the CWA, and that the Administrator may “promptly prepare and publish” water quality standards for any waters for which a state fails to submit water quality standards, or for which the standards are not consistent with the CWA.<sup>25</sup> In addition, states are required to “at least once each three year period” hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards:

Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and

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<sup>23</sup> United States Code, title 33, section 1251(b).

<sup>24</sup> *Arkansas v. Oklahoma* (1992) 503 U.S. 91, at pp. 101-102.

<sup>25</sup> United States Code, title 33, section 1313(a).

agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.<sup>26</sup>

And with respect to regulating dischargers, section 1311 requires that point source dischargers be identified and effluent limitations be set, “sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water.”<sup>27</sup> Section 1312 provides that effluent limitations must promote the attainment of water quality objectives, while section 131.10 of the applicable regulations requires also taking into consideration the water quality standards of downstream waters.<sup>28</sup>

Section 1313(d) requires that each state “identify those waters within its boundaries for which the effluent limitations... are not stringent enough to implement any water quality standard applicable to such waters.” This list is called the 303(d) List, after CWA section 303(d), codified at section 1313(d), which requires the listing of impaired waters. The state is then required to “establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.” The state then “shall establish for the waters identified... and in accordance with the priority ranking, the total maximum daily load [known as a TMDL], for those pollutants which the Administrator identifies... as suitable for such calculation.” The TMDL “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” A TMDL is defined as the sum of the amount of a pollutant allocated to all point sources (waste load allocation, or WLA), plus the amount of a pollutant allocated for nonpoint sources and natural background; a TMDL should be set for each pollutant identified by the Administrator, and is essentially a plan setting the amount of a pollutant that will attain the water quality standard necessary for beneficial uses.<sup>29</sup> TMDLs are required to be submitted to the Administrator “from time to time,” and the Administrator “shall either approve or disapprove such identification and load not later than thirty days after the date of submission.” If the Administrator disapproves the 303(d) List or a TMDL, the Administrator “shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement [water quality standards].” Finally, the identification of waters and setting of standards and TMDLs is required as a part of a

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<sup>26</sup> United States Code, title 33, section 1313(c)(2).

<sup>27</sup> United States Code, title 33, section 1311.

<sup>28</sup> United States Code, title 33, section 1312; Code of Federal Regulations, title 40, section 131.10(b) (57 FR 60910) [“In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”].

<sup>29</sup> Code of Federal Regulations, title 40, section 130.2.

state's "continuing planning process approved [by the Administrator] which is consistent with this chapter."<sup>30</sup>

Section 1342 provides for the National Pollutant Discharge Elimination System (NPDES). NPDES is the final piece of the regulatory framework under which discharges of pollutants are regulated and permitted, and applies whether or not a TMDL has been established. Section 1342 states that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title."<sup>31</sup> Section 1342 further provides that states may submit a plan to administer the NPDES permit program, and that upon review of the state's submitted program "[t]he Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State."<sup>32</sup> Whether issued by the Administrator or by a state permitting program, all NPDES permits must ensure compliance with the requirements of sections 1311, 1312, 1316, 1317, and 1343; must be for fixed terms not exceeding five years; can be terminated or modified for cause, including violation of any condition of the permit; and must control the disposal of pollutants into wells.<sup>33</sup> In addition, NPDES permits are generally prohibited, with some exceptions, from containing effluent limitations that are "less stringent than the comparable effluent limitations in the previous permit."<sup>34</sup> An NPDES permit for a point source discharging into an impaired water body must be consistent with the waste load allocations made in a TMDL, if a TMDL is approved.<sup>35</sup>

## **B. State Water Pollution Control Program**

### Porter-Cologne Water Quality Control Act

California's water pollution control laws were substantially overhauled in 1969 with the Porter-Cologne Water Quality Control Act (Porter-Cologne).<sup>36</sup> Beginning with section 13000, Porter-Cologne provides:

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by all the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be

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<sup>30</sup> United States Code, title 33, section 1313(d-e).

<sup>31</sup> United States Code, title 33, section 1342(a)(1)

<sup>32</sup> United States Code, title 33, section 1342(a)(5); (b).

<sup>33</sup> United States Code, title 33, section 1342(b)(1).

<sup>34</sup> United States Code, title 33, section 1342(o).

<sup>35</sup> Code of Federal Regulations, title 40, section 122.44(b).

<sup>36</sup> Water Code section 13020 (Stats. 1969, ch. 482).

made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety, and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state...and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.<sup>37</sup>

The state water pollution control program was again modified, beginning in 1972, so that the code would substantially comply with the federal Act, and “on May 14, 1973, California became the first state to be approved by the EPA to administer the NPDES permit program.”<sup>38</sup>

Section 13160 provides that the state water resources control board (SWRCB or State Board) “is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act...[and is] authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and acts amendatory thereto.”<sup>39</sup> Section 13001 describes the state and regional boards as being “the principal state agencies with primary responsibility for the coordination and control of water quality.”

In order to achieve the objectives of conserving and protecting the water resources of the state, and in exercise of the powers delegated, Porter-Cologne, like the CWA, employs a combination of water body standards and point source pollution controls.<sup>40</sup>

Porter Cologne sections 13240-13247 address the development and implementation of regional water quality control plans, including “water quality objectives,” defined in section 13050 to mean “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.”<sup>41</sup> Section 13241 provides that each regional board “shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance.” The section directs the regional boards to consider, when developing water quality objectives:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

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<sup>37</sup> Water Code section 13000 (Stats. 1969, ch. 482).

<sup>38</sup> *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (Cal. Ct. App. 5th Dist. 2005) 127 Cal.App.4th 1544, at pp. 1565-1566. See also Water Code section 13370 *et seq.*

<sup>39</sup> Water Code section 13160 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats 1976, ch. 596).

<sup>40</sup> Water Code section 13142 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats. 1979, ch. 947; Stats. 1995, ch. 28).

<sup>41</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247), ch. 847 (SB 206); Stats. 1996, ch. 1023 (SB 1497)).

- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.<sup>42</sup>

Beneficial uses, in turn, are defined in section 13050 as including, but not limited to “domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.”<sup>43</sup> In addition, section 13243 permits a regional board to define “certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.”<sup>44</sup>

Sections 13260-13274 address the development of “waste discharge requirements,” which section 13374 states “is the equivalent of the term ‘permits’ as used in the Federal Water Pollution Control Act, as amended.”<sup>45</sup> Section 13263 permits the regional boards, after a public hearing, to prescribe waste discharge requirements “as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system.” Section 13263 also provides that the regional boards “need not authorize the utilization of the full waste assimilation capacities of the receiving waters,” and that the board may prescribe requirements although no discharge report has been filed, and may review and revise requirements on its own motion. The section further provides that “[a]ll discharges of waste into waters of the state are privileges, not rights.”<sup>46</sup> Section 13377 permits a regional board to issue waste discharge requirements “which apply and ensure compliance with all applicable provisions of the [Federal Water Pollution Control Act].”<sup>47</sup> In effect, sections 13263 and 13377 permit the issuance of waste discharge requirements concurrently with an NPDES permit “if a discharge is to waters of both California and the United States.”<sup>48</sup>

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<sup>42</sup> Water Code section 13241 (Stats. 1969, ch. 482; Stats. 1979, ch. 947; Stats. 1991, ch. 187 (AB 673)).

<sup>43</sup> Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 847 (SB 206); Stats. 1996 ch. 1023 (SB 1497)).

<sup>44</sup> Water Code section 13243 (Stats. 1969, ch. 482).

<sup>45</sup> Water code section 13374 (Stats. 1972, ch. 1256).

<sup>46</sup> Water Code section 13263(a-b); (g) (Stats. 1969, ch. 482; Stats. 1992, ch. 211 (AB 3012) Stats. 1995, ch. 28 (AB 1247), ch. 421 (SB 572)).

<sup>47</sup> Water Code section 13377 (Stats. 1972, ch. 1256; Stats. 1978, ch. 746).

<sup>48</sup> Exhibit A, Test Claim, at p. 7.

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

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

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

### **C. Regulatory History**

The Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The River originates in the San Gabriel Mountains in Los Angeles County, runs through Ventura County, and flows into the Pacific Ocean between the cities of San Buenaventura (Ventura) and Oxnard. Land uses within the watershed include agriculture, open

space, and residential uses.<sup>49</sup> Resolution R4-2008-012, adopted by the Regional Board, states that “[r]evenue from the agricultural industry within the Santa Clara watershed is estimated at over \$700 million annually, and residential use is increasing rapidly both in the upper and lower watershed.”<sup>50</sup> Reaches 5 and 6 of the Santa Clara River are located upstream of the Blue Cut gauging station, near the Los Angeles/Ventura County line, between the cities of Fillmore (in Ventura County) and Santa Clarita in Los Angeles County; Reach 4B is in Ventura County.<sup>51</sup> Claimant operates two WRPs that discharge into Reaches 4B, 5 and 6.<sup>52</sup>

In 1975, the Regional Board established water quality objectives for chloride in the Santa Clara River. The 1975 objectives for surface waters were established, in accordance with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal antidegradation policy (40 C.F.R. 131.12), at a chloride concentration of 90mg/L in Reach 5 and 80 mg/L in Reach 6 (then known as Reaches 7 and 8).<sup>53</sup> The 1975 objectives were based on background concentrations of chloride and intended to protect the beneficial uses identified in the 1975 Basin Plan, including off-stream agricultural irrigation.”<sup>54</sup> The Basin Plan included chloride objectives between 50 and 150 mg/L for the remaining reaches of the Santa Clara River.<sup>55</sup> When the SWRCB set the water quality objectives in 1975, it “assumed the chloride concentrations in imported waters would remain relatively low.”<sup>56</sup> However, in the years following, “chloride concentrations in the imported water supply into the Los Angeles Region increased,” and in 1978 the Board “modified the water quality objectives for chloride...to 100 mg/L for both reaches.”<sup>57</sup>

In 1990 the Regional Board adopted a resolution responding to the changing conditions of the imported water supply related to drought (referred to by both the claimant and the Regional Board as the “Drought Policy”). For dischargers into the Santa Clara River who applied for relief under the Drought Policy, chloride concentrations were permitted “in the discharger’s effluent to be the lesser of: (1) 250 mg/L; or (2) the chloride concentration of supply water plus 85 mg/L.”<sup>58</sup> The board renewed the Drought Policy in 1993 and 1995 “because the chloride levels in supply waters remained higher than the chloride levels before the onset of the drought.”

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<sup>49</sup> See Exhibit A, Test Claim, at p. 34; Exhibit B, LA Regional Board Comments, at p. 1.

<sup>50</sup> Exhibit A, Test Claim, at p. 34.

<sup>51</sup> See Exhibit B, Resolution R4-2007-018, at paragraphs 4-6, describing subdividing Reach 4 into Reaches 4A and 4B, for purposes of TMDL revision.

<sup>52</sup> Exhibit A, at pp. 49-52, Resolution R4-2008-012, describing conditional waste load allocations for Valencia and Saugus WRPs.

<sup>53</sup> See Exhibit A, at p. 151, Exhibit 6, LA Regional Board Resolution 97-02.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Exhibit B, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

<sup>57</sup> Exhibit B, at p. 502, Attachment 56, 1978 Revisions to the Water Quality Control Plan for the Santa Clara River Basin.

<sup>58</sup> See Exhibit B, Attachment 57, at p. 507, L.A. Regional Board Resolution 97-02, paragraph 2.

In 1997, the Regional Board rescinded the Drought Policy and revised the water quality objectives for chloride for the Los Angeles River, Rio Hondo, and the San Gabriel River, but not for the Santa Clara River, “due to the potential for future adverse impacts to agricultural resources in Ventura County.” The board “granted temporary variances to certain dischargers in the Santa Clara River watershed, including the Valencia and Saugus [Waste Reclamation Plants].”<sup>59</sup> The interim effluent limits of 190 mg/L were applied for three years to the two facilities.<sup>60</sup>

In 1998 the Santa Clara River “appeared for the first time on the state’s federally required 303(d) list of impaired waterbodies for chloride.”<sup>61</sup> Reaches 5 and 6 of the Upper Santa Clara River did not meet the 100 mg/L water quality objective (WQO), and “[b]eneficial uses of the Upper Santa Clara River, including agricultural supply water and groundwater recharge were listed as impaired.”<sup>62</sup> The Valencia and Saugus WRPs, which are owned and operated by the District, are two major point sources that discharge to the upper reaches of the River.<sup>63</sup> The two WRPs are responsible for approximately 70 percent of the chloride loading to the River.<sup>64</sup> The Valencia and Saugus WRPs were not designed to remove chloride from waste water, and in fact have been contributing to elevated chloride concentrations due to the use of chlorine disinfection.<sup>65</sup>

In October of 2002, the Regional Board adopted Resolution 02-018, amending the Basin Plan to include a TMDL for chloride in the Santa Clara River. The same resolution also assigned “final WLAs to the Valencia and Saugus WRPs of 100 mg/L to be included also in their NPDES permits.” However, the TMDL resolution also included “interim WLAs for the [Saugus and Valencia facilities], to provide the District time to implement chloride source reduction, complete site-specific objective (“SSO”) studies, and make any necessary modifications to the WRPs.”<sup>66</sup> The District determined at the time that the TMDL would require approximately \$500 million in upgrades to its treatment facilities, including advanced treatment (desalination) at both WRPs in order to meet the effluent limitations of 100 mg/L chloride. The District appealed the decision to the SWRCB, which adopted Resolution 2003-0014, remanding the TMDL to the

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<sup>59</sup> Exhibit B, LA Regional Board Comments, at p. 10; Attachment 57, at p. 507 [L.A. Regional Board Resolution 97-02, paragraph 2].

<sup>60</sup> Exhibit B, LA Regional Board Comments, at p. 10.

<sup>61</sup> *Ibid* [referring to the Clean Water Act section 303(d), codified at 33 U.S.C. 1313(d), which requires states to identify and report to the EPA on those waters within its boundaries for which the effluent limitations have not proven effective “to implement any water quality standard applicable to such waters”]. See also, Exhibit A, Test Claim, at p. 9.

<sup>62</sup> Exhibit B, LA Regional Board Comments, at p. 10. See also Exhibit B, LA Regional Board Comments, Attachment 58, at p. 523 [L.A. Regional Board Resolution 03-088, paragraph 2].

<sup>63</sup> Exhibit A, Test Claim, at p. 34.

<sup>64</sup> Exhibit B, LA Regional Board Comments, at p. 11. See also, Exhibit A, Test Claim, at p. 48.

<sup>65</sup> Exhibit A, Test Claim, at pp. 7; 11-12; 175; Exhibit B, LA Regional Board Comments, at pp. 9-10

<sup>66</sup> Exhibit A, Test Claim, at p. 10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

Regional Board for reconsideration of various items including: (1) an extension of the interim chloride limits, and (2) re-evaluation of the water quality objectives accounting for the beneficial uses to be protected, the quality of the imported water supply, and the impacts of drought periods. In response, the Regional Board adopted Resolution 03-008,<sup>67</sup> which included interim WLAs and an implementation plan for the chloride TMDL, including required studies to justify a potentially higher level for the WLAs and TMDL under the California Antidegradation Policy.<sup>68</sup> The TMDL was approved by the EPA, as amended by Resolution 03-008, on April 28, 2005. On May 6, 2004, the Regional Board adopted Resolution 04-004, which revised and superseded the interim WLAs and implementation plan adopted by Resolution 03-008.

In 2006, the board shortened the compliance period and the interim WLAs by two years,<sup>69</sup> and in 2008, the board shortened the compliance period by an additional year, but relaxed the chloride requirements as described in the next paragraph.<sup>70</sup>

Between 2005 and 2008, several special studies were conducted, as required under the prior TMDL.<sup>71</sup> On December 11, 2008, the Regional Board adopted Resolution R4-2008-012, saying: “The completion of these TMDL special studies... has led to the development of an alternative TMDL implementation plan that addresses chloride impairment of surface waters and degradation of groundwater.”<sup>72</sup> The alternative plan is known as the Alternative Water Resources Management program; the AWRM includes:

... the development of site-specific objectives [SSOs] for chloride while protecting beneficial uses; chloride source reduction actions through the removal of self-regenerating water softeners; a switch from chlorine-based disinfection to ultraviolet disinfection at both WRPs; chloride load reduction actions through advanced treatment (like reverse osmosis and microfiltration) of a portion of the Valencia WRP’s effluent; supplemental water to enhance assimilative capacity of local groundwater or surface water; alternative water supply to protect salt-sensitive agricultural beneficial uses during drought conditions; construction of extraction wells and pipelines; and expansion of recycled water uses with[in] the Santa Clarita Valley.<sup>73</sup>

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<sup>67</sup> Exhibit B, at p. 523, Attachment 58, LA Regional Board Resolution 03-008.

<sup>68</sup> Exhibit X, Resolution 68-016, California Antidegradation Policy.

<sup>69</sup> Exhibit B, Attachment 60, at p. 566, Regional Board Resolution R4-2006-016, Implementation Task 14.

<sup>70</sup> Exhibit B, Attachment 63, at p. 624, Regional Board Resolution R4-2006-016, Implementation Task 21.

<sup>71</sup> See Exhibit A, Attachment 1, at pp. 34-36 [Regional Board Resolution R4-2008-012, paragraphs 10-16].

<sup>72</sup> Exhibit A, Attachment 1, at p. 36 [Regional Board Resolution R4-2008-012, paragraph 15].

<sup>73</sup> Exhibit A, Attachment 1, at p. 42 [Regional Board Resolution R4-2008-012, Table 3-A “Conditional Site Specific Objectives for the Santa Clara River Surface Waters].

The SSOs adopted are 150 mg/L in Reaches 5 and 6 and 117 mg/L for Reach 4B, which is adjusted to 130 mg/L when the supply water has chloride levels above 80 mg/L.<sup>74</sup> The conditional WLAs for the Valencia and Saugus facilities are also 150 mg/L for discharges to Reaches 5 and 6, and 117 mg/L for discharge to Reach 4B.<sup>75</sup> The Resolution provides for the construction and implementation of advanced treatment (reverse osmosis desalination) at the Valencia facility, as well as a number of water supply control measures designed to attain the site specific objectives.<sup>76</sup> The relaxed requirements are conditioned upon “the Claimant’s full and ongoing implementation of the AWRM program.”<sup>77</sup> The 2008 resolution was approved by the State Water Board, OAL, and then finally by the U.S. EPA on April 6, 2010.<sup>78</sup>

This test claim was filed by Santa Clarita Valley Sanitation District on March 30, 2011. On July 29, 2011, the Regional Board filed comments on test claim.<sup>79</sup> On August 8, 2011, the Department of Finance (Finance) filed comments on the test claim.<sup>80</sup> On September 28, 2011, the District filed rebuttal comments in response to both Finance and Regional Board comments.<sup>81</sup>

### **III. Positions of the Parties**

#### **Santa Clarita Valley Sanitation District Position**

The District seeks reimbursement for costs associated with implementing the Alternative Water Resources Management program (AWRM) described in Resolution R4-2008-012. The AWRM includes technology upgrades at the two WRPs, as well as alternative water supply and groundwater management techniques in order to attain the site-specific objectives and waste load allocations of 150 mg/L for Reaches 5 and 6, and 117 mg/L for Reach 4B.<sup>82</sup> The District also alleges costs incurred in fiscal years 2009-2010 and 2010-2011 associated with Implementation Tasks outlined in the Resolution; these tasks primarily involve conducting studies and developing suggested revisions to the TMDL over a span of years commencing on the effective date of the 2002 TMDL (April 28, 2005).<sup>83</sup>

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<sup>74</sup> *Id.*, p. 42.

<sup>75</sup> *Id.*, at pp. 49-51.

<sup>76</sup> *Id.*, at p. 51.

<sup>77</sup> Exhibit B, LA Regional Board Comments, at p. 17. See also, Exhibit A, Test Claim, at p. 11 [“If the AWRM program is not timely implemented, the water quality objectives for chloride will revert back from the conditional SSOs to the current levels of 100 mg/L.”].

<sup>78</sup> Exhibit A, Test Claim, at p. 11; Exhibit B, LA Regional Board Comments, at p. 17.

<sup>79</sup> Exhibit B, LA Regional Board Comments.

<sup>80</sup> Exhibit C, Department of Finance Comments.

<sup>81</sup> Exhibit D, Claimant’s Rebuttal Comments.

<sup>82</sup> Exhibit A, Test Claim, at pp. 16; 49-51.

<sup>83</sup> Exhibit A, Test Claim, at pp. 13-17; 59-63.

The District explains that the Clean Water Act “requires states to adopt water quality standards for the beneficial uses of waters of the United States and the water quality criteria for specific uses of those waters.” The Act further requires “continuing review and revision of the standards,” and requires states to “continually identify those waters of the United States within their boundaries that do not meet water quality standards (the ‘303(d) List’), rank them in order of priority for enforcement, and prepare TMDLs for those waters that will ensure re-attainment of the standard through action by regulated dischargers.” However, the District asserts that “[w]hile the Clean Water Act mandates these planning activities, it leaves to the states their evaluation and specific determination of regulatory requirements based, in part, upon site-specific factors.”<sup>84</sup>

The District argues that the Regional Board’s determination of water quality objectives, and eventually a TMDL for chloride, was discretionary regulatory activity that was not mandated by federal law. The District bases its conclusion that the TMDL was discretionary on the fact that the TMDL and WLAs have changed over time.

The District asserts that it “now faces enormous costs to ‘solve’ a problem that is has not created as does not control, and has already substantially mitigated by implementing a comprehensive chloride source reduction program within the sewer service area.” The District estimates its costs “to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>85</sup> The District acknowledges that “[s]ome of the compliance project costs may be paid from service charges,” but the District asserts that its “elected officials could not support the proposed rate increases in the face of fierce public opposition.” The District maintains that “a local agency does not fall under the fee increase exception [of section 17556(d)] if it is unable to obtain the requisite approval under the Proposition 218 process,” which requires a local agency to provide notice of any new or increased assessment. The District provided the notice, as required, and alleges that it “received strong opposition amongst its constituents,” and “[a]s a result, the District has been unable to successfully implement a rate increase due to public resistance.”<sup>86</sup>

In response to the LA Regional Board’s comments on the test claim, the District’s rebuttal comments stress the discretion available to the Regional Board, which it believes demonstrates that the Resolution is not necessary to implement a federal mandate. The comments further stress that the District’s “elected officials could not implement the proposed rate increase in the face of fierce public opposition;” that the District participated in developing the AWRM “only to protect, to the best of its ability, the interests of its ratepayers;” and that therefore “the District is entitled to subvention of the costs that have been and will be incurred as a result of this mandate.”<sup>87</sup>

### **Los Angeles Regional Water Board Position.**

The Regional Board maintains that this test claim does not qualify for subvention. The Regional Board argues that it is required by the CWA to establish a TMDL for chlorides for an impaired

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<sup>84</sup> Exhibit A, Test Claim, at p. 5.

<sup>85</sup> Exhibit A, Test Claim, at p. 12.

<sup>86</sup> *Id.*, at p. 25.

<sup>87</sup> Exhibit D, Rebuttal Comments, at pp. 2-14.

water body. In addition the Regional Board asserts that that absent the AWRM plan, the claimant would be required to meet the water quality standard established for the Santa Clara River in the 2002 TMDL (and maintained in the revisions of 2004 and 2006) by the year 2015. The Regional Board argues that it has no discretion whether to adopt water quality objectives due to the listing of the Santa Clara River under section 1313(d) of the CWA. The Regional Board asserts that “[w]ater quality standards are adopted pursuant to the Clean Water Act, and *any* TMDL is required to attain and maintain the applicable water quality standards, no matter how many times these regulatory mechanisms are modified and amended.”<sup>88</sup> The Regional Board further argues that the alleged discretion exercised in allocating pollutant loading among various dischargers does not make the Resolution a state-mandated program: “a TMDL is not valid unless it contains wasteload and load allocations.” The Regional Board holds that “to protect beneficial uses, the Los Angeles Water Board had no choice but to assign wasteload allocations to each point source discharger, including the Claimant.”<sup>89</sup>

In addition, the Regional Board also argues that the Resolution does not impose a new program or higher level of service. The Regional Board argues that the chloride water quality objective was first established in 1975, and the 2008 Resolution was intended “to incorporate less-stringent site-specific objectives in order to support the Claimant’s AWRM program.” The Regional Board continues: “[t]hus, if anything, the 2008 Resolution imposed a *lower level* of service in order to make it less expensive for the Claimant to implement the existing 100 mg/L chloride water quality objective.” The Regional Board also asserts that it did not impose this program: “[t]he AWRM is the Claimant’s chosen method of complying with the Chloride TMDL and the water quality objectives.” Finally, the Regional Board argues that if the U.S. EPA had adopted a chloride TMDL for the Santa Clara River, which the applicable laws permit if the state fails to do so, “it would have done so without an implementation plan, since the U.S. EPA does not include implementation plans as part of their TMDLs.” In other words, the District has the Regional Board to thank for the gradual and phased implementation of the TMDL, which the Regional Board implied is less burdensome and expensive than a TMDL adopted by the Administrator of the U.S. EPA.<sup>90</sup>

Moreover, the Regional Board argues that the Resolution does not impose requirements that are unique to government. The Regional Board holds that “the 2008 Resolution is a regulatory provision of general applicability and not a new program or higher level of service.” The Regional Board asserts that “[w]ater quality objectives apply to a waterbody as a whole, and all dischargers are subject to them.” The Regional Board further states that “[l]ikewise, TMDLs must assign wasteload allocations and load allocations to all sources of the pollutant, both public agencies and private industry alike.” Therefore, the Regional Board concludes that “the challenged provisions treat dischargers with an even hand, irrespective of status (any point or nonpoint source) and are not peculiar to local agencies.”<sup>91</sup>

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<sup>88</sup> Exhibit B, LA Regional Board Comments, at pp. 22-23.

<sup>89</sup> Exhibit B, LA Regional Board Comments, at p. 24.

<sup>90</sup> Exhibit B, LA Regional Board Comments, at p. 26.

<sup>91</sup> Exhibit B, LA Regional Board comments, at pp. 26-27.

Finally, the Regional Board argues that three of the statutory exceptions of Government Code section 17556 are applicable. The Regional Board argues that the water quality standards and the TMDL contained in the Resolution are federally mandated, and therefore section 17556(c) applies.<sup>92</sup> The Regional Board argues also that section 17556(a) applies to bar this test claim because “the Claimant itself developed and proposed the AWRM program and then requested the Los Angeles Water Board to adopt the AWRM as part of its 2008 Resolution.”<sup>93</sup> And, the Regional Board argues that the Claimant possesses fee authority within the meaning of section 17556(d). The Regional Board dismisses the claimant’s assertion that “the District’s board declined to adopt the proposed rate increases based on the expectations that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the district’s ratepayer.”<sup>94</sup> The Regional Board argues that “[t]he plain language of this exception is based on the Claimant’s authority, not on the Claimant’s practical ability in light of surrounding economic circumstances, to levy fees.”<sup>95</sup> The Regional Board concludes that “[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>96</sup>

### **Department of Finance Position**

Finance argues that the TMDL does not impose a reimbursable state mandate because “(1) the regulations are required by section 303(d) of the federal Clean Water Act, (2) the regulations by themselves do not require the claimant to act, and (3) even if the regulations required action, claimant has fee authority sufficient to pay its costs.” Finance also questions whether the claim may be time barred, because the Resolution was adopted by the LA Regional Board in December 2008, and the test claim was filed on March 30, 2011.<sup>97</sup>

### **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

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<sup>92</sup> See Exhibit B, LA Regional Board Comments, at p. 28.

<sup>93</sup> Exhibit B, LA Regional Board Comments, at p. 29.

<sup>94</sup> Exhibit B, LA Regional Board Comments, at pp. 30-31 [citing to Exhibit A, Test Claim, at p. 26].

<sup>95</sup> Exhibit B, LA Regional Board Comments, at p. 31 [citing *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, at pp. 401-402].

<sup>96</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>97</sup> Exhibit C, Department of Finance Comments, at pp. 1-2.

articles XIII A and XIII B impose.”<sup>98</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>99</sup> 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.<sup>100</sup>
2. The mandated activity 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.<sup>101</sup>
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.<sup>102</sup>
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.<sup>103</sup>

The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>104</sup> The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>105</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>106</sup>

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<sup>98</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>99</sup> *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

<sup>100</sup> *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

<sup>101</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

<sup>102</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>103</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>104</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>105</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>106</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

**A. Threshold Issues: the Santa Clarita Valley Sanitation District is an Eligible Claimant Before the Commission; Resolution R4-2008-012 is an Executive Order within the Meaning of Article XIII B, Section 6; and the Test Claim is Timely Filed.**

1. The Santa Clarita Valley Sanitation District is an Eligible Claimant before the Commission

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. “Costs mandated by the state” is defined to mean “any increased costs which a local agency or school district is required to incur... as a result of any statute... or any executive order implementing any statute... which mandates a new program or higher level of service of an existing program.”<sup>107</sup> “Local agency,” in turn, is defined to include “any city, county, special district, authority, or other political subdivision of the state.”<sup>108</sup>

However, not every “local agency,” as defined, is an eligible claimant before the Commission. In addition to an entity fitting the description above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. The California Supreme Court, in *County of Fresno v. State of California*,<sup>109</sup> explained the constitutional subvention requirement as follows:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments... Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>110</sup>

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,<sup>111</sup> the Fourth District Court of Appeal concluded that redevelopment agencies were not eligible to claim reimbursement because their funding came primarily from tax increment financing, which the court determined, due to a valid statutory exemption, was not subject to the taxing and spending limitations of articles XIII A and XIII B:

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” The

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<sup>107</sup> Government Code section 17514 (Stats. 1984, ch. 1459).

<sup>108</sup> Government Code section 17518 (Stats. 1984, ch. 1459).

<sup>109</sup> *County of Fresno, supra*, 53 Cal.3d 482.

<sup>110</sup> *Id.*, at p. 487. Emphasis in original.

<sup>111</sup> (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976

purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...<sup>112</sup>

Therefore, a local agency that does not collect and expend “proceeds of taxes” is not an eligible claimant before the Commission.<sup>113</sup>

Here, the District receives *at least some amount* of its funding from local taxes, and is subject to an appropriations limit for at least a portion of its revenues, and is therefore an eligible claimant. The State Controller’s Special Districts Annual Report for 2010-2011 indicates that the Santa Clarita Valley Sanitation District was subject to an appropriations limit for approximately one-third of its total revenue (nearly \$11 million), and made total appropriations subject to the appropriations limit in the amount of \$5,778,450.<sup>114</sup> Based on the foregoing, the Commission finds that the Santa Clarita Valley Sanitation District is an eligible claimant before the Commission.

2. The Regional Water Board’s Order is an Executive Order within the Meaning of Article XIII B, Section 6.

Article XIII B, section 6 provides that “[w]henever 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...” Government Code section 17514 provides that costs mandated by the state includes “any increased costs which a local agency or school district is required to incur...as a result of...any executive order implementing any statute...which mandates a new program or higher level of service of an existing program...” Government Code section 17516 defines an “executive order” to mean “any order, plan, requirement, rule, or regulation issued by...[a]ny agency, department, board, or commission of state government.”<sup>115</sup>

Because Resolution R4-2008-012 is an order of a state board, the Commission finds that Resolution R4-2008-012 is an executive order within the meaning of article XIII B, section 6.

3. The Test Claim was Timely Filed

Section 17551 provides that “[l]ocal agency and school district 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.”<sup>116</sup>

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<sup>112</sup> *Redevelopment Agency of San Marcos, supra*, 55 Cal.App.4th at p. 986 [internal citations omitted].

<sup>113</sup> *Ibid.* See also, *County of Fresno, supra* (1991) 53 Cal.3d 482, at p. 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

<sup>114</sup> Exhibit X, 2010-2011 Special Districts Annual Report Excerpts 1 and 2.

<sup>115</sup> Government Code section 17516 (as amended by Stats. 2010, ch. 288 (SB 1169)).

<sup>116</sup> Government Code section 17551 (Stats. 2007, ch. 329 (AB 1222)).

Section 1183 of the Commission’s regulations states that “within 12 months,” for purposes of test claim filing, “means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the claimant.”<sup>117</sup>

Finance has raised the statute of limitations found in section 17551, arguing that the test claim was filed on March 30, 2011, while the Resolution had an effective date of December 11, 2008. Finance further argues that the District “asserts that eligible costs under the claim include those for the entire fiscal year 2009-10.” Finance concludes that “[i]f no allegedly state-mandated costs were incurred until fiscal year 2009-2010, all claimed costs for that fiscal year would have had to be incurred after March 30, 2010 to not be time barred.”<sup>118</sup>

Finance’s first point, that the effective date of the Resolution would place this test claim beyond the time bar, has some merit. An effective date of December 11, 2008 would require that a valid test claim be filed by June 30, 2010. However, because TMDLs and waste load allocations must be approved by the SWRCB, OAL,<sup>119</sup> and the Administrator of the EPA,<sup>120</sup> there is an open question, for purposes of applying section 17551, whether the Resolution at issue is “effective” on the date it was approved by the Regional Board, or on the date that it is approved by the Administrator (here, April 6, 2010).<sup>121</sup> Fortunately, that issue need not be resolved by the Commission at this time, because the Government Code states that a test claim shall be filed not later than 12 months following the effective date of the test claim statute or executive order, *or not later than 12 months following the first costs incurred*. Section 17551 allows a claimant to take advantage of “whichever is later,” and here the District has declared that it first incurred costs in fiscal year 2009-2010.<sup>122</sup> There is no evidence in the record to rebut the District’s declaration.

The Government Code allows for a claim to be filed 12 months after the date costs were first incurred; the filing date does not necessarily turn on the effective date of the statute or executive order. And, section 1183, as cited above, states that “within 12 months” means the end of the fiscal year following the fiscal year in which costs were incurred.<sup>123</sup> Therefore, if the filing date of this test claim is based on first incurring costs during fiscal year 2009-2010, a claimant would need to file by June 30, 2011.

Based on the foregoing, the Commission finds that this test claim was timely filed.

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<sup>117</sup> Code of Regulations, title 2, section 1183 (Register 2008, No. 17).

<sup>118</sup> Exhibit C, Department of Finance Comments, at p. 2. See also, Exhibit A, Test Claim, at p. 17; Exhibit D, Rebuttal Comments, at p. 13.

<sup>119</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing Water Code §§ 13245, 13246; Government Code § 11353]. See also, Exhibit A, Test Claim, at p. 6.

<sup>120</sup> Exhibit B, LA Regional Board Comments, at p. 8 [citing 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.20(c)]. See also, Exhibit A, Test Claim, at p. 6.

<sup>121</sup> Exhibit A, Test Claim, at p. 11; Exhibit B, LA Regional Board Comments, at p. 17.

<sup>122</sup> Exhibit A, Test Claim, at pp. 544-554 [declaration of Stephen Maguin, Chief Engineer of SCVSD]. See also Exhibit A, at p. 3 [certification of claim by Stephen Maguin].

<sup>123</sup> Code of Regulations, title 2, section 1183 (Register 2008, No. 17).

**B. The Regional Water Board’s Resolution and Order does not Mandate a New Program or Higher Level of Service within the Meaning of Article XIII B, Section 6.**

The District states that “Regional Board Resolution No. R4-2008-012 requires: (1) compliance with specific waste load allocations that will also be incorporated into the Saugus and Valencia WRPs’ NPDES permits; and (2) specific "implementation tasks" necessary for compliance.” The Implementation Tasks, along with the final waste load allocations, “are the subject of this test claim.”<sup>124</sup>

Attachment B to Resolution R4-2008-012 outlines the conditional site-specific objectives for Reaches 4B, 5, and 6, and conditional waste load allocations for the water discharged from the Valencia and Saugus WRPs to Reaches 4B, 5, and 6. The WLAs for the District’s WRP facilities are based on, and numerically identical to, the SSOs for the respective reaches (117 mg/L chloride for Reach 4B, and the discharge into Reach 4B; 150 mg/L chloride for Reaches 5 and 6, and for the discharge into Reaches 5 and 6).<sup>125</sup> All other point sources are assigned WLAs equal to 100 mg/L.<sup>126</sup> Attachment B also provides for the operation of reverse osmosis treatment at the Valencia WRP, the provision of supplemental water to Reach 4B when chloride concentrations exceed 117 mg/L, and the design and construction of advanced treatment facilities.<sup>127</sup> In addition, Attachment B outlines the following implementation tasks:

*4. The SCVSD will convene a technical advisory committee or committees (TAC(s)) in cooperation with the Regional Board to review literature, develop a methodology for assessment, and provide recommendations with detailed timelines and task descriptions to support any needed changes to the time schedule for evaluation of appropriate chloride threshold for Task 6... ¶*

*5. Groundwater/Surface Water Interaction Model: The SCVSD will solicit proposals, collect data, develop a model in cooperation with the Regional Board, obtain peer review, and report results. The impact of source waters and reclaimed water plans on achieving the water quality objective and protecting beneficial uses, including impacts on underlying groundwater quality, will also be assessed and specific recommendations for management developed for Regional Board consideration. The purpose of the modeling and sampling effort is to determine the interaction between surface water and groundwater as it may affect the loading of chloride from groundwater and its linkage to surface water quality.*

*6. Evaluation of Appropriate Chloride Threshold for the Protection of Sensitive Agricultural Supply Use and Endangered Species Protection: The SCVSD will prepare and submit a report on endangered species protection thresholds. The SCVSD will also prepare and submit a report presenting the results of the evaluation of chloride thresholds for salt sensitive agricultural uses, which shall consider the impact of drought and low rainfall conditions and the associated*

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<sup>124</sup> Exhibit A, Test Claim, at p. 13.

<sup>125</sup> Exhibit A, Test Claim, at pp. 46-53.

<sup>126</sup> Exhibit A, Test Claim, at p. 52.

<sup>127</sup> Exhibit A, Test Claim, at pp. 50-52; 58; 63.

increase in imported water concentrations on downstream crops utilizing the result of Task 5.

7. *Develop SSO for Chloride for Sensitive Agriculture: The SCVSD will solicit proposals and develop technical analyses upon which the Regional Board may base a Basin Plan amendment.*

8. *Develop Anti-Degradation Analysis for Revision of Chloride Objective by SSO: The SCVSD will solicit proposals and develop draft anti-degradation analysis for Regional Board consideration.*

9. *Develop a pre-planning report on conceptual compliance measures to meet different hypothetical final conditional wasteload allocations. The SCVSD shall solicit proposals and develop and submit a report to the Regional Board that identifies potential chloride control measures and costs based on different hypothetical scenarios for chloride SSOs and final conditional wasteload allocations.*

¶...¶

17. a) *Implementation of Compliance Measures, Complete Environmental Impact Report: The SCVSD shall complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report for facilities to comply with final effluent permit limits for chloride.*

¶...¶

20. *The interim WLAs for chloride shall remain in effect for no more than 10 years after the effective date of the TMDL. Conditional SSO for chloride in the USCR shall be achieved. Final conditional WLAs for chloride in Reaches 4B, 5, and 6 shall apply by May 5, 2015. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the SCVSD.*<sup>128</sup>

The District alleges the following costs mandated by Resolution R4-2008-012:

Summary of the Implementation Tasks Completed to Date:

TMDL Study/Task	Cost
TMDL Collaborative Process Facilitation Services (Task 4)	\$0.8 million
Ground Water Surface Water Interaction Model (Task 5)	\$3.1 million
Agricultural Chloride Threshold Study (Task 6)	\$0.7 million
Threatened and Endangered Species Study (Task 6)	\$0.1 million
Site Specific Objectives and Anti-Degradation Study (Task 7 & 8)	\$0.3 million
Chloride Compliance Cost Study (Task 9)	\$0.5 million
Facilities Plan & EIR (Task 17a)	\$1.1 million
Total TMDL Study Costs to Date	\$6.6 million

<sup>128</sup> Exhibit A, Test Claim, at pp. 59-63.



As previously indicated, the District has implemented a comprehensive chloride source reduction program within the sewer service area designed to reduce chloride levels in the WRP discharges in order to comply with final WLAs for chloride. (See Exh. 19). Specifically, the District implemented an innovative automatic water softener public outreach and rebate program, in compliance with Senate Bill 475, to remove automatic water softeners, which contribute significant amounts of chloride to the WRP discharges. The total cost of the program for removal of automatic water softeners, not including the cost of the District's staff time, is approximately \$4.8 million.<sup>129</sup>

The District goes on to state that compliance with the conditional SSOs and WLAs will require implementation of “ultra-violet light disinfection at both WRPs;” construction of advanced treatment facilities such as microfiltration-reverse osmosis and brine disposal for desalination; salt management facilities such as extraction wells and water supply conveyance pipelines; supplemental water; and alternative water supplies for the protection of beneficial uses.<sup>130</sup> These activities and costs are described as the AWRM. The District’s “present estimate of the cost to comply with the TMDL’s conditional SSOs and WLAs is \$250 million.”<sup>131</sup>

The District estimates its costs to implement the AWRM program as follows:

AWRM Project Element	Estimated Capital Cost
Facilities Plan & Environmental Impact Report (EIR)	\$2.5 million
Advanced Treatment [MF & RO]	\$30.0 million
Brine Disposal (Deep Well Injection, DWI)	\$53 million
Ventura Salt Export Facilities	
(a) MF/RO Conveyance Pipeline from Valencia WRP	\$46.5 million
(b) GW Extraction Wells in Ventura County	\$5.5 million
(c) Blend Water Pipeline from Wells to River	\$52.3 million
Supplemental Water from local pumped groundwater	\$30.0 million
Supplemental Water conveyance	\$12.0 million
UV Disinfection Facilities at Saugus & Valencia WRP	\$16.5 million
Removal of Automatic Water Softeners	\$2.4 million
<b>Total Estimated Capital Cost</b>	<b>\$250.7 million<sup>132</sup></b>

Thus the District has alleged the above activities required by the 2008 Resolution, totaling approximately \$257 million in alleged increased costs. The analysis below addresses whether the activities alleged in the Implementation Tasks and the AWRM program constitute a new program or higher level of service.

<sup>129</sup> Exhibit A, Test Claim, at pp. 13-16.

<sup>130</sup> Exhibit A, Test Claim, at pp. 11-12.

<sup>131</sup> *Id.*, at p. 12.

<sup>132</sup> Exhibit A, Test Claim, at p. 16

1. Some of the Implementation Tasks described in the Resolution are not new.

Resolution R4-2008-012 constitutes a revision to the existing chloride TMDL for the Upper Santa Clara River, and therefore many of the implementation tasks included in the resolution may have already been completed, or, at minimum, were included in earlier versions of the TMDL that continued to be required when the 2008 Resolution was adopted and which have not been pled in this test claim, and are therefore not new, with respect to prior law. Activities that are not new, as compared with an earlier order or resolution in effect at the time the 2008 Resolution was adopted, do not constitute a new program or higher level of service and, thus, are not reimbursable in the context of the current test claim.<sup>133</sup>

Implementation Tasks 4, 5, 6, 7, 8, and 9, quoted above from Resolution R4-2008-012, are found in nearly identical language in Resolution 04-004,<sup>134</sup> and again in Resolution R4-2006-016.<sup>135</sup> Additionally, Implementation Tasks 4-9 are listed in the revised TMDL as having completion dates *prior to* the adoption and approval of the 2008 Resolution.<sup>136</sup> Moreover, these tasks appear to have indeed been *completed* prior to the adoption of Resolution R4-2008-012: the Resolution states that “[t]he Santa Clarita Valley Sanitation District (SCVSD) has completed all of the necessary special studies required by the Chloride TMDL (TMDL Task Nos 3, 4, 5, 6, 7, 8, 9, 10b, and 10c).” The Resolution further states that “[t]he completion of these TMDL special studies... has led to the development of an alternative TMDL implementation plan that addressed chloride impairment of surface waters and degradation of groundwater.”<sup>137</sup>

Based on the plain language of the Resolution itself, these Implementation Tasks were completed prior to the adoption of the Resolution. It appears that the tasks were repeated in the revised TMDL adopted December 11, 2008, but activities that were completed (and the costs thereby incurred) prior to July 1, 2009 are outside the period of eligibility for this test claim.<sup>138</sup> Moreover, activities that were required by a prior version of the TMDL are not new. Therefore, all costs and activities alleged for Implementation Tasks 4, 5, 6, 7, 8, and 9 do not result in a state-mandated new program or higher level of service and are denied.

Implementation Task 17a, “Implementation of Compliance Measures, Complete Environmental Impact Report...” is found in Resolution R4-2006-016.<sup>139, 140</sup> The claimant alleges \$613,530 for

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<sup>133</sup> *Lucia Mar Unified School District, supra*, (1988) 44 Cal.3d 830, at p. 835.

<sup>134</sup> See Exhibit B, LA Regional Board Comments, at p. 537 and following.

<sup>135</sup> Exhibit B, LA Regional Board Comments, at pp. 564-565.

<sup>136</sup> E.g., Task 4: Convening a technical advisory committee to conduct literature review and develop methodology for assessment; Completion Date 05/04/2006; Task 5: Groundwater/Surface Water Interaction Model; Completion Date 11/20/2007.

<sup>137</sup> Exhibit A, Test Claim, at p. 36.

<sup>138</sup> Government Code section 17557(e) [“A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” This test claim was submitted on March 30, 2011, establishing eligibility for reimbursement beginning July 1, 2009].

<sup>139</sup> Exhibit B, LA Regional Board Comments, at p. 566.

“Facilities Plan & EIR – Task 17” and \$774,890 for “Consultants (TMDL Task 17)” incurred in fiscal year 2009-2010. However, the activities of implementing compliance measures and to completing an EIR are not *new*, with respect to prior law, and the resolution which first required these activities was not pled in this test claim. Therefore, these implementation tasks are not new and do not impose a new program or higher level of service.

Finally, the default TMDL, including WLAs of 100 mg/L for the Saugus and Valencia WRPs, which takes effect “if the District cannot comply with the AWRM program,” is not a new requirement. The Regional Board adopted a TMDL for Reaches 5 and 6 of the Santa Clara River in 2002, which “required the Districts to reduce the chloride levels in the Plants’ discharge.”<sup>141</sup> That TMDL was revised in 2004 and 2006, but the numerical limits were not altered. The TMDL in effect prior to the 2008 Resolution “has a numeric target of 100 mg/L, measured instantaneously and expressed as a chloride concentration, required to attain the water quality objective and protect agricultural supply beneficial use.”<sup>142</sup> In addition, the TMDL includes “waste load allocations (WLAs) [of] 100 mg/L for Valencia WRP and 100 mg/L for Saugus WRP.”<sup>143</sup> The numerical limits adopted in 2002, which the parties acknowledge will control if the AWRM program is not fully and continuously implemented, have not changed, and are therefore not new, irrespective of whatever costs might be incurred to implement them.

Based on the foregoing, Implementation Tasks 4, 5, 6, 7, 8, 9, and 17a are not new, with respect to prior law. In addition, the waste load allocations are not new, with respect to prior law. Therefore the Commission finds that none of these provisions constitutes a state-mandated new program or higher level of service.

2. Accelerating the implementation period of the final waste load allocations under Implementation Task 20 is not a new program or higher level of service resulting in increased costs mandated by the state.

Implementation Task 20 shortens the applicable period of the interim WLAs, thus accelerating the implementation of the final WLAs for the Saugus and Valencia WRPs, from 11 years to 10 years, commencing with the effective date of the 2002 TMDL.<sup>144</sup> The interim WLAs are designed to accommodate the time needed for the WRPs to implement desalination and other chloride reduction improvements. For the Saugus WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 114 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L. For the Valencia WRP, the interim WLA is described as “the sum of State Water Project treated water supply concentration plus 134 mg/L, as a twelve month rolling average,” but not to exceed 230 mg/L.<sup>145</sup> These interim WLAs were

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<sup>140</sup> Exhibit X, SCVSD Draft EIR at p. 8 [stating that Resolution R4-2006-016 was approved by U.S. EPA on June 12, 2008].

<sup>141</sup> Exhibit A, Test Claim, at p. 175.

<sup>142</sup> Exhibit A, Test Claim, at p. 191 [Attachment A to Resolution R 02-018].

<sup>143</sup> *Id.*, at p. 192.

<sup>144</sup> The 2002 Resolution was approved by U.S. EPA, after appeal, remand, and revision, on April 28, 2005. (See Exhibit A, Test Claim, at p. 45 [Attachment B to Resolution R4-2008-012].)

<sup>145</sup> Exhibit B, LA Regional Board Comments, at p. 543 [Resolution R4-04-004].

originally intended to apply for two and one-half years, pursuant to the 2002 TMDL adopted by the Regional Board. That period was expanded to 13 years after appeal and remand from the SWRCB, and the revised schedule was approved by the SWRCB, OAL, and the Administrator of the U.S. EPA.<sup>146</sup> Resolution R4-2006-016 shortened the interim WLA period by two years, as follows:

The interim effluent limits for chloride shall remain in effect for *no more than 11 years after the effective date of the TMDL*. Water Quality Objective for chloride in the Upper Santa Clara River shall be achieved. The Regional Board may consider extending the completion date of this task as necessary to account for events beyond the control of the [District].<sup>147</sup>

Resolution R4-2008-012 shortened the implementation schedule again, providing that the interim WLAs “shall remain in effect for no more than 10 years after the effective date of the TMDL.”<sup>148</sup>

There is no new program inherent in shortening the time frame for the interim WLAs. The requirements of the interim WLAs remain the same, only the schedule is accelerated, and the final WLAs attach one year sooner. It may be argued that it costs more to implement the final WLAs one year sooner, but this change does not of itself constitute a new program or higher level of service.

The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service*.”<sup>149</sup> The Supreme Court has also spoken on the requirement of a new program, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.”<sup>150</sup> Accordingly, in *City of San Jose v. State of California*,<sup>151</sup> the court held that “withdrawal of funds to reimburse [for a program] was not a ‘new program’ under section 6,”<sup>152</sup> and that “there is no basis for applying section 6 as an equitable remedy to cure the perceived

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<sup>146</sup> Exhibit B, LA Regional Board Comments, at pp. 533 [Resolution R4-03-008]; 605 [Resolution R4-2008-012].

<sup>147</sup> Exhibit A, Test Claim, at p. 228; Exhibit B, LA Regional Board Comments, at p. 566 [emphasis added].

<sup>148</sup> Exhibit B, LA Regional Board Comments, at pp. 623-624.

<sup>149</sup> *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, at p. 173 [citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 54-56] [emphasis added].

<sup>150</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [emphasis added].

<sup>151</sup> (1996) 45 Cal.App.4th 1802, at pp. 1811-1813

<sup>152</sup> *City of San Jose, supra*, 45 Cal.App.4th at p. 1817.

unfairness resulting from political decisions on funding priorities.”<sup>153</sup> Finally, not only is an increase in costs not tantamount to a higher level of service, there is no evidence in the record of the incremental cost increase which might be alleged based on accelerating the implementation of the final WLAs by one year.

Based on the foregoing, Implementation Task 20 does not impose any new state mandated activities and does not result in a new program or higher level of service.

3. The Alternative Water Resources Management program is not a new program or higher level of service.

The California Supreme Court, in *County of Los Angeles I*,<sup>154</sup> addressed the phrase “new program or higher level of service” as follows:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning... We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>155</sup>

Thus the Supreme Court articulated a multi-faceted test for “new program or higher level of service:” reimbursement requires (1) a new task or activity; (2) which constitutes an increase in service as compared to prior law; (3) and which either provides a service to the public, or imposes requirements uniquely upon government, rather than upon all persons and entities equally.

The Regional Board has argued that the Resolution cannot impose a new program or higher level of service because water quality objectives and TMDLs apply to a water body as a whole, and all dischargers are subject to them, “both public agencies and private industry alike.” The Commission need not address this argument since the AWRM program is an optional alternative to complying with prior law which claimant may choose to reject. Moreover, the requirements of the AWRM are less stringent and provide a lower level of service when compared to the law in effect immediately prior to the adoption of R4-2008-012. Therefore the Commission finds that the AWRM does not impose a state mandated new program or higher level of service.

The Regional Board argues that Resolution issue, R4-2008-12, cannot impose a new program or higher level of service because it “amended the Basin Plan to, among other things, adopt site-specific objectives for chloride in the Santa Clara River that are *less stringent* than the generally applicable water quality objectives that apply to other major dischargers to the Santa Clara

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<sup>153</sup> 45 Cal.App.4th at p. 1813 [citing *County of Los Angeles v. Commission on State Mandates*, *supra* (1995) 32 Cal.App.4th 805, at p. 817].

<sup>154</sup> (1987) 43 Cal.3d 46, at p. 56.

<sup>155</sup> *Ibid.*

River...”<sup>156</sup> The LA Regional Board argues: “thus, if anything, the 2008 Resolution imposes a *lower level of service* in order to make it less expensive for the Claimant to implement” the TMDL.<sup>157</sup> The Commission agrees.

The first water quality objectives for the Santa Clara River were established in 1975, in which chloride objectives were set at 90 mg/L for Reach 5 and 80 mg/L for Reach 6.<sup>158</sup> In 1978, the LA Regional Board modified the chloride objectives to 100 mg/L for both Reaches 5 and 6. In 2002, the 100 mg/L objective was incorporated into a TMDL, pursuant to the impairment listing under section 303(d) of the Clean Water Act of certain reaches of the Santa Clara River, and the threat to salt-sensitive agriculture uses both within Reaches 5 and 6 and downstream.<sup>159</sup> Aside from variances and temporary relaxation of the objectives due to drought conditions in the 1990s, the 100 mg/L objective has remained the underlying standard from 1978 to the present.<sup>160</sup> Resolution R4-2008-012 plainly states that the TMDL then in effect is being amended, conditionally, to include the elements of the AWRM.<sup>161</sup> Therefore, the underlying water quality objectives and TMDL in effect are outside the subvention requirement, because any activities or requirements to meet the 100 mg/L objectives, or the TMDL, are not new, and are not pled in this test claim.

Both the District and the Regional Board agree that the AWRM contains “relaxed” requirements, as compared with the prior water quality objectives. The District describes the Resolution as follows:

The December 11, 2008 amendment to the Basin Plan also modified the chloride requirements. This amendment included the enactment of *relaxed site specific objectives (“SSOs”)* for chloride in the Santa Clara River conditioned upon the completion of activities set forth in the revised TMDL that contained new final WLAs and a detailed implementation plan.<sup>162</sup>

The LA Regional Board states:

In addition, the 2008 Resolution reduces the compliance costs the Claimant would otherwise incur. As detailed above, the 2008 Resolution was specifically adopted to incorporate relaxed site-specific objectives into the Basin Plan in order to implement the Claimant’s proposed AWRM program.<sup>163</sup>

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<sup>156</sup> Exhibit B, LA Regional Board Comments, at p. 2 [emphasis in original].

<sup>157</sup> Exhibit B, LA Regional Board Comments, at p. 26 [emphasis in original].

<sup>158</sup> Exhibit A, Test Claim, at p. 7; Exhibit B, LA Regional Board Comments, at p. 9

<sup>159</sup> Exhibit A, Test Claim, at pp. 9-10; Exhibit B, LA Regional Board Comments, at pp. 10-11.

<sup>160</sup> Exhibit A, Test Claim, at pp. 7-11; Exhibit B, LA Regional Board Comments, at pp. 9-11.

<sup>161</sup> Exhibit A, Test Claim, at p. 36. See also, Exhibit B, LA Regional Board Comments, at p. 705 [transcript of December 11, 2008 hearing].

<sup>162</sup> Exhibit A, Test Claim, at p. 11 [emphasis added].

<sup>163</sup> Exhibit B, LA Regional Board Comments, at p. 29.

In addition, “implementation actions to attain [the prior TMDL] would require advanced treatment – that is, reverse osmosis – of the full effluent from the Saugus *and* Valencia plants with discharge into the ocean through a 43-mile brine line.”<sup>164</sup> Under the AWRM, reverse osmosis desalination is only required at the Valencia WRP, and the waste is permitted to be disposed of through deep well injection.<sup>165</sup> The District estimates that implementing the advanced treatment upgrades at only one of the two facilities, along with other tasks, will cost only approximately \$250 million, as opposed to \$500 million under the prior TMDL.<sup>166</sup>

There is nothing in the AWRM that imposes a higher level of service on this claimant. Resolution R4-2008-012 calls for the implementation of less-stringent requirements than under prior law, which the District has acknowledged will be less-expensive to implement. In addition, those requirements are conditional, and the default requirements, should the AWRM not continue to be fully implemented, are not new.

Based on the foregoing, the Commission finds that the AWRM program is not a new program or higher level of service, and the costs and activities thereunder are denied.

**C. Even if the Resolution Imposed a State-Mandated New Program or Higher Level of Service, it Would not Impose Costs Mandated by the State Under Section 17556(d) Because the Claimant Has Sufficient Fee Authority, as a Sanitation District, to Cover the Costs of the Program.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds that “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556, subdivision (d), in *County of Fresno v. State of California*.<sup>167</sup> The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local

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<sup>164</sup> Exhibit B, LA Regional Board Comments, at p. 719 [transcript of December 11, 2008 meeting] [emphasis added]. See also, Exhibit A, Test Claim, at p. 10 [TMDL estimated to cost \$500 million].

<sup>165</sup> Exhibit A, Test Claim, at p. 12; Exhibit B, LA Regional Board Comments, at p. 778-779.

<sup>166</sup> Exhibit A, Test Claim, at pp. 10; 12.

<sup>167</sup> *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>168</sup>

Accordingly, in *Connell v. Superior Court of Sacramento County*,<sup>169</sup> the Santa Margarita Water District, among others, was denied reimbursement on the basis of its authority to impose fees on water users. The water districts submitted evidence “that rates necessary to cover the increased costs [of pollution control regulations] would render the reclaimed water unmarketable and would encourage users to switch to potable water.”<sup>170</sup> The court concluded that “[t]he question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs.” Water Code section 35470 authorized the levy of fees to “correspond to the cost and value of the service,” and “to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”<sup>171</sup> The court held that the Districts had not demonstrated “that anything in Water Code section 35470 limits the authority of the Districts to levy fees “sufficient” to cover their costs,” and that therefore “the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry.”<sup>172</sup>

Likewise, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”<sup>173</sup> The court further noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>174</sup>

Here, Health and Safety Code section 5471 permits a sanitation district, “by ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees tolls, rates, rentals, or territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.”<sup>175</sup> This section provides “authority,” within the meaning of

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<sup>168</sup> *Id.*, at p. 487.

<sup>169</sup> (Cal. Ct. App. 3d Dist. 1997) 59 Cal.App.4th 382

<sup>170</sup> *Id.*, at p. 399.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Connell, supra*, (1997) 59 Cal.App.4th at p. 401.

<sup>173</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

<sup>174</sup> *Ibid.*

<sup>175</sup> Health and Safety Code section 5471(a) (Stats. 2007, ch. 27 (SB 444)).

section 17556(d), based on the plain language of both Health and Safety Code section 5471 and Government Code section 17556.

Proposition 218, adopted by the voters in 1996, also known as the “Right to Vote on Taxes Act,” declared its purpose to protect taxpayers “by limiting the methods by which local governments exact revenue from taxpayers without their consent.” Proposition 218 added articles XIII C and XIII D to the Constitution;<sup>176</sup> article XIII D, section 6 lays out the procedures and requirements for “new or existing increased fees and charges:”

(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. *If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as

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<sup>176</sup> Exhibit X, Text of Proposition 218.

assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. *Except for fees or charges for sewer, water, and refuse collection services*, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision...

Section 6 thus provides that an agency seeking to impose or increase fees must identify the parcels and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to “consider all protests.” Written protests by a majority of owners of the affected parcels are sufficient to defeat a fee increase. Furthermore, new or increased fees are required to “not exceed the funds required to provide the property related service;” “not be used for any purpose other than that for which the fee or charge was imposed;” “not exceed the proportional cost of the service attributable to the parcel;” and be “actually used by, or immediately available to, the owner of the property in question.” In addition, new fees or charges may not be imposed for general services such as police and fire protection. Finally, voter approval is required “[e]xcept for fees or charges for sewer, water, and refuse collection services.”<sup>177</sup>

The District asserts that the fee authority case law discussed above is no longer on point “because the most significant cases predate the passage of [Proposition 218].” The District contends that “[t]his potential conflict is significant where a local agency is unable to obtain the requisite approval to implement a proposed fee increase.” The District asserts that it “attempted to implement the Proposition 218 process, but the elected public officials could not support the proposed rate increase in the face of fierce public opposition.” The District states that “[i]n 2010, the District’s board declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum due to fierce opposition from the District’s ratepayers.”<sup>178</sup>

Based on the plain language of article XIII D, section 6, above, voter approval is not required for

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<sup>177</sup> California Constitution, article XIII D, section 6 (adopted November 5, 1996).

<sup>178</sup> Exhibit A, Test Claim, at p. 26.

increases to water and sewer rates.<sup>179</sup> Here, the fee authority is that of a sanitation district, and relates to the fees charged to the users of the sewerage system; voter approval is therefore not required. All remaining limitations of article XIII D, however, must be satisfied (e.g., parcels must be identified, and amounts proposed must be calculated; fees shall not exceed the funds required to provide service; revenues may not be used for any other purpose; amount of a fee must be proportional to the cost of the service attributable to a parcel; a public hearing must be held and *if written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge*). The parties' comments identify "written protests" as a limitation at issue here.

The Regional Board argues that "assuming that Proposition 218 does apply to Claimant's proposals for rate increases...the number of written protests necessary to preclude the Board of Directors from passing rate increases under Proposition 218 was noticeably lacking. Section 6(a)(2), states that "[i]f *written protests* against the proposed fee or charge are *presented by a majority of owners of the identified parcels*, the agency shall not impose the fee or charge." The LA Regional Board argues that there are nearly 69,000 parcels connected to the District's sewerage system, and therefore "at least 34,449 written protests" would be a majority of the owners required to defeat a rate increase. At the May 26, 2009 and July 27, 2010 hearings the District received "203 written protests and 7, 732 written protests, respectively."<sup>180</sup>

The District does not dispute the number of written protests needed, or the number received (the Regional Board's mathematical reasoning presumes that all 69,000 parcels represent a single voting property owner, but the District fails to argue the point); rather the District argues that the District's Board "quite reasonably believed that this large rate increase would be rejected if challenged by initiative."<sup>181</sup> Section 3 of Proposition 218 provides that the initiative power to overturn a tax, fee, or assessment "shall not be prohibited or otherwise limited," and the District maintains that an initiative to overturn the fee increase would qualify for the ballot with approximately 6,500 votes, based on the estimated number of voters in the last gubernatorial election who would be affected by the increase.<sup>182</sup> Therefore, the District concludes that the 7,732 written protests "exceeded the number of signatures needed to qualify an initiative that would overturn the rate increase."<sup>183</sup>

But written protests are not tantamount to an initiative petition, and an initiative petition is not a successful referendum. The District acknowledges that its own board "declined to adopt the proposed rate increases based on the expectation that any substantive rate increase would be overturned by way of referendum."<sup>184</sup> The Commission agrees with the Regional Board, in that

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<sup>179</sup> California Constitution, article XIII D, section 6(c) (adopted November 5, 1996).

<sup>180</sup> Exhibit B, LA Regional Board Comments, at p. 20 [citing "Letter from Stephen R. Maguin...to Council members" regarding responses to comments made during the public hearing on proposed rate increases].

<sup>181</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>182</sup> Exhibit D, Rebuttal Comments, at p. 11, Fn. 8. See also article XIII C, section 3.

<sup>183</sup> Exhibit D, Rebuttal Comments, at p. 11.

<sup>184</sup> Exhibit A, Test Claim, at p. 26.

“[t]he Claimant cannot rely on mere speculation as to what could happen as a defense to the fee increase exception” of section 17556(d).<sup>185</sup>

The District argues that the Commission’s decision on *Discharge of Stormwater Runoff* (07-TC-09) reflects the tension between Proposition 218 and the precedent of *Connell*,<sup>186</sup> discussed above, because the Commission found in that earlier test claim decision that Proposition 218 limited the authority of the local government to raise the necessary fees. *Connell* did not address Proposition 218, because the water districts did not allege that their authority to raise fees was impacted by Proposition 218.<sup>187</sup> The water districts in *Connell* instead urged an interpretation of “authority” under section 17556(d) that would necessarily include economic feasibility as a test of “sufficiency,” and the court rejected that interpretation. Moreover, the Commission’s decision in *Discharge of Stormwater Runoff* concluded that Proposition 218 was a barrier to raising assessments or fees only because stormwater management charges were not “water” or “sewer” services provided directly to users, and thus exempt from the voter approval requirement of Proposition 218. The Commission concluded that without the exemption from voter approval under section 6(c), “it is possible that the local agency’s voters or property owners may never adopt the proposed fee or assessment, but the local agency would still be required to comply with the state mandate.”<sup>188</sup>

Therefore the Commission’s earlier decision, though it would not in any event be precedential, is distinguishable on the very same ground that renders *Connell* significantly poignant. The District cannot rely on the unwillingness of voters to raise fees, because the fees in question fall, based on the plain language of the Constitution, outside voter-approval requirement of article XIII D, section 6(c). The District would have the Commission recognize “political realities” as a test of the District’s “authority” under Health and Safety Code section 5471 to raise fees, but here, as in *Connell*, “the plain language of the statute defeats the Districts’ position.” The District asserts that “political realities... [made] it impossible” for the District to raise fees, but ultimately “the District’s board *declined to adopt the proposed rate increases...*”<sup>189</sup> In the same way that the court in *Connell* declined to find that an inability to market reclaimed water would undermine the “sufficiency” of the districts’ authority to raise fees, the Commission here declines to make a finding that political opposition undermines the authority of a sanitation district to raise fees.

Based on the foregoing, the Commission finds that the District has not incurred increased costs mandated by the state, pursuant to section 17556(d).

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<sup>185</sup> Exhibit B, LA Regional Board Comments, at p. 31.

<sup>186</sup> (1997) 59 Cal.App.4th 382.

<sup>187</sup> *Id.*, at p. 402.

<sup>188</sup> *Discharge of Stormwater Runoff* (07-TC-09) at p. 106 [citing *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, at pp. 1358-1359 (concluding that city’s charges on developed parcels to fund stormwater management were property-related fees, but not covered by the exemption for water and sewer fees, and thus required voter approval)].

<sup>189</sup> Exhibit A, Test Claim, at p. 26 [emphasis added].

## **V. Conclusion**

Based on the foregoing discussion and analysis, the Commission denies this test claim and concludes that Resolution No. R4-2008-012, adopted December 11, 2008, by the Los Angeles Regional Water Quality Control Board does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

## **Glossary of Frequently Used Water Quality Related Terms and Acronyms:**

Alternative Water Resources Management program (AWRM)	An alternative to meeting the prior TMDL and WLA requirements of the former basin plan. The requirements for the AWRM were included in a MOU entered into by the stakeholders which was then included in the revised Upper Santa Clara River TMDL and SSOs by Resolution R4-2008-012.
California Antidegradation Policy	A 1968 State Board policy that precludes water quality degradation in the state unless specific conditions are satisfied.
Clean Water Act (CWA)	The primary federal law governing water pollution. The CWA was enacted in 1972, to restore and maintain the chemical, physical, and biological integrity of the nation's waters and includes a goal to eliminate the discharge of pollutants into the navigable waters by 1985.
Effluent	Wastewater - treated or untreated - that flows out of a treatment plant, sewer, or industrial outfall; generally refers to wastes discharged into surface waters.
Environmental Impact Report (EIR)	A detailed statement prepared in accordance with California Environmental Quality Act (CEQA) whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. (Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
Federal Antidegradation Policy	The CWA's antidegradation policy is found in section 303(d) (and further detailed in federal regulations). Its goals are to 1) ensure that no activity will lower water quality to support existing uses, and 2) to maintain and protect high quality waters.

Porter-Cologne Water Quality Control Act	California's Porter-Cologne Water Quality Control Act was enacted in 1969 to allocate and to protect the waters of California. Through it, the State Board and regional boards were established. Many of its provisions mirror those of the CWA which was modeled, in part, on Porter-Cologne.
Reclaimed Water	Treated effluent that is considered to be of appropriate quality for an intended reuse application.
Regional Water Quality Control Boards (RWQCBs or Regional Boards)	The nine RWQCBs develop and enforce water quality objectives and implementation plans to protect the State's waters, recognizing local differences in climate, topography, geology and hydrology.
Site Specific Objective (SSO)	Water Quality Objectives (WQOs) adjusted to reflect localized site specific conditions. Usually initiated by a discharger to allow discharge of pollutants at greater than background levels.
State Water Resources Control Board(SWRCB or State Board)	The state board charged with protecting the waters of California. The SWRCB has joint authority of water allocation and water quality protection. It also oversees and supports the work of the regional boards (RWQCBs).
Total Maximum Daily Load (TMDL)	A calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.
Waste Load Allocation (WLA)	The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution (e.g., permitted waste treatment facilities).
Water Quality Objectives (WQOs)	Define the level of water quality that shall be maintained in a water body or portion thereof.
Water Reclamation Plant (WRP)	A plant which treats sewage and produces reclaimed water.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 20, 2013, I served the:

**Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 20, 2013 at Sacramento, California.



---

Jason Hone  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 9/20/2013  
List Print Date: 09/20/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

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Received  
October 7, 2013  
Commission on  
State Mandates

October 7, 2013

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA. 95814

Dear Ms. Halsey:

**Draft Staff Analysis on the Upper Santa Clara River Chloride Requirements Test Claim, 10-TC-09**

The Department of Finance (Finance) has reviewed the draft staff analysis for the test claim on the Upper Santa Clara River Chloride Requirements submitted by the Santa Clarita Valley Sanitation District of Los Angeles County. The test claim alleges that Resolution R4-2008-012, adopted December 11, 2008 by the Regional Water Quality Control Board for the Los Angeles region, imposed a maximum daily load for the discharge of chloride which would result in new requirements on the Sanitation District's water reclamation plants creating a reimbursable state mandate.

Finance concurs with the draft staff analysis that Resolution No. R4-2008-012 does not constitute a reimbursable state-mandated program and recommends that this test claim be denied.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an email address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

*TDZ*  
Tom Dyer  
Assistant Program Budget Manager

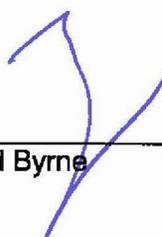
Enclosure A

DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE  
CLAIM NO. 10-TC-09

I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

10/7/2013  
at Sacramento, California.

  
\_\_\_\_\_  
Michael Byrne

2074

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 8, 2013, I served the:

**Department of Finance Comments;  
Claimant Request for Extension of Time; and  
Extension Approval**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 8, 2013 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/8/2013  
List Print Date: 10/08/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

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<p>Mr. Mark Rewolinski  MAXIMUS  625 Coolidge Drive, Suite 100  Folsom, CA 95630</p>	<p>Tel: (949) 440-0845  Email markrewolinski@maximus.com  Fax: (916) 366-4838</p>
<p>Mr. Jim Spano  State Controller's Office (B-08)  Division of Audits  3301 C Street, Suite 700  Sacramento, CA 95816</p>	<p>Tel: (916) 323-5849  Email jspano@sco.ca.gov  Fax: (916) 327-0832</p>
<p>Mr. Jai Prasad  County of San Bernardino  Office of Auditor-Controller  222 West Hospitality Lane, 4th Floor  San Bernardino, CA 92415-0018</p>	<p>Tel: (909) 386-8854  Email jai.prasad@atc.sbcounty.gov  Fax: (909) 386-8830</p>
<p>Mr. Michael Lauffer  State Water Resources Control Board  1001 I Street, 22nd Floor  Sacramento, CA 95814-2828</p>	<p>Tel: (916) 341-5183  Email mlauffer@waterboards.ca.gov  Fax: (916) 641-5199</p>
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<p>Mr. Tom Dyer  Department of Finance (A-15)  915 L Street  Sacramento, CA 95814</p>	<p>Tel: (916) 445-3274  Email: tom.dyer@dof.ca.gov  Fax:</p>
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Received  
October 9, 2013  
Commission on  
State Mandates

Commission on State Mandates  
980 Ninth Street, Ste 300  
Sacramento, CA 95814

Comments on Upper Santa Clara River Chloride Requirements, 10-TC-09  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012

I am sending these comments based on a local reporting of a Staff decision that says that Chloride costs should be paid by local ratepayers. The assumption of the article indicates that should be the residents of the Santa Clarita Valley.

Santa Clarita residents have already paid much in our willingness to replace chloride water softeners, which were approved at the time we built or bought our homes. Although there were credits given for replacing these devices, it in no way covered the complete cost of the replacement.

If the residents of Santa Clarita were the sole reason that the chloride is considered too high in the Santa Clara River, I would then consider that there could be cause to expect locale ratepayers to contribute to the cost of the desalination system. However, based on my research, that is not the case. The water comes into us a ppm higher than you expect when it goes on down river.

How one valley on the long trip down from the delta can be held responsible for this is not reasonable. Between the County and the State we seem to be the target for all water related issues. I thought all taxes had to be passed with a two-thirds majority and could not just be assessed. This is a tax, no matter what you call it, in that if we don't pay it, we could lose our property.

I find it hard to believe that in this era of high technology a better solution to the problem can not be proposed. For \$250 million dollars, we should get a better solution than what has been proposed and will probably be obsolete before it's even completed.

Lynda L Cook  
26508 Sheldon Ave.  
Santa Clarita , CA 91351

661-424-9996

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 10, 2013, I served the:

**Public Comments;**

**SWRCB Request for Extension and Postponement; and  
Extension and Postponement Approval**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 10, 2013 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/10/2013  
List Print Date: 10/10/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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**SANTA CLARITA**

23920 Valencia Boulevard • Suite 300 • Santa Clarita, California 91355-2196  
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[www.santa-clarita.com](http://www.santa-clarita.com)

Exhibit H

Received  
October 18, 2013  
Commission on  
State Mandates

**Delivered via: Electronic Filing (Dropbox)**

Bob Kellar  
Mayor

October 22, 2013

Laurene Weste  
Mayor Pro Tem

Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

TimBen Boydston  
Councilmember

Dear Commission on State Mandates:  
Subject: Test Claim Comments

Frank Ferry  
Councilmember

Thank you for the opportunity to comment on the State Mandate Test Claim for the Upper Santa Clara River Chloride Requirements. This is a very important issue for our community.

Marsha McLean  
Councilmember

Water quality laws and their implementation by State agencies create a substantial monetary burden on local municipalities. According to the Sanitation District of Los Angeles County (District), compliance with the Upper Santa Clara River Chloride Total Maximum Daily Load will cost our Santa Clarita Valley residents and businesses millions of dollars. This is in addition to the cost of numerous programs already in place to meet other State and Federal requirements. It is essential for the vitality of our community that compliance with State-created regulations, such as this one, be supported by the State.

I urge you to carefully consider the arguments made by the District. Unfunded mandates must be addressed by the State to maintain fairness and protect the financial stability of local municipalities.

Thank you for your time and consideration regarding this important issue.

Sincerely,

Bob Kellar  
Mayor

BK:TL:eg

S:\ENVS\RVC\Chloride\Test Claim Comments Letter 10-9-13.doc



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 21, 2013, I served the:

**City of Santa Clarita Comments**

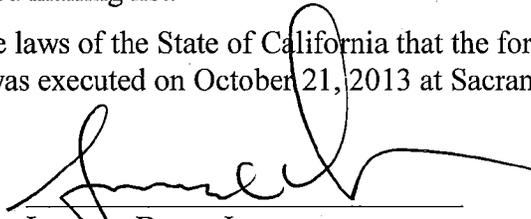
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 21, 2013 at Sacramento, California.



Lorenzo Duran Jr.  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/21/2013  
List Print Date: 10/21/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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Exhibit I

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GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

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November 1, 2013

VIA E-FILE

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Received  
November 1, 2013  
Commission on  
State Mandates

Dear Ms. Halsey:

*UPPER SANTA CLARA RIVER CHLORIDE REQUIREMENTS*, 10-TC-09: COMMENTS  
ON DRAFT STAFF ANALYSIS AND PROPOSED STATEMENT OF DECISION

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) appreciates the careful and thoughtful work of the Commission on State Mandates staff and concurs with the conclusion reached in the Draft Staff Analysis and Proposed Statement of Decision (collectively, Proposed Decision). The Proposed Decision correctly concludes that Resolution No. R4-2008-012 (Resolution) does not constitute a reimbursable state-mandated program and recommends that the test claim be denied.

The Board agrees with the rationale of the Proposed Decision as to why the Resolution does not impose a new program or higher level of service. For completeness, though, the Board encourages the Commission to also consider alternative grounds that the Board has advanced for denying the test claim.

In the Los Angeles Water Board's response to the test claim, it also argued that the Resolution is not a new program or higher level of service because the Resolution does not impose requirements unique to local agencies and is not a mandate peculiar to government. This is because the Resolution is a regulatory provision of general applicability. Laws of general application are not entitled to subvention.<sup>1</sup> Water quality objectives apply to a waterbody as a whole, and all dischargers are subject to them.<sup>2</sup> Likewise, total maximum daily loads (TMDLs) must assign wasteload allocations and load allocations to all sources

<sup>1</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-58.

<sup>2</sup> See 40 C.F.R. § 130.3 ("A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting [objectives] necessary to protect the uses.").

of the pollutant, both public agencies and private industry alike.<sup>3</sup> As such, the challenged provisions in the Resolution treat dischargers with an even hand, and are not peculiar to local agencies such as the Santa Clarita Valley Sanitation District of Los Angeles County (Claimant). The fact that the Claimant has to spend more money than other persons and entities to comply with the water quality objective and TMDL is not relevant to a subvention claim.<sup>4</sup> That is merely a reflection of the Claimant's need to undertake greater activities to achieve compliance with a rule of general application.

The Proposed Statement of Decision states that the "Commission need not address this argument since the AWRM [Alternative Water Resources Management] program is an optional alternative to complying with prior law which claimant may choose to reject."<sup>5</sup> The Board fully agrees that the AWRM program is an optional alternative to compliance that the Claimant may choose to implement, or not. Nevertheless, the Board made the argument in the context of the Resolution as a whole, and not solely in the context of the provisions concerning the AWRM program. As such, the Board believes that this argument constitutes independent grounds for the Commission to determine that the Resolution does not impose a new program or higher level of service and for denying the test claim. The Board therefore respectfully requests that the Commission address this argument in the context of the Resolution as a whole and determine that the Resolution does not impose requirements unique to the government.

In addition, the Los Angeles Water Board seeks to clarify one issue with regards to antidegradation requirements. The Proposed Decision's background discussion addresses California's antidegradation policy. The Board notes for clarification that State Water Resources Control Board (State Water Board) Resolution No. 68-16, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California," satisfies the requirements that California have a policy which, at a minimum, is consistent with the federal antidegradation policy contained in 40 Code of Federal Regulations section 131.12. In order to ensure consistency with federal Clean Water Act requirements, the State Water Board has interpreted Resolution No. 68-16 to incorporate the federal antidegradation policy in situations where the federal antidegradation policy is applicable.<sup>6</sup> As noted in its response to the test claim, the Los Angeles Water Board established the water quality objectives for chloride based on background concentrations of chloride in accordance with both the federal and state antidegradation policies.

Lastly, in your letter dated September 20, 2013, you requested that interested parties and affected state agencies let you know in advance if a representative will testify at the hearing, and if other witnesses will appear. Representatives of the Los Angeles Water Board

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<sup>3</sup> See 40 C.F.R. § 130.2(i) (defining total maximum daily loads as the sum of all individual discharges of the impairing pollutant).

<sup>4</sup> See *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197 (citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 56-57).

<sup>5</sup> Proposed Statement of Decision, p. 41.

<sup>6</sup> See State Water Board Order No. WQ 86-17 (*Rimmon C. Fay*), pp. 16-19.

consisting of myself, Michael Lauffer, and/or Lori Okun, will be present at the hearing on January 24, 2014 to answer any questions the Commission may have.

The Los Angeles Water Board sincerely appreciates the extension of time to submit comments on the Proposed Decision in this matter, as well as the postponement of the hearing to January 24, 2014. If you have any questions concerning this letter, please contact me by email at [jfordyce@waterboards.ca.gov](mailto:jfordyce@waterboards.ca.gov) or by phone at (916) 324-6682.

Sincerely,



Jennifer L. Fordyce  
Senior Staff Counsel

**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 November 4, 2013, 2013, I served the:

**California Regional Water Quality Control Board Comments; and Claimant  
Comments**

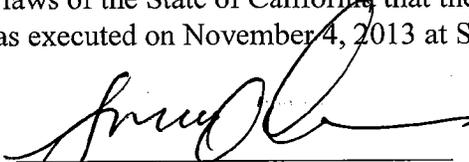
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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 November 4, 2013 at Sacramento, California.



Lorenzo Duran Jr.  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 11/4/2013  
List Print Date: 11/04/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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Exhibit J

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Commission on  
State Mandates

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November 1, 2013

File No.  
17.8177

**VIA ELECTRONIC FILING**

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: **Santa Clarita Valley Sanitation District's Comments on the Draft Staff  
Analysis Regarding the Upper Santa Clara River Chloride Requirements,  
Test Claim No. 10-TC-09**

Dear Ms. Halsey:

This firm represents the claimant, Santa Clarita Valley Sanitation District (the "District") in Test Claim No. 10-TC-09 relating to Upper Santa Clara River Chloride Requirements ("Test Claim").

The District has reviewed the draft staff analysis and proposed statement of decision with respect to the chloride limit that is the subject of the Test Claim ("staff analysis"), but believes that the analysis misses the forest for the trees and results in an incorrect and unfair outcome.

The District is caught between a rock and a hard place: it is the passive recipient of imported high-chloride drinking water, which it must treat to prevent a speculative harm. As a result, the chloride limit requires the District to pay more than its fair share of cleanup costs to prevent speculative damage. The District has no legal authority to obtain reimbursement from the parties responsible for much of the chloride nor from the beneficiaries of the treatment. The District is being required to pay to solve a problem that has its origins in other regions of the state. The level of service required by the state is greater than the current service level and clearly exceeds federal requirements, as detailed in the District's original Test Claim. This is an unfunded state mandate.

A single community has been burdened with the exorbitant costs of a capital-intensive project that implements an over-protective state-established water quality standard. The California Constitution at Art. XIII B § 6 states that: “Whenever . . . 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 that local government for the costs of the program or increased level of service.” In interpreting this provision, the California Supreme Court has held that “the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.” *County of Los Angeles v. State of California* (Cal. 1987) 43 Cal. 3d 46, 49-50.

The chloride limit is a unique requirement, imposed by a state agency upon a local government. This requirement does not apply to all state residents or entities, and the facilities necessary to comply with the requirement is not financed by them.

The chloride limit at issue was imposed by the Regional Board, a state agency. Chloride is a naturally-occurring salt that generally benignly exists in the potable water delivered to District residents. Although District residents contribute approximately one-third of the chloride that exists in the current effluent, 50% or more of the chloride in the effluent is merely “passed through” from the water supply.<sup>1</sup> The District is a passive recipient of the majority of the chloride. But the chloride limit requires only the District’s ratepayers to pay for all of the expensive facilities necessary to remove chloride from wastewater prior to discharge of the treated effluent to the Santa Clara River. The Regional Board has required the District to “clean up” the chloride, essentially desalinating of millions of gallons of wastewater per day. The District is burdened with this responsibility (1) because the District happens to be the last “point source” on the Santa Clara River before Ventura County, an accident of geography; and (2) because the chloride level *may theoretically someday* be harmful to highly specialized and apparently heretofore unaffected downstream agricultural users of the river.

To be clear: current effluent chloride levels largely result from chloride that exists in the water *before that water reaches Santa Clarita Valley*. Chloride occurs naturally in the State Water Project water and groundwater that flows to taps in every home and business in Santa Clarita Valley. Based on engineering estimates, approximately 60% of all chloride

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<sup>1</sup> Santa Clarita Valley Sanitation District: *2013 Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan*, page 3-23 at table 3.9-3, attached as Exhibit 1.

came from the water supply in 2012.<sup>2</sup> In years past, a significant proportion of the chloride also came from in-District sources, especially self-regenerating water softeners. But the District's source-control efforts over the last 10 years - outlawing and removing water softeners in the District - have led to significant reductions. As a result of the removal of over 7,900 water softeners, the chloride loadings have dropped from approximately 30% of total effluent chloride in 2002 to an undetectable amount in 2012.<sup>3</sup>

Residents of the District are outraged that the Regional Water Quality Control Board has imposed effluent chloride limits of 100 mg/L. That limit is not based on any demonstrated scientific study. Furthermore, the chloride levels in the pertinent reaches of the Santa Clara River have far exceeded the 100m/L limit for decades, but no appreciable impact on Ventura County agriculture interests has been documented. Avocados and strawberries, the allegedly impacted crops, continue to be grown using downstream Santa Clara River water.

Even if avocado and strawberry crops were affected, federal law does not require the Regional Board to protect the most sensitive agricultural use. The standards established in the federal Clean Water Act only require that the waters of the U.S. be "fishable and swimmable" and only provide for "consideration" of other beneficial uses. Even if the Clean Water Act could be construed to require protection of agriculture, the Act does not require protection of the most salt-sensitive agriculture or the accomplishment of such a result through the imposition of an instantaneous maximum "end of pipe" limit. The Regional Board abused its discretion in setting a 100 mg/L chloride standard for the Santa Clara River.

Nevertheless, in order to comply with Regional Board orders, and a settlement agreement reached after a \$225,000 fine imposed in 2012, the District's Board of Directors undertook extensive environmental review, approved a Chloride Compliance Facilities Plan on Monday, October 28, 2013, and authorized the development of a chloride treatment and disposal facilities project. The planning and environmental review have cost \$7.4 million to date; estimated capital costs of the project exceed \$130 million, and increased operation and maintenance costs are projected at \$4.1 million per year.<sup>4</sup> The District maintains that these are costs mandated by the state for a new or increased level of service over pre-TMDL limits, that the District cannot collect these costs from the source

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan Environmental Impact Report*, page 6-63, attached as Exhibit 2.

of the chloride, and that therefore this is a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

#### Response to Itemized Staff Recommendations

The draft staff analysis summarizes the claims and issues raised in the Test Claim, and provides a staff recommendation. The narratives, especially in the summary, are misleading and result in an incorrect analysis. The District's comments on each section of the analysis are provided below.

##### 1. Implementation Tasks 4-9, 17a, and the default waste load allocation of 100mg/L

The staff analysis concludes that "the required activities do not impose a new program or higher level of service" because they were "required by prior law."<sup>5</sup> The staff bases this conclusion on the grounds that the Implementation Tasks are "not new" because they were previously approved by the Regional Board and EPA between 2002 and 2006. This conclusion completely ignores the fact that the 2008 TMDL is the result of the final appeal of the original 2002 approval. The entire TMDL process began in 2002 with the initial adoption of the TMDL, and was repeatedly administratively appealed and negotiated over six years until the District had exhausted all of its administrative remedies and was forced to accept the 2008 order in the face of the threat of crippling fines. This process is described in significant detail in the Test Claim and supporting materials, and because the 2002, 2005, and 2006 approvals are part and parcel of the 2008 TMDL, they were "pled" in this Test Claim.<sup>6</sup> To deny the Test Claim on the grounds that the state mandate is not "new" would be a Catch-22, since any Test Claim during the appeals process would have been unripe. The Commission cannot have it both ways.

The proper measure of whether the TMDL is a new or higher level of service is to compare the TMDL's requirements with the existing or pre-TMDL requirements. The District's present chloride effluent limitations are: at Saugus WRP - chloride concentration in water supply plus 114mg/L as a 12-month rolling average, not to exceed 230 mg/L; and at Valencia WRP - water supply chloride concentration plus 134 mg/L as a 12-month rolling average, not to exceed 230 mg/L. Actual concentrations are approximately 130 mg/L. The TMDL's requirement of 100 mg/L chloride at both WRPs therefore results in a reduction of the limit to 56% below the current chloride daily limit. Every reduction in a limit requires a new or higher level of service. The mere fact that this more stringent treatment requirement

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<sup>5</sup> Draft staff analysis at p. 5.

<sup>6</sup> Test Claim at pp. 7-8 and exhibits 12-17.

will cost ratepayers \$130 million in otherwise unnecessary capital costs demonstrates that this is a new or higher level of service.

With respect to Implementation Task 17a, the environmental impact report was certified only this week, on Monday, October 28, 2013.<sup>7</sup>

## 2. Implementation Task 20 - Acceleration of Implementation Schedule.

The draft staff analysis concludes that acceleration of the implementation schedule for the massive public works project necessitated by the TMDL is “not a new program or higher level of service.” Just as accelerating a car is a higher level of speed, accelerating a compliance schedule is a higher level of service. If the DMV could process our driver’s licenses in a shorter amount of time, that would be a higher level of service. If FedEx delivers our packages sooner than USPS, that is a higher level of service. If a home builder can build a home in nine months instead of the originally-forecast 12-month schedule, that is a higher level of service. And if the Regional Board requires a project to be built 23% faster than its original mandate, that is a higher level of service. The reduction of the time schedule from 13 years to 10 years is therefore a higher level of service mandated by the state.

The reliance on case law for the proposition that an accelerated compliance schedule’s increased costs are “not tantamount to a higher level of service” is misplaced. The facts of both cited cases are completely distinguishable: *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155 deals with mandatory racial integration of schools and *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 deals with a claim for subvention for the increased costs of providing workers compensation benefits to local agency employees. Neither case addresses the issue of accelerated timetables for completion of a project.

## 3. AWRM As A New Program or Higher Level of Service.

The AWRM program was not adopted by the District and will not be implemented. However, as discussed above, both AWRM and the compliance plan adopted by the District on October 28, 2013 are designed to comply with Regional Board requirements that are far more stringent than the pre-TMDL standard. As stated in Section 1, above, the comparison must be between the pre-TMDL conditions and the present TMDL conditions – not comparisons between the various TMDL standards adopted during the appeals process spanning from 2002 to 2008.

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<sup>7</sup> See Notice of Determination attached as Exhibit 3.

#### 4. Authority to Cover Costs of the Program

The District has no legal authority to obtain reimbursement from the parties responsible for the majority of the chloride concentration, nor does it have the legal authority to obtain reimbursement from the beneficiaries of the treatment.

Further, the case law cited in the staff analysis and proposed statement of decision is distinguishable from this Test Claim. The cited language of *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4<sup>th</sup> 794 relates to whether the state must reimburse community colleges for health fees that are separately and explicitly authorized by law. In that case, a community college district was authorized under the Education Code to collect a specified sum of money from each student for health fees. Because the community college district was required by state law to provide health services, the state reimbursed the community college for health care costs *only in excess of the authorized per-student health fee*. The court held that the state was not required to reimburse the community college for the health fee, since that fee was clearly legally authorized to be collected from each student.

The facts at issue in this Test Claim have no relationship to the facts in *Clovis*. There, the Education Code authorizes \$10 per semester to be charged to students, who directly benefit from that health fee by receiving health services. The District, in contrast, has no authority to raise sewer fees by a sum certain. The District has no ability to collect fees from the source of more than 50% of the chloride that the District must treat. The District is subject to Prop. 218 protests and referenda on the rates necessary to support the TMDL facilities. The community college district in *Clovis* was not subject to Prop. 218 or referenda on the health fee because it was directly established by state law.

#### Conclusion.

At its essence, this Test Claim is about a state agency requiring a local agency to spend over \$130 million to “clean up” a natural condition in order to prevent an unproven harm to an adjacent county. Santa Clarita Valley is being forced to pay to solve a speculative problem with origins and effects that are outside its jurisdiction.

Heather Halsey, Executive Director  
Commission on State Mandates  
November 1, 2013  
Page 7

This is a state-mandated "new program or higher level of service" for which the state should provide a subvention of funds to reimburse the District under Article XIII B, Section 6 of the California Constitution.

Very truly yours,



Claire Hervey Collins of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC

# EXHIBIT 1

# EXHIBIT 1

## Section 3. Sources of Chloride Loadings

Table 3.9-2 SCVSD Estimated Chloride Loadings, Concentration (mg/L)

Year	Effl. Cl.	Water Supply	Inf.	Disinf.	Ind.	Com.	LWDS	Residential Non-SRWS	Residential SRWS
2002	183	82	0	14	4	5	0.3	24	54
2003	189	84	0	13	3	5	0.4	24	60
2004	178	74	0	15	2	5	0.4	24	58
2005	142	52	5	12	3	4	0.6	22	43
2006	133	55	0	12	2	5	0.5	25	34
2007	141	62	0	12	3	5	0.4	24	35
2008	148	74	0	12	3	5	0.4	24	30
2009	138	78	0	12	4	5	0.4	24	15
2010	128	77	0	12	3	5	0.3	24	7
2011	118	66	0	11	5	6	0.3	23	7
2012	113	68	0	11	5	7	0.3	22	0

Table 3.9-3 SCVSD Estimated Chloride Loadings, Percentages

Year	Total Load	Water Supply	Inf.	Disinf.	Ind.	Com.	LWDS	Residential Non-SRWS	Residential SRWS
2002	100%	45%	0%	8%	2%	3%	0%	13%	29%
2003	100%	45%	0%	7%	1%	3%	0%	13%	31%
2004	100%	41%	0%	8%	1%	3%	0%	14%	33%
2005	100%	37%	3%	9%	2%	3%	0%	16%	30%
2006	100%	41%	0%	9%	2%	4%	0%	19%	25%
2007	100%	44%	0%	9%	2%	4%	0%	17%	24%
2008	100%	50%	0%	8%	2%	4%	0%	16%	20%
2009	100%	56%	0%	9%	3%	4%	0%	17%	11%
2010	100%	60%	0%	9%	3%	4%	0%	19%	5%
2011	100%	56%	0%	9%	4%	5%	0%	20%	6%
2012	100%	60%	0%	10%	4%	6%	0%	20%	0%

The relative contribution to chloride loadings of the industrial sector, commercial sector, liquid waste disposal station, disinfection, and residential non-SRWS has stayed relatively constant over the past several years. The industrial sector discharges one to four percent of the total loading, representing 2 to 5 mg/L of chloride in the final system effluent. The commercial sector discharges three to six percent of the total chloride loading, representing 4 to 7 mg/L chloride in the final system effluent. The liquid waste disposal station discharges less than one percent of the total chloride loading, representing about 0.4 mg/L chloride in the final system effluent. Disinfection at the WRPs contributes seven to ten percent of the total chloride loading, representing 11 to 15 mg/L in the final system effluent. Residential non-SRWS contributes 13 to 20 percent of the total chloride loading, representing approximately 22 to 25 mg/L in the final system effluent.

The two sources of chloride that have significantly varied over the past several years are chloride in the potable water supply and chloride from residential SRWS. The estimated chloride loading from water supply between 2002 and 2012 peaked in 2009 at 13,242 pounds per day of chloride, representing 78 mg/L chloride in the system effluent. In 2012, the potable water supply contributed 60 percent of the chloride load in the District's sewerage system. The estimated chloride loading from SRWS peaked in 2003/2004 at about 9,000 pounds per day, representing 59 mg/L in the system effluent. This coincided with enactment of the prohibition on installation of SRWS in the District in 2003. The SRWS contribution maintained a downward trend in 2012, as the Automatic Water Softener Rebate Program –

# EXHIBIT 2

**Table 6-18. Final Alternative Capital Cost Breakdown**

Component	Alternative 1	Alternative 2	Alternative 3	Alternative 4	
				Phase I	Phases I & II
UV	—	\$30 M	\$30 M	\$30 M	\$30 M
MF/RO	\$50 M	\$45 M	\$45 M	—	\$32 M
Second-Pass RO	\$2 M	\$2 M	\$2 M	—	\$1 M
RO Product Water Conveyance System	\$12 M <sup>a</sup>	\$11 M <sup>a</sup>	\$11 M <sup>a</sup>	—	\$53 M <sup>b</sup>
Brine Disposal	\$85 M	\$42 M	\$17 M	—	\$29 M
Salt Management Facilities	—	—	—	\$73 M	\$73 M
Supplemental Water	—	—	—	\$6 M	\$6 M
<b>Total Capital Cost<sup>c</sup></b>	<b>\$150 M</b>	<b>\$130 M</b>	<b>\$105 M</b>	<b>\$110 M</b>	<b>\$225 M</b>

<sup>a</sup> This component may be eliminated if the RWQCB-LA modifies discharge requirements as requested by the SCVSD.

<sup>b</sup> This component may be eliminated if an alternative source of dilution water is identified.

<sup>c</sup> All costs are shown in 2012 dollars.

**Table 6-19. Final Alternative O&M Cost Breakdown**

Component	Alternative 1	Alternative 2	Alternative 3	Alternative 4	
				Phase I	Phases I & II
UV	—	\$0.1 M/yr	\$0.1 M/yr	\$0.1 M/yr	\$0.1 M/yr
MF/RO	\$3.1 M/yr	\$2.7 M/yr	\$2.7 M/yr	—	\$0.7 M/yr
Second-Pass RO	\$0.5 M/yr	\$0.4 M/yr	\$0.4 M/yr	—	\$0.3 M/yr
RO Product Water Conveyance System	\$0.1 M/yr <sup>a</sup>	\$0.1 M/yr <sup>a</sup>	\$0.1 M/yr <sup>a</sup>	—	\$0.3 M/yr <sup>b</sup>
Brine Disposal	\$0.5 M/yr	\$0.9 M/yr	\$5.5 M/yr	—	\$0.4 M/yr
Salt Management Facilities	—	—	—	\$2.0 M/yr	\$2.0 M/yr
Supplemental Water <sup>d</sup>	—	—	—	\$1.7 M/yr	\$1.7 M/yr
<b>Total O&amp;M Cost<sup>c</sup></b>	<b>\$4.3 M/yr</b>	<b>\$4.1 M/yr</b>	<b>\$8.7 M/yr</b>	<b>\$3.8 M/yr</b>	<b>\$5.5 M/yr</b>

<sup>a</sup> This component may be eliminated if the RWQCB-LA modifies discharge requirements as requested by the SCVSD.

<sup>b</sup> This component may be eliminated if an alternative source of dilution water is identified.

<sup>c</sup> All costs are shown in 2012 dollars.

<sup>d</sup> Supplemental water costs include the cost to purchase and convey replacement water, operation and maintenance costs for Saugus groundwater wells and a conveyance pipeline.

# EXHIBIT 3

SANITATION DISTRICTS OF LOS ANGELES COUNTY

EXHIBIT 3 ORIGINAL FILED

Santa Clarita Valley Sanitation District of  
Los Angeles County  
1955 Workman Mill Road  
Whittier, CA 90601

OCT 30 2013

LOS ANGELES, COUNTY CLERK

## NOTICE OF DETERMINATION

**To:** County Clerk, County of Los Angeles  
12400 East Imperial Highway  
Room 2001  
Norwalk, CA 92650

Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, CA 95812-3044

**Subject:** Filing of Notice of Determination in Compliance With Section 21152 of the Public Resources Code

**Project Title:** Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan and Environmental Impact Report

**SCH Number:** 2012011010

**Project Location:** Los Angeles County

**Contact Person:** Mary Jacobs, P.E.  
Senior Engineer, Planning Section  
(562) 908-4288, x2728  
[mjacob@lacsdc.org](mailto:mjacobs@lacsdc.org)

**Project Description:** The Santa Clarita Valley Sanitation District of Los Angeles County (SCVSD) prepared the Final Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan and Environmental Impact Report (Final Facilities Plan and EIR) to meet project objectives including compliance with the Upper Santa Clara River Chloride Total Maximum Daily Load (Chloride TMDL).

RECEIVED

OCT 30 2013

STATE CLEARING HOUSE

A Draft Facilities Plan and EIR was released on April 24, 2013, for an extended public review period that ended on July 24, 2013. The comments received and the SCVSD's responses were incorporated into the Final Facilities Plan and EIR, which was released on October 10, 2013.

The Final Facilities Plan recommended Alternative 4 with Alternative 2 as a backup alternative. After the Final Facilities Plan was released, Ventura County withdrew its withdraw essential support for Alternative 4, which made that alternative infeasible. On October 28, 2013, the recommended project (Project) was revised to only include Alternative 2, which is described in the Final Facilities Plan. Under the Project, a portion of the Valencia Water Reclamation Plant's (VWRP's) effluent will receive advanced treatment to remove chloride and meet the Chloride TMDL limit of 100 mg/L. A portion of the advanced-treated water will be pumped to the Saugus Water Reclamation Plant (SWRP) for blending with its effluent through a new pump station and conveyance pipeline. The brine waste from the advanced treatment facilities will be disposed by deep well injection. Brine will be pumped to the injection site by a new pump station and pipeline. Approximately five injection wells will be constructed at the injection site along with appurtenant facilities. The existing chlorine-based disinfection systems at the VWRP and SWRP will be replaced with ultraviolet light disinfection facilities. The Project will be located within the City of Santa Clarita and adjacent portions of unincorporated Los Angeles County.

DOC # 2777019

EXHIBIT 3

P.002

STATE CLEARINGHOUSE

OCT-30-2013 13:36

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# EXHIBIT 3

This is to advise that the Board of Directors of the Santa Clarita Valley Sanitation District certified the Final EIR and approved the Facilities Plan at its Board meeting on October 28, 2013, and has made the following determinations regarding the Project:

1. An EIR was prepared for the Project pursuant to the provisions of the California Environmental Quality Act (CEQA).
2. Mitigation measures were made a condition of the approval of the Project, and a Mitigation Monitoring and Reporting Program was adopted pursuant to the provisions of CEQA.
3. The Project, as approved with mitigation measures, will have the following significant impacts on the environment: air quality (during construction).
4. Findings of Fact were made for the Project pursuant to the provisions of CEQA.
5. A Statement of Overriding Considerations was issued for the Project pursuant to the provisions of CEQA.

This is to certify that the Final EIR, with comments and responses, and the record of Project approval are available to the public at the Sanitation Districts' Joint Administration Office, 1955 Workman Mill Road, Whittier, California 90601.

Date:

10/30/13

*Grace R. Chan*

Grace Robinson Chan  
Chief Engineer and General Manager

# DECLARATION

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**DECLARATION OF PHILIP L. FRIESS**

I, Philip L. Friess, declare as follows:

1. I am the department head of the Technical Services Department of the County Sanitation Districts of Los Angeles County. One of these districts is the Santa Clarita Valley Sanitation District of Los Angeles County (the "District"), the claimant in this proceeding.

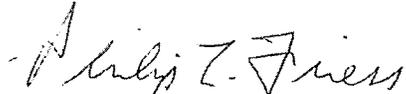
2. I have personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could competently and truthfully do so.

3. Exhibit 1 to the attached comment letter of Claire Hervey Collins on behalf of the District is a true and correct copy of page 3-23 of the District's 2013 Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan.

4. Exhibit 2 to the comment letter is a true and correct copy of page 6-63 of the final Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan and Environmental Impact Report ("Final EIR").

5. Exhibit 3 to the comment letter is a true and correct copy of the Notice of Determination regarding the Final EIR filed by the District with the County of Los Angeles on October 30, 2013.

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 November 1, 2013, at Whittier, California.

  
Philip L. Friess

**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 November 4, 2013, 2013, I served the:

**California Regional Water Quality Control Board Comments; and Claimant Comments**

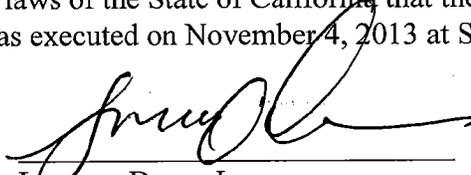
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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 November 4, 2013 at Sacramento, California.



Lorenzo Duran Jr.  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 11/4/2013  
List Print Date: 11/04/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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**Table 1. Special District Annual Report — Fiscal Year 2010-11 — (continued)**  
**General Information: Revenues, Expenditures, Debt and Appropriations Limits by**  
**Special District in Alphabetical Order**

Name of Special District	Principal County	Type Code (a)	Gov Body (b)	Activity	Total Revenues	Total Expenditures	Total Debt	Appropriations Limit	Total Annual Appropriations Subject to Limit
Santa Clarita Valley Sanitation District of Los Angeles County	Los Angeles	31.	S	Waste Disposal Enterprise	\$ 30,007,065	\$ 25,306,814	\$ 69,901,957	\$ 10,859,427	\$ 5,778,450
Santa Clarita Watershed Recreation and Conservation Authority	Los Angeles	50.	C	Recreation and Park	141	13,584	—	—	—
Santa Cruz Consolidated Emergency Communication Center	Santa Cruz	50.	O	Governmental Services	6,023,756	6,131,946	2,870,000	—	—
Santa Cruz County Animal Shelter	Santa Cruz	50.	O	Animal Control	3,107,031	3,205,065	—	—	—
Santa Cruz County Emergency Medical Services Integration Authority	Santa Cruz	50.	O	Governmental Services	295,901	266,659	—	—	—
Santa Cruz County Fire Agencies Insurance Group	Santa Cruz	50.	O	Self Insurance	760,353	777,282	—	—	—
Santa Cruz County Flood Control District	Santa Cruz	8.28	S	Flood Control and Water Conservation	4,161,380	4,557,691	4,630,778	—	—
Santa Cruz County Library Financing Authority	Santa Cruz	50.	O	Governmental Services	14,006,271	14,006,271	—	—	—
Santa Cruz County Resource Conservation District	Santa Cruz	36.1	O	Resource Conservation	3,028,882	2,974,005	—	—	—
Santa Cruz County Sanitation District (Santa Cruz)	Santa Cruz	31.	O	Waste Disposal Enterprise	27,539,562	16,033,902	15,545,213	—	—
Santa Cruz County Schools Health Insurance Group	Santa Cruz	50.	O	Self Insurance	4,429,056	7,005,395	—	—	—
Santa Cruz County Vehicle Abatement Authority	Santa Cruz	50.	O	Governmental Services	238,731	238,718	—	—	—
Santa Cruz Metropolitan Transit District	Santa Cruz	38.9	O	Transit Enterprise	33,428,527	39,596,877	—	—	—
Santa Cruz Port District	Santa Cruz	11.3	O	Transit Enterprise	4,846,360	5,024,827	—	—	—
Santa Cruz Public Improvement Financing Corporation	Santa Cruz	54.1	C	Harbor and Port Enterprise	6,588,637	6,757,121	9,747,782	—	—
Santa Cruz-San Benito County Schools Insurance Group	Santa Cruz	50.	O	Financing or Constructing Facilities	350,534	616,635	3,584,844	—	—
Santa Fe Irrigation District	San Diego	52.	O	Self Insurance	2,891,318	3,048,601	—	11,635,200	1,969,951
Santa Lucia Community Services District	Monterey	5.1	O	Water Enterprise	19,106,684	17,480,389	10,225,000	—	—
				Police Protection and Personal Safety	1,621,224	1,333,419	—	—	—
				Streets and Roads - Construction and Maintenance	1,134,258	1,217,968	—	—	—
				Waste Disposal Enterprise	258,425	340,312	—	—	—
				Water Enterprise	1,688,249	2,870,764	—	—	—
Santa Margarita Cemetery District	San Luis Obispo	4.	O	Cemetery	34,276	30,924	—	—	—

(a) Refers to type code description in Appendix A.

(b) Governing Body, S=County Board of Supervisors, C=City Council, O=Other

**Table 7. Special Districts Annual Report — Fiscal Year 2010- 11 — (continued)**  
**Waste Disposal Activity Revenues and Expenses by Special District in Alphabetical Order**

	Sanitary District No. 5 (Marin)	Santa Ana Gardens Sanitary District (Orange)	Santa Ana Watershed Project Authority	Santa Clarita Valley Sanitation District of Los Angeles County	Santa Cruz County Sanitation District (Santa Cruz)	Santa Lucia Community Services District	Santa Margarita Water District	Santa Margarita-Dana Point Authority	Santa Nella County Water District	Santa Ynez Community Services District
<b>Operating Revenues</b>										
Service Charges	\$3,306,355	\$—	\$13,433,628	\$19,818,374	\$19,568,846	\$—	\$11,129,993	\$—	\$372,760	\$1,151,805
Connection Fees	62,544	—	—	986,777	81,749	—	—	—	—	4,912
Service Type Assessment	—	—	—	—	—	—	—	—	—	—
Other Services	6,239	—	310,154	—	6,206	215	1,379,598	—	—	15,551
Sales	24,709	—	—	61,810	—	—	—	—	—	—
<b>Total Operating Revenues</b>	<b>3,399,847</b>	<b>—</b>	<b>13,743,782</b>	<b>20,866,961</b>	<b>19,656,801</b>	<b>215</b>	<b>12,509,591</b>	<b>—</b>	<b>372,760</b>	<b>1,172,268</b>
<b>Operating Expenses</b>										
Sewage Collection	327,752	—	—	387,499	—	—	—	—	—	121,985
Sewage Treatment	492,782	—	3,979,126	13,799,339	11,588,629	203,969	3,351,879	—	206,819	792,904
Sewage Disposal	—	—	7,926,393	—	—	—	2,187,210	—	—	—
Solid Waste Disposal	24,561	—	—	—	—	—	—	—	—	—
Administration and General	1,845,756	—	1,561,023	3,799,611	—	62,948	4,671,982	—	161,648	101,655
Depreciation and Amortization	779,228	—	4,044,416	4,660,615	3,812,938	73,395	7,164,081	—	61,665	194,945
Other Operating Expenses	—	—	—	—	—	—	—	—	—	—
<b>Total Operating Expenses</b>	<b>3,470,079</b>	<b>—</b>	<b>17,510,958</b>	<b>22,647,064</b>	<b>15,401,567</b>	<b>340,312</b>	<b>17,375,152</b>	<b>—</b>	<b>430,132</b>	<b>1,211,489</b>
<b>Operating Income (Loss)</b>	<b>(70,232)</b>	<b>—</b>	<b>(3,767,176)</b>	<b>(1,780,103)</b>	<b>4,255,234</b>	<b>(340,097)</b>	<b>(4,865,561)</b>	<b>—</b>	<b>(57,372)</b>	<b>(39,221)</b>
<b>Non-Operating Revenues</b>										
Interest Income	13,973	84	1,178,639	1,730,508	187,960	1,000	606,040	9,687,322	1,079	11,968
Rents, Leases, and Franchises	27,483	—	—	—	—	—	288,165	—	1,500	—
<b>Taxes and Assessments</b>										
Current Secured and Unsecured (1%)	565,043	—	—	5,582,101	—	—	1,532,497	—	27,970	142,165
Voter Approved Taxes	—	—	—	—	—	—	6,485,807	—	—	20,885
Property Assessments	—	—	—	—	—	256,875	—	—	—	22,202
Special Assessments	—	—	—	—	—	—	—	—	—	—
Prior Year and Penalties	—	—	—	(3,109)	—	—	—	—	—	—
<b>Intergovernmental</b>										
Federal	—	—	23,204	—	(1,779)	—	—	—	—	—
State	3,912	—	524,160	48,422	7,696,580	—	12,885	—	413	1,500
Other Governmental Agencies	—	—	—	—	—	—	—	—	437	—
Other Non-Operating Revenues	264,522	89	2,683,528	1,782,182	—	335	—	—	151,156	1,190
<b>Total Non-Operating Revenues</b>	<b>874,933</b>	<b>173</b>	<b>4,409,531</b>	<b>9,140,104</b>	<b>7,882,761</b>	<b>258,210</b>	<b>8,925,394</b>	<b>9,687,322</b>	<b>182,555</b>	<b>199,910</b>
<b>Non-Operating Expenses</b>										
Interest Expense	34,003	—	792,108	2,161,894	479,061	—	3,608,074	9,687,322	1,689	56,640
Other Non-Operating Expenses	—	12	815,520	497,856	153,274	—	229,707	—	3,050	—
<b>Total Non-Operating Expenses</b>	<b>34,003</b>	<b>12</b>	<b>1,607,628</b>	<b>2,659,750</b>	<b>632,335</b>	<b>—</b>	<b>3,837,781</b>	<b>9,687,322</b>	<b>4,739</b>	<b>56,640</b>
<b>Non-Operating Income (Loss)</b>	<b>840,930</b>	<b>161</b>	<b>2,801,903</b>	<b>6,480,354</b>	<b>7,250,426</b>	<b>258,210</b>	<b>5,087,613</b>	<b>—</b>	<b>177,816</b>	<b>143,270</b>
<b>Income (Loss) Before Operating Transfers</b>	<b>770,698</b>	<b>161</b>	<b>(965,273)</b>	<b>4,700,251</b>	<b>11,505,660</b>	<b>(81,887)</b>	<b>222,052</b>	<b>—</b>	<b>120,444</b>	<b>104,049</b>
Operating Transfers In	—	—	—	—	—	—	—	—	—	—
Operating Transfers Out	—	—	—	—	—	—	—	—	—	—
<b>Net Income (Loss)</b>	<b>\$770,698</b>	<b>\$161</b>	<b>\$(965,273)</b>	<b>\$4,700,251</b>	<b>\$11,505,660</b>	<b>\$(81,887)</b>	<b>\$222,052</b>	<b>\$—</b>	<b>\$120,444</b>	<b>\$104,049</b>

## **LAWS AND REGULATIONS**

### **3.1 INTRODUCTION**

The collection and treatment of wastewater and the management of treated wastewater effluent is subject to federal, state, and local regulations. Furthermore, federal and state funding for capital projects is contingent upon the fulfillment of additional regulatory requirements. This section provides a broad summary of federal, state, and local laws, regulations, and plans that must be considered when planning for wastewater treatment and effluent management facilities.

### **3.2 REGULATIONS GOVERNING FEDERAL AND STATE WATERS**

This section discusses regulations pertaining to federal and state waters that typically impact publicly owned treatment works (POTWs). The Santa Clarita Valley Sanitation District of Los Angeles County's (SCVSD's) Saugus and Valencia Water Reclamation Plants (SWRP and VWRP, respectively) are subject to the regulations listed below because they discharge to the Santa Clara River (SCR), which is considered waters of the United States (waters of the U.S.). Waters of the U.S. are defined as all waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide. Further definition can be found in Part 328.3 of Title 33 of the Code of Federal Regulations (33 CFR Part 328.3).

#### **3.2.1 Evolution of Federal Regulations**

##### **3.2.1.1 Refuse Act**

Federal regulation of discharges to bodies of water began in 1899 with the passage of the Refuse Act, which was primarily intended to protect navigation by preventing discharges that might interfere with the use of the nation's waterways as transportation corridors.

##### **3.2.1.2 Water Pollution Control Act**

The Water Pollution Control Act of 1948 was the first federal legislation to address water quality, which had been historically regulated on state and local levels. This act reaffirmed that water pollution control was primarily a state responsibility, but did provide the federal government with the authority to conduct investigations, research, and surveys. In 1956, the Water Pollution Control Act was amended to include provisions for federal grants to support the construction of POTWs and direct federal regulation of waste discharges.

### **3.2.1.3 Water Quality Control Act**

The Water Quality Control Act, enacted in 1965, required states to establish federally approved ambient water quality standards for interstate watercourses and to develop federally approved implementation plans for controlling pollution sufficiently to meet these standards.

## **3.2.2 Federal Regulations**

### **3.2.2.1 Clean Water Act**

The 1972 amendments to the federal Water Pollution Control Act marked the beginning of the current system of federal water quality regulation and increased the level of federal grant funding for municipal wastewater treatment facilities. Goals of the 1972 amendments included elimination of pollutant discharges to navigable waters of the U.S. by 1985 and protection of fishable and swimmable waters, wherever attainable, by 1983. The 1972 amendments initiated the National Pollutant Discharge Elimination System (NPDES) permit program, which required the issuance of discharge permits for all municipal and industrial point sources that discharge into waters of the U.S.

The 1972 amendments preserved the system of state-established water quality criteria promulgated under the 1965 Water Quality Control Act, but the states were additionally required to review and update these standards every three years and submit revisions to the United States Environmental Protection Agency (EPA) for approval. Water quality standards consisting of the designated uses of the navigable waters and the water quality criteria for such waters were to be established. These standards were to consider the water's use and value for public water supplies; propagation of fish and wildlife; recreational purposes; and agricultural, industrial, navigation, and other purposes. Where compliance with identified technology-based standards was not sufficient to ensure attainment of approved water quality standards, the 1972 amendments directed the permitting agency to impose water quality-based, effluent limitations in permits.

The federal Water Pollution Control Act was amended a third time in 1977, and the amended act was renamed the Clean Water Act (CWA). The 1977 amendments extended some of the deadlines identified in 1972 and more clearly delineated the manner in which conventional and toxic water pollutants were to be treated. The 1977 CWA required that toxic pollutants be managed through the effluent guidelines program for major industrial dischargers or the pretreatment program for specified industries discharging to POTWs.

The 1987 amendments to the CWA: (1) ended the construction grant program and replaced it with the state revolving fund (SRF) loan program for the construction of municipal sewerage facilities, (2) required states to promulgate water quality standards for toxic water pollutants for which advisory water quality criteria had been developed pursuant to §304(a) of the CWA, and (3) established new requirements for states to develop and implement programs to control nonpoint source pollution. To address nonpoint source pollution, the 1987 amendments also required the issuance of NPDES permits for stormwater discharges associated with municipal, industrial, and construction activities.

### **3.2.2.2 National Pretreatment Program**

The National Pretreatment Program, established through the CWA in Part 403 of Title 40 of the CFR (40 CFR Part 403), requires the implementation of pretreatment programs for POTWs with

capacities greater than 5 million gallons per day (mgd) that receive pollutants that may interfere with POTW operations. POTWs are required to prohibit or limit discharges of pollutants from industrial facilities that could pass through the treatment processes into receiving waters, interfere with treatment plant operations, or limit biosolids management options. Smaller POTWs with significant industrial influent, treatment process problems, or violations of effluent limitations are also required to implement pretreatment programs. In addition, federal standards have been established to regulate sewer discharges from specific types of industries.

POTWs are responsible for developing, implementing, and enforcing their own pretreatment programs. If POTWs fail to properly administer pretreatment programs, they are subject to oversight by state and federal regulatory agencies including enforcement actions, penalties, fines, or other remedies provided for by the CWA.

The Sanitation Districts of Los Angeles County (Sanitation Districts) developed and implemented an industrial wastewater pretreatment program in 1972 with the adoption of the Wastewater Ordinance. Local discharge limits for industrial wastewater dischargers were adopted in 1975, and the EPA approved the Sanitation Districts' program in March 1985. Local industrial wastewater discharge limits were established to ensure compliance with NPDES and waste discharge requirements (WDRs) permit limits for each treatment plant, as well as to protect treatment plant operations and biosolids quality. The pretreatment program has been very successful in reducing the discharge of contaminants.

The existing industrial wastewater discharge limits are presented in Table 3-1. The Sanitation Districts regularly review these limits to determine if modifications are needed. Modifications to the discharge limits may be made if determined necessary to maintain biosolids quality and/or meet NPDES and WDRs permit limits.

In addition, the following numerical requirements from the Sanitation Districts' Wastewater Ordinance apply:

- The pH of the wastewater discharged shall not be below 6.0 at any time
- The dissolved sulfide concentration of the wastewater shall not exceed 0.1 milligrams per liter (mg/L) at any time
- The temperature of the wastewater shall not exceed 140 degrees Fahrenheit (°F) at any time, and shall not cause the wastewater influent to a Sanitation Districts' treatment plant to exceed 104°F

### **3.2.2.3 National Toxics Rule and California Toxics Rule**

In 1992, EPA promulgated toxic pollutant water-quality criteria for California in the National Toxics Rule (NTR). EPA promulgated the California Toxics Rule (CTR) in response to litigation that overturned two statewide water quality control plans in 1994, the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan. The CTR took effect in May 2000 and established numeric criteria for the remaining priority toxic pollutants to meet the requirements of §303(c)(2)(B) of the CWA. The NTR and CTR criteria are regulatory criteria adopted pursuant to §303(c) of the CWA that apply to inland surface waters and enclosed bays and estuaries in California that are waters of the U.S. The NTR and CTR include criteria for the protection of aquatic life and human health. Aquatic life and human health criteria (organisms

**Table 3-1. SCVSD Industrial Wastewater Discharge Limits**

<b>Constituent</b>	<b>Instantaneous Maximum Limit (mg/L)</b>
Arsenic	3
Cadmium	15
Chromium (Total)	10
Copper	15
Cyanide (Total)	10
Lead	40
Mercury	2
Nickel	12
Silver	5
TICH <sup>a</sup>	Essentially None <sup>b</sup>
Zinc	25

mg/L = milligrams per liter

<sup>a</sup> Total Identifiable Chlorinated Hydrocarbons (TICH) include pesticides such as aldrin, dieldrin, chlordane, dichlorodiphenyltrichloroethane (DDT), endrin, hexachloro-cyclohexane, toxaphene, and polychlorinated biphenyls (PCBs).

<sup>b</sup> TICH must be maintained below detection levels.

only) apply to all inland surface waters and enclosed bays and estuaries, while human health criteria (water and organisms) apply to all waters with a municipal and domestic water supply (MUN) Beneficial Use (BU) designation as indicated in regional basin plans. In translating these criteria to effluent limitations in permits, California Regional Water Quality Control Boards (RWQCBs) determine which designated BUs apply to the receiving waters and base permit limits on the most stringent applicable criterion.

### 3.2.2.4 Clean Water Act §404 and §401 Permits

§404 of the CWA established a permit program for regulation of the discharge of dredged material or fill into waters of the U.S. The permit program is administered by the Secretary of the Army, acting through the United States Army Corps of Engineers (Corps). §404 authorizes the EPA to regulate the discharge of any dredged material or fill that can cause adverse effects on municipal water supplies, recreational areas, wildlife, fisheries, or shellfish beds.

§401 of the CWA provided the authority for the state-operated 401 Certification Programs. The 401 Certification process is used by the state to regulate hydrologic modification projects that require §404 permits.

## 3.2.3 State Regulations

### 3.2.3.1 The Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act of 1969 (PCA) established the current legal framework for water quality regulation in California. The PCA requires the California State Water Resources Control Board (SWRCB) to adopt water quality control plans and policies for the protection of water quality. The PCA also established nine RWQCBs to develop regional water quality control plans and implement water quality protection programs at the local level. A water quality control plan must:

- Identify the BUs of the waters to be protected
- Establish water quality objectives for the reasonable protection of those BUs
- Establish an implementation program for achieving water quality objectives

The SWRCB is the primary agency responsible for formulating policies to protect surface waters and groundwater supplies within the State of California. The SWRCB has delegated authority for the day-to-day administration and enforcement of the PCA to the regional level. Each RWQCB develops a water quality control plan that identifies important water resources within its region and specifies the BUs for each of these resources. Each water quality control plan must be approved by the SWRCB, the Office of Administrative Law (OAL), and the EPA. Water quality control plans are generally reviewed and updated every three years.

The SCVSD's facilities are under the jurisdiction of the RWQCB-Los Angeles Region (RWQCB-LA). The RWQCB-LA is responsible for administering and enforcing the regional water quality control plans, NPDES permits, WDRs, and pretreatment programs within the Los Angeles basin.

The PCA authorizes RWQCBs to regulate all discharges to water and/or land to protect water quality. RWQCBs issue WDRs to all dischargers in accordance with §13263 of the California Water Code (CWC) and are authorized to review WDRs periodically. These WDRs also serve as NPDES permits for discharge from the SCVSD facilities (see Section 3.4.2 for more information on NPDES permits). Authority delegated to RWQCBs includes the issuance of WDRs, review of self-monitoring reports submitted by dischargers, performance of independent compliance checks, and enforcement for non-compliance. Enforcement actions, which may be taken by RWQCBs under the authority provided by the PCA, range from orders requiring relatively simple corrective actions to monetary penalties levied for failure to comply with permit provisions.

The RWQCBs have also been delegated responsibilities associated with administering and enforcing the provisions of the CWA. When discharges are made to waters of the U.S., NPDES/WDRs for point source discharges are issued. Under Chapter 5.5 of the PCA, WDRs are deemed equivalent to NPDES permits issued under the CWA. Thus, NPDES permits are generally issued as both federal and state permits in California and generally have both a State Order Number and an NPDES permit number.

### **3.2.3.2 California Water Code §1211**

Water Code §1211 states that before a wastewater treatment plant owner may make “any change in the point of discharge, place of use, or purpose of use of treated wastewater, the owner of any wastewater treatment plant shall obtain approval of the [State Water Resources Control] [B]oard for that change.” §1211 applies when this change results in a decreased flow to any portion of a watercourse (CWC§1211[b]). If the proposed change is expected to have an adverse impact to biological resources, the applicant must include mitigation measures, which may include a minimum discharge rate.

### **3.2.3.3 Statewide Implementation Policy**

In March 2000, the SWRCB adopted a policy establishing provisions to implement the priority toxic pollutant criteria in the CTR and NTR and implement priority pollutant objectives in the basin plans of each RWQCB. The Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (also known as the Statewide

Implementation Policy) establishes provisions for translating CTR criteria, NTR criteria, and basin plan water quality objectives for toxic pollutants into:

- NPDES permit effluent limits
- Compliance determinations
- Monitoring for 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin equivalents
- Chronic toxicity control
- Initiating site-specific objective development
- Granting exceptions

### **3.2.4 Local Regulations**

#### **3.2.4.1 Water Quality Control Plan-Los Angeles Region**

The Water Quality Control Plan-Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) was adopted by RWQCB-LA on June 13, 1994. Chapters 2 and 7 of the Basin Plan were updated in November 2011 and September 2011, respectively. The Basin Plan provides the basis for the RWQCB-LA's regulatory program by designating BUs for all surface and groundwater bodies and setting forth narrative and numerical water quality objectives that must be maintained or attained to protect these BUs. The Basin Plan also identifies general types of water quality problems that can threaten BUs of water resources in the basin and identifies required or recommended control measures for these problems. RWQCB-LA orders are based on applicable water quality objectives and/or prohibitions specified in the Basin Plan. The Basin Plan is reviewed and updated every 3 years or as necessary (CWA §303[c]). The most recent Triennial Review began in 2011 and was completed in February 2012. The findings of the Triennial Review are summarized in Resolution No. R12-001.

#### ***Basin Plan Amendments Related to the Santa Clara River***

There have been several Basin Plan Amendments that affect the SCR watershed WRP since the 1994 adoption of the Basin Plan. The majority of these amendments have concerned attainment of BUs.

Water bodies that do not meet basin plan requirements are considered "impaired." Impaired water bodies are identified in a published list of Water Quality Limited Segments (CWA §303[d] List) and are evaluated through a prescribed study approach to: (1) characterize the sources and degree of impairment, (2) determine total maximum daily loadings (TMDLs) of the pollutants of concern to meet water quality objectives (WQOs) and obtain Bus, and (3) allocate pollutant loadings among the identified sources as Waste Load Allocations (WLAs). After adoption by the RWQCB-LA, SWRCB, State Office of Administrative Law (OAL), and the EPA, TMDLs become amendments to the Basin Plan.

The SCR has been divided into sections, called reaches, that exhibit consistent hydrological, water quality, or adjacent land use characteristics. Several of these reaches are listed/impaired and have defined TMDLs for nutrients (nitrogen compounds) and chloride that impact the SWRP and VWRP (see Figure 3-1). The Basin Plan amendments that impact the SCR watershed are shown in Table 3-2.



Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan and EIR

**Figure 3-1**

Santa Clara River Reaches

**Table 3-2. Basin Plan Amendments for the Santa Clara Valley Since 1994**

Resolution No.	Focus	Resolution Description	Status
02-018	Salts (Chloride)	Upper Santa Clara River Chloride TMDL	TMDL in Effect October 24, 2002
03-008	Salts (Chloride)	Upper Santa Clara River Chloride TMDL	TMDL in Effect July 10, 2003
03-011	Nutrients (N)	Santa Clara River Nutrient TMDL	TMDL in Effect March 23, 2004
04-004	Salts (Chloride)	Upper Santa Clara River Chloride TMDL	TMDL in Effect May 4, 2005
R4-2006-016	Salts (Chloride)	Upper Santa Clara River Chloride TMDL Implementation Plan Reconsideration	TMDL in Effect June 12, 2008
R4-2007-018	Revision	Subdivision of Santa Clara River Reach 4	WQS in Effect May 18, 2009
R4-2008-012	Chloride	Reconsideration of the Upper Santa Clara River Chloride TMDL Implementation Plan and Revise Chloride Water Quality Objectives	TMDL in Effect April 6, 2010

WQS = Water Quality Standard  
Source: RWQCB-LA January 2009.

### ***Beneficial Uses***

The portion of the SCR most impacted by the SCVSD facilities generally coincides with Reach 5, which is the SCR reach west of Soledad Canyon and east of the Los Angeles-Ventura County line. Discharged effluent flows downstream into Reaches 5 to 1.

The Basin Plan identifies existing BUs for surface waters in these reaches as industrial service supply (IND), industrial process supply (PRO), agricultural water supply (AGR), groundwater recharge (GWR), freshwater replenishment (FRSH), water contact recreation (REC1), non-contact water recreation (REC2), warm freshwater habitat (WARM), wildlife habitat (WILD), preservation of rare and endangered species (RARE), and wetland habitat (WET). A potential BU is MUN, which currently has no regulatory impact. The designated BUs for Santa Clara Basin groundwater are MUN, IND, and ARG.

WQOs have been established in the Basin Plan to ensure that a water body can support its designated BUs. WQOs are stated as numeric and/or narrative limits for water quality constituents. Current numeric WQOs in the Basin Plan for selected constituents in the SCR reaches immediately affected by SWRP and VWRP discharges are presented in Table 3-3. Note that for the SCR, conditional site specific objectives (SSOs) for chloride have been adopted, but only apply if certain requirements are met.

**Table 3-3. Selected Numeric Surface Water Quality Objectives for Santa Clara River Reaches 4 Through 6**

Reach	TDS (mg/L)	Sulfate (mg/L)	Chloride <sup>a</sup> (mg/L)	Boron (mg/L)	Nitrogen (mg/L)
Reach 6. Between Bouquet Canyon Road Bridge and West Pier Highway 99	1,000	300	100	1.6	10
Reach 5. Between West Pier Highway 99 and Blue Cut gauging station	1,000	400	100	1.5	5
Reach 4A. Between Piru Creek and A Street Bridge, Fillmore	1,300	600	100	1.5	5
Reach 4B. Between Blue Cut gauging station and Piru Creek	1,300	600	100	1.5	5

<sup>a</sup> In 2010, conditional SSOs of 150 mg/L, 150 mg/L, and 117/130 mg/L were adopted for chloride in Reaches 6, 5, and 4B, respectively, if certain requirements are met.

Source: RWQCB-LA, Basin Plan.

### 3.3 TMDLs FOR THE SANTA CLARA RIVER

A TMDL is a written, quantitative assessment of water quality problems and contributing pollutant sources. A TMDL identifies one or more numeric targets based on applicable WQO's; specifies the maximum amount of a pollutant that can be discharged (or the amount of a pollutant that needs to be reduced) to meet WQO's; allocates pollutant loads among sources in the watershed; and provides a basis for taking actions needed to meet the numeric target(s) and implement water quality standards. More than 500 water bodies or segments have been identified as needing TMDLs in California, many for multiple pollutants. TMDLs for nutrients (nitrogen compounds), bacteria, and chloride are in place for the SCR along reaches that affect the SWRP and the VWRP.

#### 3.3.1 Nitrogen Compounds TMDL

On August 7, 2003, the RWQCB-LA adopted Resolution No. 03-011, the Santa Clara River Nitrogen Compounds TMDL (Nitrogen Compounds TMDL) which limits nitrate, nitrite, and ammonia. The associated TMDL implementation schedule required the SCVSD to develop a work plan to monitor and assess surface water quality in the SCR and evaluate the effectiveness in meeting nitrogen WLAs. On March 23, 2005, the SCVSD submitted the required work plan, which specified collection of ambient water quality and biological data from the upper SCR watershed. The work plan was supplemented with a detailed sampling and analysis plan that was finalized on May 31, 2006. On December 27, 2007, a report on the results was submitted. The results indicated that current TMDL objectives for nitrate, nitrite, and ammonia were achieved in the USCR; that WLAs were being met by the SWRP and VWRP; and that the relevant portions of the river were not impaired for nutrients. The USCR was subsequently delisted for nitrate, nitrite, and ammonia.

#### 3.3.2 Indicator Bacteria TMDL

On July 8, 2010, the RWQCB-LA adopted Resolution No. R10-006, the Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL (Indicator Bacteria TMDL), which limits indicator bacteria densities. The SWRP and VWRP were assigned WLAs for indicator

bacteria, but no action was necessary on the part of these WRPs because they were already in compliance with the WLAs.

### **3.3.3 Upper Santa Clara River Chloride TMDL Development**

In 1990, the RWQCB-LA adopted a Drought Policy (Resolution No. 90-04) in response to drought conditions persisting since 1987 providing a variance to the applicable chloride WQO. During this drought period, most of the wastewater treatment plants in the Los Angeles Region could not comply with their discharge limits for chloride, primarily as a result of increased chloride concentration in imported water supplies. Interim chloride objectives for the SCR of 190 mg/L were set in 1997 and RWQCB-LA staff were directed to conduct a 3-year study to determine appropriate chloride objectives that would protect salt-sensitive crops and address the costs and environmental tradeoffs that could occur if end-of-pipe treatment were required at wastewater treatment plants.

During the 3-year study, the RWQCB-LA proposed listing several reaches of the SCR on the 303(d) list of Water Quality Limited Segments for chloride and in May 1999, EPA listed Reaches 5 and 6 of the SCR (the VWRP discharges to Reach 5 and SWRP discharges to Reach 6). The RWQCB-LA developed Chloride TMDLs for the Upper SCR (USCR) and, in 2002, adopted Resolution No. 02-018 setting a WLA of 100 mg/L for these reaches.

In 2003, the SWRCB remanded Resolution No. 02-018 back to the RWQCB-LA for reconsideration of various items including: (1) an extension of the interim effluent chloride limits, and (2) re-evaluation of the WQO accounting for the BUs to be protected, the quality of the imported water supply, and the impacts of drought periods. In response, the RWQCB-LA adopted Resolution No. 03-008 setting the time frame for compliance with the Chloride TMDLs. Also in 2003, the RWQCB-LA adopted NPDES permits and Time Schedule Orders (TSOs) for the SWRP and the VWRP. The SCVSD filed petitions for review of these permits and TSOs with the SWRCB following their adoption. The petition was resolved when the RWQCB-LA and the SCVSD signed a Settlement Agreement and Stipulation Concerning Chlorides in the Upper Santa Clara River (Settlement Agreement).

After the Settlement Agreement was signed, the RWQCB-LA adopted Resolution No. 04-004 revising the interim WLA and Implementation Plan for the Chloride TMDL. The interim chloride WLAs for the SWRP and the VWRP were based on floating limits consisting of State Water Project water supply chloride levels plus an incremental loading for each plant. The Implementation Plan required completion of several special studies to characterize the sources, fate, transport, and specific impacts of chloride in the USCR, followed by the development and implementation of appropriate control measures for meeting the WQO.

#### **3.3.3.1 Threatened and Endangered Species Chloride Threshold Study**

The Threatened and Endangered Species Chloride Threshold Study (T&Es Study), completed in November 2007, determined that the 1988 EPA ambient water quality criteria for chloride for the protection of aquatic life (230 mg/L as chronic; 860 mg/L as acute) are protective of locally important threatened and endangered species (Advent-Environ 2007).

### **3.3.3.2 Agricultural Chloride Threshold Study**

The Agricultural Chloride Threshold Study (Ag Study) was designed to support the AGR BU for the USCR. The Ag Study consisted of two parts – a Literature Review Evaluation completed in September 2005 (CH2M HILL 2005), and an evaluation of the appropriate averaging period completed in January 2008 (NewFields Agricultural and Environmental Resources 2008). The Ag Study determined that the appropriate chloride threshold for salt-sensitive agriculture (avocados, strawberries, and nursery crops) grown in the USCR watershed is in the range of 100 to 117 mg/L, with an averaging period of 3 months. The Ag Study was reviewed by an independent Technical Advisory Panel.

### **3.3.3.3 Groundwater-Surface Water Interaction Model Study**

The Groundwater-Surface Water Interaction Model (GSWIM) Study resulted in preparation of a calibrated numerical model in March 2008 (CH2M HILL 2008) that enables evaluation of the impact of WRP recycled water discharges to the SCR on downstream surface water and groundwater quality. The GSWIM was also used to evaluate various compliance alternatives including potential SSOs.

### **3.3.3.4 Site-Specific Objectives and Anti-Degradation Analysis Study**

The SSO and Anti-Degradation Analysis Study (SSO and ADA Study), completed in November 2008, provided the technical and regulatory basis for the RWQCB-LA to consider potential SSOs for the USCR. As part of the SSO and ADA Study, salt-sensitive agriculture was found not to be an existing or potential BU in Reaches 5 and 6.

## **3.3.4 Upper Santa Clara River Chloride TMDL Implementation Plan**

In 2006, the TMDL Implementation Plan was amended in RWQCB-LA Resolution No. R4-2006-016, shortening the time schedule for completing the special studies and implementing control measures. After completing the special studies (T&Es Study, Ag Study, GSWIM Study, and SSO and ADA Study), and with the input of various stakeholders including the SCVSD, Ventura County Agricultural Water Quality Coalition (VCAWQC), United Water Conservation District (United Water), and the Upper Basin Water Purveyors, an alternative compliance plan known as Alternative Water Resources Management Plan (AWRM) was developed to address chloride while protecting BUs. The RWQCB-LA then adopted Resolution No. R4-2008-012 in 2008 (see Appendix 3-A) which set conditional SSOs for chloride and shortened the implementation deadline from May 4, 2016 to May 4, 2015. These conditional SSOs allow a higher (117 mg/L) chloride limit but are contingent upon implementation of the specific facilities described in the AWRM. Therefore, SSOs higher than the Ag Study range of 100 to 117 mg/L were adopted for Reaches 5 and 6.

The AWRM consisted of chloride source reduction measures and a 3-mgd advanced wastewater treatment facility, brine disposal facilities, and salt management facilities. The AWRM is further described in Section 6.

### 3.3.5 Basin Plan Amendment – Subdivision of Santa Clara River Reach 4

SCR Reach 4, between the Blue Cut gauging station and A Street in Fillmore, has a “Dry Gap” where surface water in the upper portion of Reach 4 infiltrates into the Piru groundwater basin and resurfaces approximately 6 miles downstream. Flow from Piru Creek, a major tributary, also infiltrates into the groundwater basin.

Initially, one WQO for chloride had been assigned to all of Reach 4 despite the changes in hydrologic conditions along its course. To allow for the development of more geographically precise SSOs and to better represent the hydraulic regime of the SCR, the RWQCB-LA adopted Resolution R4-2007-018 on November 1, 2007, which subdivided Reach 4 of the SCR into two separate reaches, Reach 4A and Reach 4B. Reach 4A now consists of the river segment between the A Street Bridge in Fillmore and the confluence of Piru Creek. Reach 4B lies between the Piru Creek confluence and the Blue Cut gauging station.

## 3.4 DISCHARGE REGULATIONS

### 3.4.1 Discharge Points and Receiving Waters

The VWRP has two discharge points to the SCR. The primary discharge point is used during normal conditions. The second is located a few feet away and is only used when the water level rises in the river to the extent that the primary discharge point is partially or completely submerged (i.e., during heavy storm events). Both discharge points are within Reach 5 of the SCR, about 3,500 feet downstream of the Interstate 5 (I-5) Freeway Bridge.

The SWRP has one discharge point just downstream of the Bouquet Canyon Road Bridge in Reach 6 of the SCR. The SCR ultimately drains to the Pacific Ocean in Ventura County, and is considered waters of the U.S., as discussed in the beginning of Section 3.2.

### 3.4.2 NPDES Permits

Discharges from the SCVSD WRPs to the SCR are regulated by NPDES permits issued by the RWQCB-LA. Updated NPDES permits for discharge to the SCR were adopted for both the SWRP and VWRP on June 4, 2009. Permits are renewed every 5 years unless conditions change that require a permit reopening (e.g., plant capacity expansion, treatment upgrade, or change in Basin Plan). Current NPDES permits for the SWRP and VWRP are identified in Table 3-4.

**Table 3-4. SWRP and VWRP Waste Discharge and Water Reuse Permits**

Facility	NPDES Permit		
	Permit No.	RWQCB-LA Order No.	WRR Order No.
SWRP	CA0054313	R4-2009-0075	97-072
VWRP	CA0054216	R4-2009-0074	97-072

An NPDES permit generally contains the following components:

- **Findings:** Official description of the facility, process, type and quantity of wastes, existing requirements, enforcement actions, public notice, and applicable basin plans

- **Effluent Limitations:** Narrative and numerical limits for effluent; discharge prohibitions
- **Receiving Water Limitations:** Narrative and numerical objectives for the receiving waters
- **Provisions:** Standard provisions required by the RQWCB and by federal law; expiration date of permit
- **Compliance/Task Schedule:** Time schedules and interim reporting deadlines for compliance
- **Pretreatment Requirements:** Standard pretreatment requirements for municipal facilities

Average and daily maximum pollutant discharge limitations are presented in Table 3-5. The NPDES permits issued for the VWRP and SWRP by the RWQCB-LA in 2009 also include interim effluent limits for chloride. The chloride interim limit is equal to the sum of the State Water Project treated water supply chloride concentration plus 114 mg/L (for SWRP) or 134 mg/L (for VWRP), not to exceed a daily maximum of 230 mg/L. The interim limits apply until the Chloride TMDL compliance date.

Disinfection requirements for the VWRP and SWRP are also contained in the NPDES permits. Adequate disinfection is determined by testing for the levels of coliform bacteria present in the effluent. See Table 3-5 for coliform limits.

In addition to the discharge limitations listed in Table 3-5, the NPDES Permits for the SWRP and VWRP include the following discharge requirements.

- 86°F maximum temperature
- The pH of wastes discharged must be within the range of 6.5 and 8.5 at all times
- The wastes discharged to watercourses must be adequately disinfected at all times
- Maximum turbidity of 2 Nephelometric turbidity units (NTUs) average within a 24-hour period, 5 NTUs more than 5 percent of the time (72 minutes) during any 24-hour period, and 10 NTUs at any time
- To protect underlying ground water basins, pollutants must not be present in the wastes discharged at concentrations that pose a threat to ground water quality
- Incorporation of radioactivity limits from Title 22, *Drinking Water Standards* to protect BUs
- Acute and chronic toxicity limitations are based upon the Basin Plan
- The permit contains a narrative chronic toxicity effluent limitation with a numeric trigger of 1 Toxicity Unit (TU<sub>c</sub>) for accelerated monitoring

### 3.4.2.1 Watershed-Wide Monitoring Program

The NPDES permits include the requirement that the SCVSD participate in development of an updated comprehensive Watershed-Wide Monitoring Program and develop an implementation plan for this monitoring program in conjunction with other interested stakeholders. The Watershed-Wide Monitoring Program seeks to assess impacts on water quality and ecological resources from nonpoint source runoff and aerial fallout as well as point source discharges. The stated goals of the program are to:

- Determine compliance with receiving water limits
- Monitor trends in surface water quality

**Table 3-5. SWRP and VWRP NPDES Permit Discharge Limitations for Conventional, Nonconventional, and Toxic Pollutants**

Constituent	Units	Discharge Limitations <sup>a</sup>			Basis
		30-day Avg.	7-day Avg.	Daily Max.	
BOD <sub>5</sub> @ 20°C (BOD)	mg/L	20	30	45	40CFR133 <sup>b</sup>
TSS	mg/L	15	40	45	40CFR133
Settleable Solids	mg/L	0.1	--	0.3	Basin Plan
Oil and Grease	mg/L	10	--	15	Basin Plan
Total Residual Chlorine	mg/L	--	--	0.1	Basin Plan
Total Dissolved Solids	mg/L	1,000	--	--	Basin Plan
Sulfate	mg/L SWRP	300	--	--	Basin Plan
	mg/L VWRP	400	--	--	Basin Plan
Boron	mg/L	1.5	--	--	Basin Plan
Detergents (as MBAS)	mg/L	0.5	--	--	Basin Plan
Ammonia Nitrogen	mg/L SWRP	2.0	--	5.6	TMDL
	mg/L VWRP	1.75	--	5.2	
Nitrate + Nitrite as Nitrogen	mg/L SWRP	7.1	--	--	TMDL
	mg/L VWRP	6.8	--	--	
Nitrite as Nitrogen	mg/L	0.9	--	--	TMDL
Nitrate as Nitrogen	mg/L SWRP	7.1	--	--	TMDL
	mg/L VWRP	6.8	--	--	
Cyanide (SWRP only)	µg/L	3.9	--	9.4	Basin Plan
Perchlorate (SWRP only)	µg/L	6	--	--	Basin Plan
Antimony (SWRP only)	µg/L	6	--	--	Basin Plan
Arsenic	µg/L	10	--	--	Basin Plan
Cadmium (SWRP only)	µg/L	5	--	--	Basin Plan
Iron	µg/L	300	--	--	Basin Plan
Mercury	µg/L	0.051	--	--	Basin Plan
Selenium	µg/L	4.4	--	--	Basin Plan
Total Trihalomethanes	µg/L	80	--	--	Basin Plan
Coliform Bacteria	MPN/100 mL	23	2.2	--	Basin Plan

BOD<sub>5</sub> = Biochemical Oxygen Demand 5-day

TSS = Total Suspended Solids

MBAS = Methylene Blue Active Substances

MPN = Most Probable Number

<sup>a</sup> Mass emission rates (based on plant design flow rates of 21.6 mgd and 6.5 mgd for the SWRP and the VWRP, respectively), can be calculated as follows: Flow (mgd) x Concentration (mg/L) x 8.34 (conversion factor) = lbs/day. During wet-weather storm events in which the flow exceeds the design capacity, the mass discharge rate limitations shall not apply, and concentration limitations will provide the only applicable effluent limitations.

<sup>b</sup> CWA 40 Code of Federal Regulations Part 133.

<sup>c</sup> Total Trihalomethanes is the sum of concentrations of the trihalomethane compounds: bromodichloromethane, bromoform, chloroform, and dibromochloromethane. This limit is based on the Basin Plan WQO incorporation of MCLs by reference.

- Ensure protection of BUs
- Provide data for modeling contaminants of concern
- Characterize water quality including seasonal variation of surface waters within the watershed
- Assess the health of the biological community
- Determine mixing dynamics of effluent and receiving waters in the estuary

## 3.5 REGULATIONS GOVERNING WATER REUSE

The discharge and reuse of recycled water is regulated under a number of authorities on the state and local level.

### 3.5.1 State Regulations

State requirements for production, discharge, distribution, and use of recycled water are contained in the following codes:

- CWC, Division 6 – Conservation, Development, and Utilization of State Water Resources, §§10610 through 10655, and Division 7 – Water Quality, §§13000 through 13633
- California Health and Safety Code, Division 6 – Sanitary Districts, §6512, and Division 104 – Environmental Health Sciences, §§116800 through 116820
- California Code of Regulations (CCR), Title 22 – Social Security, Division 4 – Environmental Health, Chapter 3 – Recycling Criteria, §§60001 through 60355
- CCR, Title 17-Public Health, Division 1 – State Department of Health, Chapter 5, Sanitation (Environmental), Subchapter 1, Engineering (Sanitary), Group 4, Drinking Water Supplies, §§7583 through 7605

In addition, guidelines for production, distribution, and use of recycled water have been prepared or endorsed by state agencies administering recycled water regulations

#### 3.5.1.1 California Water Code

The CWC contains requirements for the production, discharge, and use of recycled water. Division 7, Chapter 7, of the CWC specifically addresses requirements for water recycling. This chapter requires California Department of Public Health (CDPH) to establish water-recycling criteria and gives the RWQCBs responsibility for prescribing specific Water Reclamation Requirements (WRRs) for water that is used or proposed to be used as recycled water. In addition, Division 7, Chapter 7, of the CWC provides for regulation of recycled water injection into the ground and requires that greenbelt areas and certain other applications use recycled water rather than potable water where recycled water is available at a cost-effective price.

The CWC (§§1210 through 1212), added in 1980, focus on the definition of property rights to recycled water and require that the owner of a wastewater treatment plant obtain approval from the SWRCB prior to making any change to the point of discharge, place of use, and/or purpose of use of recycled water.

#### 3.5.1.2 Title 22

The CWC (§13521) requires the CDPH to establish water reclamation criteria. In 1975, the CDPH prepared Title 22 regulations to fulfill this requirement. Title 22 was subsequently revised in 1978 to conform with the 1977 amendments to the CWA and revised again in December 2000. The requirements of Title 22 regulate production and use of recycled water in California.

Title 22 establishes four categories of recycled water:

- Undisinfected Secondary Recycled Water: oxidized effluent.

- Disinfected Secondary-23 Recycled Water: oxidized and disinfected effluent that does not exceed a most probable number (MPN) of 23 total coliform bacteria per 100 milliliters (mL) median concentration in a 7-day period.
- Disinfected Secondary-2.2 Recycled Water: oxidized and disinfected effluent that does not exceed an MPN of 2.2 total coliform bacteria per 100 mL median concentration in a 7-day period.
- Disinfected Tertiary Recycled Water: oxidized, coagulated, clarified, filtered, and disinfected effluent.

Criteria for reuse of secondary and tertiary effluent in various reuse applications include limits on the maximum numbers of total coliform bacteria present within the water. A partial list of suitable uses of recycled water, as defined by Title 22, is summarized in Table 3-6.

**Table 3-6. Suitable Uses of Recycled Water**

Use <sup>a</sup>	Disinfected Tertiary Recycled Water	Disinfected Secondary-2.2 Recycled Water	Disinfected Secondary-23 Recycled Water	Undisinfected Secondary Recycled Water
<b>Surface Irrigation</b>				
Parks, playgrounds and School yards	Allowed	Not Allowed	Not Allowed	Not Allowed
Residential landscaping	Allowed	Not Allowed	Not Allowed	Not Allowed
Unrestricted access golf courses	Allowed	Not Allowed	Not Allowed	Not Allowed
Cemeteries and Freeway landscaping	Allowed	Allowed	Allowed	Not Allowed
Restricted access golf courses	Allowed	Allowed	Allowed	Not Allowed
<b>Supply for Impoundments</b>				
Nonrestricted recreational impoundment	Allowed <sup>b</sup>	Not Allowed	Not Allowed	Not Allowed
Restricted recreational impoundment	Allowed	Allowed	Not Allowed	Not Allowed
<b>Other Uses</b>				
Flushing toilets and urinals	Allowed	Not Allowed	Not Allowed	Not Allowed
Industrial process water that may contact workers	Allowed	Not Allowed	Not Allowed	Not Allowed
Structural fire fighting	Allowed	Not Allowed	Not Allowed	Not Allowed
Decorative fountains	Allowed	Not Allowed	Not Allowed	Not Allowed
Commercial laundries	Allowed	Not Allowed	Not Allowed	Not Allowed
Commercial car washes, including hand washes if water is not heated, where public is excluded from washing process	Allowed	Not Allowed	Not Allowed	Not Allowed
Industrial boiler feed	Allowed	Allowed	Allowed	Not Allowed
Nonstructural fire fighting	Allowed	Allowed	Allowed	Not Allowed
Soil compaction	Allowed	Allowed	Allowed	Not Allowed
Mixing concrete	Allowed	Allowed	Allowed	Not Allowed
Dust control on roads and streets	Allowed	Allowed	Allowed	Not Allowed
Cleaning roads, sidewalks and outdoor work areas	Allowed	Allowed	Allowed	Not Allowed
Industrial process water that may not contact workers	Allowed	Allowed	Allowed	Not Allowed

<sup>a</sup> This list is not all inclusive.

<sup>b</sup> With monitoring for viruses, bacteria, and protozoa cysts.

In addition to defining permitted uses of recycled water and treatment requirements, Title 22 defines sampling and analysis requirements for treatment plant effluent, requires preparation of an engineering report prior to production or use of recycled water, specifies general design criteria for treatment facilities, establishes reliability requirements, and addresses alternative methods of treatment.

### **Water Recycling Requirements**

Use of recycled water is usually regulated by the RWQCB under WRRs (also known as reuse permits). WRRs include findings that provide an official description of the facility using the recycled water and specifications for use of the water. The SCVSD WRR Order was issued in 1987.

The reuse permit contains limits that are consistent with specific WQOs of the Basin Plan. Table 3-7 summarizes the numerical limits listed in the WRRs. The reuse permits also require that reclaimed water shall not contain trace constituents or other substances in concentrations exceeding the limits of the current CDWS.

**Table 3-7. SWRP and VWRP WRR Constituent Limits**

pH	TDS (mg/L)	Sulfate (mg/L)	Chloride <sup>a</sup> (mg/L)
6.0 – 9.0	800	250	300

<sup>a</sup> Revised WRRs may be issued at any time. It is expected that new limits would be closer to 100-150 mg/L.

#### **3.5.1.3 SWRCB Recycled Water Policy**

On February 3, 2009, the SWRCB released a recycled water policy (Resolution No. 2009-0011). The purpose of this policy is to increase the use of recycled water in a manner that implements state and federal water quality laws and provides direction to RWQCBs, proponents of recycled water projects, and the public regarding appropriate criteria to be used by the SWRCB and RWQCBs in issuing permits for recycled water projects. The policy includes language that:

- Establishes goals to increase the use of recycled water in California and clarifies the roles of the SWRCB, RWQCBs, CDPH, and the California Department of Water Resources (DWR).
- Requires development of salt and nutrient management plans for each groundwater basin by 2014.
- Establishes a “blue-ribbon” advisory panel to guide future actions relating to Emerging Constituents/Constituents of Emerging Concern (CEC).

#### **3.5.1.4 SWRCB Recycled Water General Irrigation Permit**

The California Legislature declared its intent that the state undertake all possible steps to encourage development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state. In response, the SWRCB adopted a General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water on July 7, 2009 to streamline the regulatory process for reuse of disinfected tertiary recycled water for:

- Parks, greenbelts, and playgrounds
- School yards

- Athletic fields
- Golf courses
- Cemeteries
- Residential landscaping, common areas
- Commercial landscaping, except eating areas
- Industrial landscaping, except eating
- Freeway, highway, and street landscaping

### **3.5.1.5 California Department of Public Health Draft Groundwater Recharge Regulations**

The CDPH issued new Draft Groundwater Replenishment Reuse Regulations on November 21, 2011. For surface spreading projects not using full advanced treated recycled water (as defined in §60320.201 of the Draft Groundwater Replenishment Reuse Regulations, November 21, 2011), the draft regulations allow an initial recycled water contribution (RWC) of 20 percent, or a 20/80 blend ratio of recycled water to dilution water. For surface spreading projects and direct injection projects using full advanced treated recycled water, the initial maximum RWC is to be determined on a case-by-case basis by CDPH. The draft regulations propose methodology whereby the RWC could be increased above the initial value, which could lead to increased groundwater recharge. In addition to the RWC requirements, the draft regulations provide requirements for recycled water treatment, pathogen removal, wastewater source control, diluent water, soil treatment process, response retention time, monitoring wells, reporting, and various water quality constituent requirements.

### **3.5.1.6 Title 17**

The focus of Title 17 of the CCR is the protection of potable water supplies through control of cross connections with potential contaminants. Examples of potential contaminants include sewage; nonpotable water supplies such as recycled water, irrigation water, and auxiliary water supplies; fire protection systems; and hazardous substances. Title 17, Group 4, Article 2 (Protection of Water System), Table 1, specifies the minimum backflow protection required on a potable water system when there is a potential for contamination of the potable water supply. Revisions to Title 17 of the CCR are being developed, with the most current draft dated December 8, 2005.

### **3.5.1.7 Recycled Water Guidelines**

To assist in compliance with Title 22, CDPH has prepared a number of guidelines for production, distribution, and use of recycled water. Additionally, CDPH recommends the use of recycled water distribution guidelines prepared by the California-Nevada Section of the American Water Works Association (AWWA). These guidelines include:

- Guidelines for the Preparation of an Engineering Report on the Production, Distribution, and Use of Recycled Water
- Manual of Cross-Connection Control/Procedures and Practices
- Guidelines for the Distribution of Nonpotable Water

- Guidelines for the Use of Recycled Water
- Guidelines for the Use of Recycled Water for Construction Purposes

### **3.5.1.8 Recycled Water Administration**

In the State of California, recycling requirements are administered by the SWRCB, the RWQCB, and CDPH. The direct involvement of each agency during a water recycling project is as follows:

- The SWRCB issue loans and approves petitions for a change in place and/or purpose of use of recycled water in accordance with the CWC.
- The RWQCB (1) prepares or revises WRRs in accordance with the CWC and Title 22, (2) reviews and approves engineering reports required under Title 22, and (3) reviews and approves recharge projects using recycled water in accordance with the CWC.
- The CDPH reviews and approves (1) engineering reports, (2) final plans for cross-section control and pipeline separations in accordance with Title 17 and inspects distribution systems prior to operation, and (3) final user system plans in conjunction with local health agencies for cross-section control in accordance with Title 17 and inspects systems prior to operations.

### **3.5.2 Recycled Water Local Regulations**

Local requirements focus on the distribution and use of recycled water and, primarily, on the user systems. Local requirements generally emphasize cross-connection control. The state regulations and guidelines discussed above are the governing requirements. The Los Angeles County Department of Public Health (County DPH) generally establishes more specific requirements for separation and construction of potable and recycled water systems, specifies guidelines for user systems, and establishes criteria for identification of recycled water facilities.

## **3.6 REGULATIONS GOVERNING AIR QUALITY**

### **3.6.1 Federal Regulations**

#### **3.6.1.1 Federal Clean Air Act**

The Federal Clean Air Act (FCAA), passed in 1963 and amended significantly in 1970, 1977, and 1990, requires the EPA to establish national ambient air quality standards (NAAQS) for air pollutants. The EPA has promulgated NAAQS for criteria pollutants, including carbon monoxide (CO), ozone (O<sub>3</sub>), sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), particulate matter with an aerodynamic diameter of less than 10 microns (PM<sub>10</sub>), particulate matter with an aerodynamic diameter of less than 2.5 microns (PM<sub>2.5</sub>), and lead. State governments, in turn, must develop attainment plans to meet these NAAQS by a specific date. As outlined in the California Health and Safety Code (CHSC) §39602, the Air Resources Board (ARB) is designated as the air pollution control agency of the state and is responsible for developing a state implementation plan as required by the FCAA. Areas not meeting the NAAQS, referred to as nonattainment areas, are required to implement specified air pollution control measures. In California, responsibility for air pollution control measures is divided between the ARB and local air districts. A brief description of the applicable titles of the FCAA follows.

## ***Title V***

Title V of the FCAA establishes a federal operating permit program for major sources of criteria or hazardous air pollutants to be administered by states. A Title V permit consolidates different FCAA requirements into a single document. Major sources are required to obtain a Title V permit. Facilities can also be required to obtain a Title V permit if they are not otherwise major sources, but are subject to New Source Performance Standards (NSPS – Title I) or National Emission Standards for Hazardous Air Pollutants (NESHAP – Title III). Neither the SWRP nor the VWRP is considered a major source by South Coast Air Quality Management District (SCAQMD) criteria, and Title V permits are not required for any SCVSD facilities at this time.

## ***Title III***

Title III of the FCAA directs the EPA to establish technology-based standards for 187 hazardous air pollutants (HAPs) based on the use of maximum achievable control technology (MACT). POTWs that provide treatment for industrial wastewater streams to comply with any industrial MACTs are defined as industrial POTWs. For the most part, MACT emission standards are to be imposed on major sources of HAPs. Under the MACT definition, the SCVSD facilities are considered non-industrial POTWs. The SCVSD facilities are not currently, nor are they expected to be, a major source of HAPs. Therefore, the MACT standard does not apply.

## **3.6.2 State Regulations**

### **3.6.2.1 California Clean Air Act**

The California Clean Air Act (CCAA), which was signed into law in 1988, requires attainment of state ambient air quality standards by the earliest practicable date. The CCAA is generally more stringent than the FCAA. Vehicular sources and consumer products are the primary responsibility of the ARB, while local air districts are primarily responsible for stationary and portable sources (CHSC 39002). The ARB retains oversight authority over the local air districts.

As with the CAA, nonattainment areas that do not meet the NAAQS are required to implement specified air pollution control measures. The CCAA divides nonattainment areas, based on background pollutant levels, into categories with progressively more stringent requirements. Each air district that is located in a nonattainment area is required to submit an air quality management plan (AQMP) to the ARB.

SCVSD facilities are located within the jurisdiction of the SCAQMD, which is classified as a severe nonattainment area for ozone and nonattainment area for PM<sub>10</sub> and PM<sub>2.5</sub>.

### **3.6.2.2 Greenhouse Gas Legislation**

In June 2005, in response to the increasing body of evidence that greenhouse gases (GHGs) will affect the global climate, Governor Schwarzenegger issued executive order (EO S-3-05), which established the following GHG emission reduction targets for California: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; by 2050, reduce GHG emissions to 80 percent below 1990 levels. Subsequent to the Governor's issuance of EO S-3-05, on September 27, 2006, the California State Legislature adopted Assembly Bill (AB) 32, also called the Global Warming Solutions Act of 2006. AB 32 sets forth the regulatory framework to achieve the 2020 reduction in statewide emissions levels called for in EO S-3-05. AB 32 assigns

ARB responsibility for monitoring and reducing GHG emissions as well as preparing a Scoping Plan to identify how best to reach the 2020 limit.

In December 2008, the SCAQMD approved an Interim Guidance Document on how to determine whether a project's GHG emissions are significant for CEQA purposes and included a numeric significance threshold for stationary sources. SCAQMD continues to refine this guidance through a workgroup process. The interim GHG significance threshold is only a recommendation for lead agencies and not a mandatory requirement, although the threshold (10,000 metric tons of CO<sub>2</sub> equivalents per year) will be used by SCAQMD when SCAQMD is the lead agency.

In August 2007, Governor Schwarzenegger signed Senate Bill (SB) 97, which requires the California Office of Planning and Research (OPR) to prepare CEQA guidelines for the mitigation of GHG emissions or the effects of GHG emissions and transmit these Guidelines to the Natural Resources Agency (NRA). On June 19, 2008, OPR released its Technical Advisory on CEQA and Climate Change, which was developed in cooperation with the NRA, the California Environmental Protection Agency (Cal-EPA), and ARB. The Technical Advisory encourages lead agencies to follow three basic steps: (1) identify and quantify the GHGs that could result from a proposed project, (2) analyze the effects of those emissions and determine whether the effect is significant, and (3) if the impact is significant, identify feasible mitigation measures or alternatives that will reduce the impact below a level of significance.

The NRA adopted amendments to the CEQA Guidelines for GHG emissions on January 1, 2010. The amendments encourage lead agencies to consider many factors in performing a CEQA analysis but preserve the discretion granted by CEQA to lead agencies in making their own determinations based on substantial evidence. The amendments also encourage public agencies to make use of programmatic mitigation plans and programs from which to tier when they perform individual project analyses.

### **3.6.3 Local Regulations**

#### **3.6.3.1 South Coast Air Quality Management District**

The SCAQMD is responsible for stationary and indirect source control, air monitoring, enforcement of delegated mandates, and attainment plan preparation for Orange County; the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties; and the Riverside County portions of the Salton Sea Air Basin and the Mojave Desert Air Basin. All of the SCVSD facilities are within the jurisdiction of the SCAQMD.

#### **3.6.3.2 Air Quality Management Plan**

The FCAA requires that the appropriate air quality authorities prepare air quality plans designed to achieve the federal ambient air quality standards. As mentioned above, the SCAQMD is responsible for preparing an AQMP and submitting that plan to the ARB. The ARB then reviews the AQMP and, following approval, incorporates it into the California State Implementation Plan (SIP), which includes air quality plans prepared by other local air quality control districts. The ARB then forwards the State Implementation Plan to EPA Region IX for approval. Every three years, the SCAQMD updates the AQMP. The final 2012 AQMP was adopted by the SCAQMD Governing Board on December 7, 2012.

### 3.6.3.3 South Coast Air Quality Management District Permit Rules

The SCAQMD regulates stationary and area-wide sources through a variety of general “prohibitory” rules. These rules limit criteria pollutants irrespective of the source’s size. The rules include source-specific Regulation XI standards, New Source Review (Regulation XIII) that requires best available control technology (BACT) and offsets for new and modified sources, and implementation of federally-delegated rules.

Similarly, the SCAQMD has promulgated technology-based rules to limit emissions of toxic air pollutants from new and existing operations. The rules apply to all permit applications for new or modified facilities and/or equipment. Some of these rules were originated by the SCAQMD and some, such as those addressing diesel particulates, were based on airborne toxic control measures (ATCM) adopted by the ARB.

### 3.6.3.4 Regulation XIII (New Source Review)

The SCAQMD new source review (NSR) program applies when there is a permitting action resulting in increased emissions of any nonattainment air pollutant, precursors to a nonattainment pollutant, ammonia, or ozone depleting compounds (ODCs) from a new or modified source of emissions. The main elements of NSR are best available control technology (BACT) requirements, modeling, and offsets. Any new or modified facilities where the emissions increase is greater than the offset threshold must obtain offsets by purchasing emission reduction credits or reducing emissions elsewhere at the facility (simultaneous emissions reductions), thereby resulting in no net increase in emissions.

The SCAQMD’s NSR program has been modified several times since it was first adopted in 1976. Generally, each modification has reduced the offset requirement thresholds, which led to a concern that sufficient offsets would not be available to allow the permitting of essential public service projects, such as POTWs and landfills. Consequently, the SCAQMD created a pool of emission offsets known as the Priority Reserve to ensure offset availability for such projects. This pool can be accessed at no charge to satisfy emission offset requirements for essential public service projects. Access to the Priority Reserve does not eliminate the requirement to install BACT.

### 3.6.3.5 Rule 1401 (New Source Review of Toxic Air Contaminants) and Subsequent Rules

Rule 1401 is the SCAQMD’s NSR program for toxic emissions, while Rule 1402 addresses control of toxic air contaminants from existing sources and implements the state Air Toxics Hot Spot Program. Under Rule 1401, the SCAQMD reviews permit applications for new or modified sources to determine if the facility is required to submit a health risk assessment and to assess whether BACT for Toxics (T-BACT) is required. A permit application will be denied if the cancer burden is greater than 0.5 or if the maximum individual cancer risk (MICR) is greater than 1 in 1 million, or 10 in 1 million for sources that apply T-BACT. Rule 1402 requires facility-wide risk assessments for facilities notified by the SCAQMD, or under the original State Hot Spots program. Based upon the facility-wide MICR, cancer burden, or Hazard Index (HI), a facility may trigger different risk thresholds for public notification (10 in 1 million MICR or HI of 1.0), action level (25 in 1 million MICR, 0.5 cancer burden, or HI of 3.0), or significant risk (100 in 1 million MICR or HI of 5.0). The latter two triggers would require the facility to reduce

risk through specified Risk Reduction Plans. Neither SCVSD facility has ever triggered a facility-based public notice threshold or a mandatory risk reduction threshold.

As a result of increased concern over environmental justice and impacts to sensitive receptors, a more restrictive toxic emissions NSR rule, Rule 1401.1, was adopted to cap risk from new or relocated facilities locating near schools.

### **3.6.3.6 Regulation XXVII (Climate Change)**

This SCAQMD climate change regulation, developed in response to AB 32, establishes the Southern California Climate Solutions Exchange Program. Through this program, entities can purchase carbon reductions from the exchange to mitigate emissions from new projects. Participation in the program is voluntary.

## **3.7 REGULATIONS GOVERNING BIOSOLIDS MANAGEMENT**

All solids generated within the SCVSD are processed onsite at the VWRP. The disposal of solids and beneficial reuse of biosolids are subject to federal and state regulations. Depending upon the type and level of treatment provided, solids/biosolids are placed into different classifications, which determine allowable application of these materials.

### **3.7.1 Federal Regulations**

The EPA promulgated Standards for the Use or Disposal of Sewage Sludge, Title 40 of the Code of Federal Regulations, Part 503 (Part 503) in 1993. Part 503 is a comprehensive, risk-based regulation that protects human health and the environment from pollutants of concern that can be present in biosolids. Biosolids are sewage sludges/solids that have been treated/stabilized to a degree suitable for beneficial reuse. Part 503 specifies general requirements, pollutant limits, management practices, and operational standards for various biosolids management options such as land application, surface disposal, and incineration. It provides the basis for classifying biosolids as Class A or Class B depending on the level of pathogen reduction, the degree of vector attraction reduction, and the concentration of regulated pollutants in the biosolids. Both Class A and Class B biosolids are both protective of public health and the environment.

All wastewater treatment plant solids produced in the SCVSD are processed at the VWRP, which produces Class B biosolids. Class B biosolids meet the pathogen and vector attraction reduction requirements of Part 503 and do not exceed the pollutant ceiling concentrations listed in Table 3-5. Class B biosolids may be applied in bulk to agricultural land, forest, public contact sites (e.g., public parks, ball fields, cemeteries, etc.) or a reclamation site provided either the cumulative loading rates or the pollutant concentrations listed in Table 3-7 are not exceeded and the applicable Part 503 site restrictions are maintained.

### **3.7.2 State Regulations**

The SWRCB enacted State Water Quality Order No. 2000-10-DWQ in August 2000, which was later replaced by State Water Quality Order No. 2004-0012-DWQ to establish general WDRs for the reuse of biosolids. Table 3-8 lists pollutant limits for biosolids. The land application

requirements are more restrictive than those contained in Part 503 and are designed to account for conditions specific to California soils and local environments through the issuance and oversight of General Order Permits.

## 3.8 REGULATIONS GOVERNING HAZARDOUS MATERIALS

The EPA is the principal federal agency regulating hazardous materials. As such, the EPA broadly defines a hazardous waste as one that is specifically listed in EPA regulations; that has been tested and meets one of the characteristics (e.g., toxicity) established by the EPA; or that has been declared hazardous by the generator based on its knowledge of the waste.

Cal-EPA has been granted primary responsibility by the EPA for administering and enforcing hazardous materials management plans. Cal-EPA defines a hazardous material more generally as a material that, because of its quantity, concentration, physical characteristics or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released (26 CCR 25501). Note that hazardous materials include chemicals used in the operation of a typical POTW.

**Table 3-8. Pollutant Limits for Biosolids**

Constituent	Ceiling Concentration <sup>a</sup> (mg/kg)	Pollutant Concentration <sup>a</sup> (mg/kg)	Cumulative Loading Rate (kg/ha)
Arsenic	75	41	41
Cadmium	85	39	39
Copper	4,300	1,500	1,500
Lead	840	300	300
Mercury	57	17	17
Molybdenum	75	–	–
Nickel	420	420	420
Selenium	100	100	100
Zinc	7,500	2,800	2,800

mg/kg = milligrams per kilogram

kg/ha = kilogram per hectare

<sup>a</sup> Dry weight basis.

Source: EPA, 40 CFR 503 – Standards for the Use or Disposal of Sewage Sludge 1997.

## 3.9 REGULATIONS GOVERNING ENVIRONMENTAL IMPACTS

### 3.9.1 Federal Regulations

#### 3.9.1.1 National Environmental Policy Act

The National Environmental Policy Act (NEPA), enacted in 1970, came in response to a national sentiment that federal agencies should take more direct responsibility in providing greater protection for the environment. NEPA is the nation's basic charter for the protection of the environment. It establishes environmental policy for the nation, provides an interdisciplinary

framework for federal agencies to prevent environmental damage, and contains procedures to ensure that federal agency decision makers take environmental factors into account (Bass, Herson, and Bogdan 1996).

Because there are no proposed federal actions under this Facilities Plan, no federal lead agency is required.

## **3.9.2 State Regulations**

### **3.9.2.1 California Environmental Quality Act**

The California Environmental Quality Act (CEQA), enacted in 1970, was modeled after NEPA. CEQA applies to all proposed discretionary activities that will be carried out or approved by California public agencies, such as the Sanitation Districts, unless such activities are specifically exempted. Under CEQA, the “Lead Agency” is the agency with the principal responsibility to approve a project and therefore is the agency responsible for preparing a CEQA document for a proposed project. For the Facilities Plan, the SCVSD will serve as the CEQA Lead Agency.

The purpose of CEQA is to minimize environmental damage. Key objectives of CEQA are to disclose to decision makers and the public the significant environmental effects of the proposed project to enable them to understand the environmental consequences of a project and to balance the benefits of a project against the environmental costs. Major elements of CEQA include (1) disclosing environmental impacts, (2) identifying and preventing environmental damage, (3) fostering intergovernmental coordination, (4) enhancing public participation, and (5) disclosing agency decision making (Bass, Herson, and Bogdan 1996).

## **3.10 REGULATIONS GOVERNING ENDANGERED SPECIES**

### **3.10.1 Federal Regulations**

#### **3.10.1.1 The Federal Endangered Species Act**

The Federal Endangered Species Act (FESA) regulates the take of species listed as threatened or endangered. Take is broadly defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

#### ***Federal Endangered Species Act §7***

§7 of the FESA applies when a project involves a federal action such as issuing a federal permit or federal funding. §7 requires the federal agency to consult with the USFWS regarding the potential effect of the agency’s action on species listed as threatened or endangered.

§7 compliance applies to agencies applying for SRF loans because some of the funding is from federal sources. This consultation typically results in preparation of a biological opinion that specifies whether the proposed action is likely to jeopardize the continued existence of the listed species or result in the adverse modification of critical habitat. The biological opinion may include an “incidental take” statement if the proposed action would result in the take of a listed species incidental to the federal action.

### ***Federal Endangered Species Act §9***

§9 of FESA prohibits all persons subject to the jurisdiction of the United States from taking, importing, exporting, transporting, or selling any species of fish or wildlife listed as endangered or threatened.

### ***Federal Endangered Species Act §10***

Although §9 prohibits the take of a federally listed species, §10 of FESA is the mechanism that may allow an incidental take of such species. The USFWS may issue a take permit for any taking that is incidental to, and not for the purpose of, carrying out an otherwise lawful activity. Along with the application for an incidental take permit, the applicant must submit a conservation plan that specifies likely impacts that would result from the take, mitigation measures to minimize those impacts, funding for the mitigation, and a project alternatives analysis.

## **3.10.2 State Regulations**

### **3.10.2.1 The California Endangered Species Act**

Under the California Endangered Species Act (Cal-ESA), all state Lead Agencies (as defined by CEQA) preparing Initial Studies, Negative Declarations, or environmental impact reports (EIRs) must consult with the California Department of Fish and Wildlife (CDFW) to ensure that any action authorized, funded, or carried out by that Lead Agency is not likely to jeopardize the continued existence of any endangered or threatened species. This Cal-ESA consultation requirement does not apply to local Lead Agencies, such as the SCVSD.

The Cal-ESA prohibits any party from importing into the state, exporting out of the state, or taking, possessing, purchasing, or selling within the state any part or product of any endangered or threatened species (except as provided in the Native Plant Protection Act or California Desert Native Plants Act). Through §2081 of the Cal-ESA, CDFW may enter into a management agreement with the project applicant to allow for an incidental take (similar to the USFWS mechanism under §10 of FESA).

### **3.10.2.2 California Fish and Game Code**

The California Fish and Game Code (§§1601-1616) applies to any state or local government agency or any public utility that proposes to “substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.” Any agency proposing such actions must apply with the CDFW for a Streambed Alteration Agreement (SAA), which is negotiated between CDFW and the applicant. The agreement may contain mitigation measures to reduce the effect of the activity on fish and wildlife resources. The agreement may also include monitoring to assess the effectiveness of the proposed mitigations.

### **3.10.3 Local Regulations**

#### **3.10.3.1 Significant Ecological Areas**

Significant ecological areas (SEAs) were developed by the Los Angeles County Department of Regional Planning (DRP) as a way to protect biotic diversity including habitat for endangered species. Although SEAs do not preclude development or construction, they promote open space conservation. SEAs require another level of scrutiny in the CEQA review process by the Significant Ecological Areas Technical Advisory Committee (SEATAC). SEATAC reviews proposed projects to ensure consistency with SEA-recommended management practices before a SEA conditional use permit (CUP) can be issued and the project can be approved.

## **3.11 REGULATIONS GOVERNING CULTURAL RESOURCES**

### **3.11.1 Federal Regulations**

#### **3.11.1.1 National Historic Preservation Act**

A programmatic agreement between the SWRCB and the State Historic Preservation Officer (SHPO) requires that projects receiving federal funds administered by the SWRCB (such as SRF loan funding) comply with §106 of the National Historic Preservation Act (NHPA). Because the SCVSD intends to finance the Facilities Plan projects with SRF loan funds, compliance with §106 of the NHPA will be required.

The §106 review process uses a five-step procedure including: (1) the identification and evaluation of historic properties, (2) an assessment of the project's effects on properties that are eligible for listing on the National Register of Historic Places, (3) a consultation with the SHPO and other relevant agencies and, potentially, the development of an agreement that addresses the treatment of historic properties, (4) the receipt of comments on the agreement or consultation results from the Advisory Council on Historic Preservation, and (5) project implementation subject to conditions imposed by the consultation and any agreement.

### **3.11.2 State Regulations**

The state requirements for cultural resources are outlined in §§5020, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084, and 21084.1 of the California Public Resources Code (CPRC). In general, compliance with the requirements of §106 of the NHPA is sufficient to ensure compliance with CEQA.

Other state requirements outlined in §§7050.5-7055 of the CHSC and §5097 of the CPRC provide for the protection of Native American remains and identify special procedures to be followed when Native American burial sites are found. Compliance with the provisions of these laws is separate from the requirements of CEQA and NHPA.

## 3.12 OTHER APPLICABLE LAWS AND REGULATIONS

### 3.12.1 Federal Regulations

#### 3.12.1.1 State Revolving Fund

Because a portion of the funding for the SRF program comes from federal sources, projects receiving SRF funds must meet a variety of federal requirements including compliance with the FESA, NHPA, and the following executive orders.

##### ***Executive Order 11988***

This executive order relating to floodplain management was prepared in 1979 to avoid, to the extent possible, long- and short-term adverse impacts associated with the occupation and modification of floodplains and to avoid direct or indirect support of development in floodplains. This order requires that the agency reviewing the proposed action consider alternatives to avoid adverse effects and incompatible development in floodplains. If the only practicable alternative is to site a project in the floodplain and the reviewing agency concurs, then the action must be designed or modified to minimize potential harm to the floodplain. Further, a notice containing an explanation of why the action is proposed to be located in the floodplain must be prepared and circulated.

##### ***Executive Order 11990***

This executive order was prepared to provide assistance for new construction located in wetlands if no practicable alternative exists, and to minimize the harm to wetlands that may result from the proposed use. The order requires early public review of any plans or proposals for new construction in wetlands and notification of the federal Office of Management and Budget regarding compliance with the order. The order establishes several factors that should be considered during evaluation of project effects on the survival and quality of wetlands including public health and welfare, maintenance of natural systems, and other uses of wetlands in the public interest.

##### ***Executive Order 11593***

This executive order provides for the protection and enhancement of the cultural environment. Compliance with §106 of NHPA and with CEQA fulfills the requirements of this order.

##### ***Executive Order 12898***

This executive order effectively expands the scope of complaints that may be filed with EPA under Title VI of the Civil Rights Act of 1964 to include issues of environmental justice. Environmental justice complaints typically allege that facilities generating adverse impacts associated with pollution and/or potential pollution are systemically sited in and/or permitted to operate in minority communities. Disproportionate adverse impacts on minority communities associated with pollution generated by facilities may constitute discrimination. Executive Order 12898 directs the EPA to address environmental justice concerns through the permitting process and applies to the permitting decisions of all agencies that receive or act as a conduit for federal monies.

The EPA's Title VI regulations apply to all programs and activities carried out by departments or agencies that receive EPA funding either directly or indirectly. The SWRCB administers a number of funding programs, including SRF, which are partially funded by federal monies. The SWRCB has delegated permitting authority to the local RWQCBs, including the RWQCB-LA. Accordingly, all of the permitting decisions of the RWQCB-LA, including the issuance, modification, or renewal of the WDRs for the SCVSD facilities, are subject to the mandates of Executive Order 12898 and the EPA guidelines implementing that order.

### **3.12.2 State Regulations**

#### **3.12.2.1 Worker Safety**

Worker safety laws protect public health in the workplace. These laws are administered and enforced by the California Occupational Safety and Health Administration (Cal-OSHA). The laws apply to normal operational activities (including all provisions for standard injury and illness prevention), construction requirements, and requirements for chemical handling and infection and disease prevention.

### **3.12.3 Local Regulations**

#### **3.12.3.1 Construction Storm Water Program**

For construction projects disturbing one or more acres of soil, a Notice of Intent (NOI) package must be submitted to the SWRCB to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The General Permit requires the development and implementation of a storm water pollution prevention plan (SWPPP). The major objectives of an SWPPP are to help identify sources of sediment and other pollutants that affect the quality of storm water discharges and to describe and ensure implementation of best management practices (BMPs). The SWPPP emphasizes the use of appropriately installed and maintained storm water pollution reduction BMPs.

Required elements of an SWPPP include:

- Site description addressing the elements and characteristics specific to the site
- Descriptions of BMPs for erosion and sediment controls
- BMPs for construction waste handling and disposal
- Implementation of approved local plans
- Proposed post-construction controls, including description of local post-construction erosion and sediment control requirements
- Non-storm water management

## Proposition 218: Text of Proposed Law

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This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding articles thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED ADDITION OF ARTICLE XIII C AND ARTICLE XIII D

#### RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE. This act shall be known and may be cited as the "Right to Vote on Taxes Act."

SECTION 2. FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.

Article XIII C is added to the California Constitution to read:

#### *ARTICLE XIII C*

*SECTION 1. Definitions. As used in this article:*

- (a) "General tax" means any tax imposed for general governmental purposes.*
- (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.*
- (c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.*
- (d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.*

*SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:*

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

*SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.*

#### SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIII D is added to the California Constitution to read:

#### ARTICLE XIII D

*SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:*

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

*SEC. 2. Definitions. As used in this article:*

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

*SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:*

*(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.*

*(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.*

*(3) Assessments as provided by this article.*

*(4) Fees or charges for property related services as provided by this article.*

*(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.*

*SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.*

*(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.*

*(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice*

shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

*SEC. 5. Effective Date.* Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall

*be subject to the procedures and approval process set forth in Section 4.*

*SEC. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:*

*(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.*

*(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*

*(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:*

*(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.*

*(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.*

*(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.*

*(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.*

*(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.*

*(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures*

*similar to those for increases in assessments in the conduct of elections under this subdivision.*

*(d) Beginning July 1, 1997, all fees or charges shall comply with this section.*

SECTION 5. LIBERAL CONSTRUCTION. The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

SECTION 6. SEVERABILITY. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

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Legislative Analyst's Office, December 1996



# Understanding Proposition 218

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## Introduction

Proposition 218 significantly changes local government finance. This constitutional initiative--approved by the state's voters in November 1996--applies to each of California's nearly 7,000 cities, counties, special districts, schools, community college districts, redevelopment agencies, and regional organizations.

The purpose of this guide is to help the Legislature, local officials, and other parties understand Proposition 218, including the actions local governments must take to implement it. The guide includes five chapters:

- How Proposition 218 Changes Local Finance and Governance.
- Understanding the Vocabulary of Proposition 218.
- Are Existing Revenues Affected by Proposition 218?
- What Must a Local Government do to Raise New Revenues?
- May Residents Overturn Local Taxes, Assessments, and Fees?

Finally, the appendix to this guide summarizes major areas of uncertainty pertaining to Proposition 218 (some of which the Legislature may wish to address), and includes the text of Proposition 218 (now Article XIII C and D of the California Constitution).

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# Chapter 1

## How Proposition 218 Changes Local Finance and Governance

Nearly two decades ago, Proposition 13 sharply constrained local governments' ability to raise property taxes, the mainstay of local government finance. Proposition 13 also specified that any local tax imposed to pay for specific governmental programs--a "special tax"--must be approved by two-thirds of the voters.

Since that time, many local governments have relied increasingly upon *other* revenue tools to finance local services, most notably: assessments, property-related fees, and a variety of small general purpose taxes (such as hotel, business license, and utility user taxes). It is the use of *these* local revenue tools that is the focus of Proposition 218.

In general, the intent of Proposition 218 is to ensure that all taxes and most charges on property owners are subject to voter approval. In addition, Proposition 218 seeks to curb some perceived abuses in the use of assessments and property-related fees, specifically the use of these revenue-raising tools to pay for general governmental services rather than property-related services.

In this chapter, we provide an overview and perspective on the impact of Proposition 218 on local finance and governance.

### Proposition 218 Changes Local Government Finance

Proposition 218 makes several important changes regarding local government finance. Figure 1 summarizes our observations regarding their fiscal impact.

Figure 1	
Proposition 218's Impact on Local Finance	
+	The measure's fiscal impact cannot be fully ascertained until the uncertainty regarding some of its provisions are resolved.
+	Most local revenues are not affected.
+	The impact on certain local governments could be substantial.
+	Local government revenue reductions will begin in 1997.
+	In the long term, local government revenues are likely to be somewhat lower and come from different sources.

### Some Uncertainty Regarding Proposition 218's Provisions

Proposition 218's requirements span a large spectrum, including local initiatives, water standby charges, legal standards of proof, election procedures, and the calculation and use of sewer assessment revenues. Although the measure is quite detailed in many respects, some important provisions are not completely clear.

In this guide, we provide our interpretation of the measure's requirements. This interpretation is based

on our extensive review of the measure, as well as consultations with the measure's drafters, local government officials, and legal counsel. In some cases, however, we are not able to fully ascertain the meaning or scope of a Proposition 218 requirement. We believe our uncertainty--frequently shared by other analysts of the measure--will be resolved only when the Legislature enacts implementing statutes or court rulings become available.

Accordingly, throughout this guide we discuss Proposition 218 as we understand it. Where other parties have different opinions or the measure's requirements are not clear, we provide this information. Finally, we provide in Appendix I a summary of the areas in which clarifying legislative or judicial action may be necessary.

## Most Local Revenues Are Not Affected

California local governments raise more than \$50 billion annually from taxes, assessments, and fees. As Figure 2 shows, most of these local revenues are *not* affected directly by Proposition 218. Instead, Proposition 218's provisions apply to a relatively small subset of local government revenues.

Figure 2	
Which Local Revenues Are Affected by Proposition 218?	
Affected	Not Directly Affected
<b>Taxes</b>	
New and some recently imposed "general" taxes.	Property taxes.
	Bradley-Burns sales taxes.
	Special taxes.
	Vehicle license taxes.
	Redevelopment revenues.
	Mello-Roos taxes.
	Timber taxes.
<b>Assessments</b>	
All new or increased assessments.	Most existing assessments.
Some existing assessments.	
<b>Fees</b>	
Property-related fees. (Fees imposed as an "incident of property ownership," not including gas, electric, or developer fees.)	Fees that are <i>not</i> property-related. Gas and electric fees. Developer fees.

Given the relatively small number and dollar value of local revenue sources that are affected by Proposition 218, we think it is highly unlikely that the measure could cause more than a 5 percent annual decrease in *aggregate* local government own-source revenues.

## Impact on Certain Local Governments May Be Substantial

The actual impact of Proposition 218 on local public services may be greater than our 5 percent estimate would suggest, however, for a variety of reasons. First, some governments are highly reliant upon the types of assessments and fees that would be restricted by this measure. These local governments--typically, small, newly incorporated cities, and library, fire, and park and recreation special districts--may sustain revenue reductions of much more than 5 percent. Some special districts also lack the authority to propose taxes to replace the lost assessment and fee revenues.

Second, many local governments have limited flexibility to reduce programs when revenues decline. Most major county programs, for example, are subject to state and federal mandates and spending requirements. As a result, relatively small revenue losses can trigger significant reductions to the few programs over which the local government has control.

Finally, many local governments will experience both revenue reductions *and* cost increases to comply with Proposition 218. For example, some local governments will lose part of their assessment and fee revenues, and have to pay:

- Assessments charges to other local governments.
- Increased election, property-owner notification, and administrative costs.

These increased costs will increase the fiscal impact of this measure on local government programs.

## Fiscal Impact Begins in 1997

The fiscal impact of Proposition 218 will begin almost immediately. Within eight months of Proposition 218's passage, local governments will need to reduce or eliminate certain existing assessments and fees to meet the measure's requirements. (These requirements are discussed in Chapter Three.) We estimate that these actions will reduce local government revenues by at least \$100 million in 1997-98.

Proposition 218 also requires local governments to place before the voters certain existing assessments and taxes. Unless the voters ratify these assessments and taxes, local governments will experience *additional* revenues losses, potentially exceeding \$100 million annually.

## Longer Term: Different Revenue Sources, Probably Less Money

Proposition 218 restricts local governments' ability to impose assessments and property-related fees-- and requires elections to approve many local government revenue raising methods. Because of this, it is likely that over the long term local governments will raise fewer revenues from assessments, property-related fees, and some taxes.

Unless these reduced local revenues are replaced with other revenues, local government spending for local public services will decrease accordingly. What other revenues could offset these revenue reductions? It is likely that local governments will pursue one or more of the following sources of potential replacement revenues:

- Redevelopment revenues.
- Developer exactions.
- General taxes imposed on particular groups (such as business license, hotel occupancy, and sporting or entertainment admission taxes).
- Special taxes imposed on properties within small, discrete areas.
- Intergovernmental transfers.
- Non-property related fees.

**Limited Ability to Raise Replacement Revenues.** Local governments' ability to expand these six other revenue sources is not great. Various legal and practical restrictions limit a major expansion of redevelopment or developer exactions, for example. In addition, many local government observers believe that existing hotel and business taxes are already high and not all parts of the state have major entertainment or sporting centers. (We include these taxes on the above list because these taxes are not paid directly by most voters. Thus, the likelihood of their being approved by a majority of voters may be higher than other general taxes.)

Similarly, while local governments in California have had difficulty securing the requisite two-thirds vote to impose special taxes, it is likely that some additional special taxes will be approved. Special

taxes probably are more likely to be adopted in small, discrete areas of a community where the commonality of interest is high, however, rather than on a community-wide basis. Thus, the likelihood of generating significant revenues from special taxes is not great.

Additional major revenues from the state or federal government also do not appear likely, given the fiscal limitations faced by both these level of governments. (Please see our November 1996 publication, *California's Fiscal Outlook*, for our projections of the state's fiscal condition.)

This leaves the last revenue source on our list: non-property related fees. Ultimately, the ability of local government to expand this revenue source turns on how the term "property-related" fee is defined by the Legislature or courts. If the definition of a property-related fee is broad, then local government's ability to replace revenues lost by Proposition 218 is limited. Conversely, if this definition is narrow, then local government will have greater opportunities to replace lost revenues with expanded non property-related fees. (Even then, however, the state Constitution and statutes do not permit local government to charge fees in excess of costs.)

All in all, our review indicates that most local governments will have some ability to raise revenues to replace some of the funding lost by Proposition 218. This ability, however, is limited. Accordingly, we expect that in the long term, local governments will raise somewhat less revenues than they would have otherwise--and local government revenues will come from somewhat different sources. These revenue reductions will result in lower payments by people and businesses to government--and decreased spending for local public services.

## Proposition 218 Changes Local Governance

In addition to changing local finance, Proposition 218 changes the governance roles and responsibilities of local residents and property owners, local government, and potentially, the state. While the full ramifications of these changes will not be known for years to come, some elements are already apparent.

### Increased Role for Local Residents And Property Owners

Prior to Proposition 218, the local resident and property owner's role in approving most new local government revenue-raising measures was minimal. Local governments typically raised new funds by imposing new or increased assessments or fees, or in the case of charter cities, general-purpose taxes on utility use, business licences, and hotel occupancy. In most cases, California residents or property owners could object to these taxes or charges at a public hearing or during a statutory protest procedure, but these taxes or charges were not placed on the ballot. In short, locally elected governing bodies held most of the power over local revenue raising.

Proposition 218 shifts most of this power over taxation from locally elected governing boards to residents and property owners. In order to fulfill this considerable responsibility, local residents and property owners will need greater information on local government finances and responsibilities. Even with this information, however, the task of local residents and property owners will be difficult, given the frequently confusing manner in which program responsibilities are shared between state and local government, and among local governments.

### Local Government Remains Responsible for Expenditures

Local government's powers, in contrast, become significantly constrained. While locally elected governing boards continue to be fully responsible for decision-making regarding the expenditure of public funds, they now have very little authority to raise funds without a vote of the residents or property owners. In addition, Proposition 218 limits local government's authority to call an election to raise revenues. Specifically, except in cases of emergency, local governments now may hold elections on general taxes only once every two years (consolidated with an election for members of the

governing board.) Moreover, Proposition 218 limits the amount of an assessment or property-related fee that may be put before the property owners for a vote.

## State Government Role May Expand

Proposition 218 may also alter the state's role and responsibilities regarding local government in several important ways. First, the Legislature will be asked to play a large role in interpreting Proposition 218's requirements, and helping set the rules regarding local government finance. In some cases, local governments are likely to ask for urgency legislation to enact these measures because the deadline for compliance with some Proposition 218 provisions is July 1, 1997.

Second, the Legislature will probably receive requests for fiscal assistance from local governments. These requests are likely to begin in the spring of 1997, as the fiscal consequences of the assessment and fee restrictions become apparent. Local governments are likely to turn to the state because it has more fiscal flexibility than local government. For example, the Legislature may raise taxes at any time with a two-thirds vote of its members.

Finally, any effort to restructure state-local program responsibilities is now more complicated. Specifically, the Legislature will have less flexibility to realign programs in a manner that increases local government responsibility without providing a direct subvention of state funds. This is because local governments have little or no flexibility to adjust their own revenues.

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## Chapter 2

# Understanding the Vocabulary of Proposition 218

Any discussion of Proposition 218 requires an explanation of several local government finance words and terms. This chapter explains the vocabulary.

## What Is a Tax?

Taxes are government's most flexible revenue raising tool. A tax is a charge on an individual or business that pays for governmental services or facilities that benefit the public broadly. There need not be any direct relationship between how much tax a person pays and how much service he or she receives from government. Example of taxes include the property tax, sales tax, business licence tax, hotel occupancy tax, and utility users tax.

## Special Tax Versus General Tax

A tax is called a "special" tax if its revenues are used for specific purposes and a "general" tax if its revenues may be used for any governmental purpose. This distinction is important because it determines whether a tax must be approved by a majority vote of the electorate (general tax)--or a two-thirds vote (special tax).

## What Is an Assessment?

An assessment is a charge levied on property to pay for a public improvement or service that benefits

property. Assessments are usually collected on the regular property tax bill. They are different, however, from the regular 1 percent property tax and property tax debt overrides in that assessment rates are not based on the value of the property. Assessments are also different from another charge that sometimes is placed on the property tax bill, parcel taxes. Unlike parcel taxes, assessments typically were not voter approved prior to Proposition 218. In addition, assessment rates were linked to the cost of providing a service or improvement, whereas parcel taxes could be set at any amount. Typical assessments include those for flood control improvements, streets, and lighting and landscaping.

## What Is a Fee?

A fee is a charge imposed on an individual or business for a service or facility provided directly to an individual or business. Local governments charge fees for a wide range of purposes, from park entry fees to building plan check fees. The amount of the fee may not exceed the cost of government to provide the service.

### A New Term: "Property-Related Fee"

Proposition 218 restricts property-related fees, defined as fees imposed "as an incident of property ownership." At this time, there is no consensus as to which fees meet this definition. The drafters of Proposition 218 indicate that it was their intent to include most fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service, and storm water management fees. Other analysts of Proposition 218 contend that fees that vary by level of service (for example, a fee for metered water usage) should not be considered a property-related fee, because it is based on service usage, rather than property ownership. Because Proposition 218 does not restrict nonproperty-related fees, the definition of this term will be an important and sensitive issue for the Legislature and courts.

## Overlapping Terms

While the terms tax, assessment, and fee are each legally distinct, in practice they overlap. For example, communities in California may finance streets from taxes, assessments, and/or fees. In addition, local government officials sometimes call a charge one term, when it was legally adopted as another. As a result, the work of sorting out whether a particular charge must comply with Proposition 218's requirements for a tax, assessment, or fee will not always be easy.

## Chapter 3

# Are Existing Revenues Affected by Proposition 218?

Local governments must bring their existing taxes, assessments and property-related fees into conformity with Proposition 218. The deadline for each of these actions is:

- July 1, 1997--for assessment and property-related fees.
- November 6, 1998--for taxes.

Below, we discuss Proposition 218's requirements regarding *existing* taxes, assessments, and fees. (The requirements for *new* or *increased* revenue raising tools is the topic of the next chapter.) After

each section, we answer some common questions regarding Proposition 218's requirements.

## Requirements for Existing Taxes

Proposition 218 does not affect existing special taxes or most general taxes. Proposition 218 affects only those *general* taxes that were imposed in 1995 or 1996 without a vote of the people.

In order to continue such a tax, Proposition 218 requires the governing body to place the tax before the voters by November 6, 1998. Unless the governing body unanimously votes to declare the election an emergency, the tax election must be consolidated with a regularly scheduled election for members of the governing body. The local government may continue an existing tax if it is approved by a majority vote.

### Questions

***Are general taxes imposed before 1995, without a vote of the people, safe from challenges?***

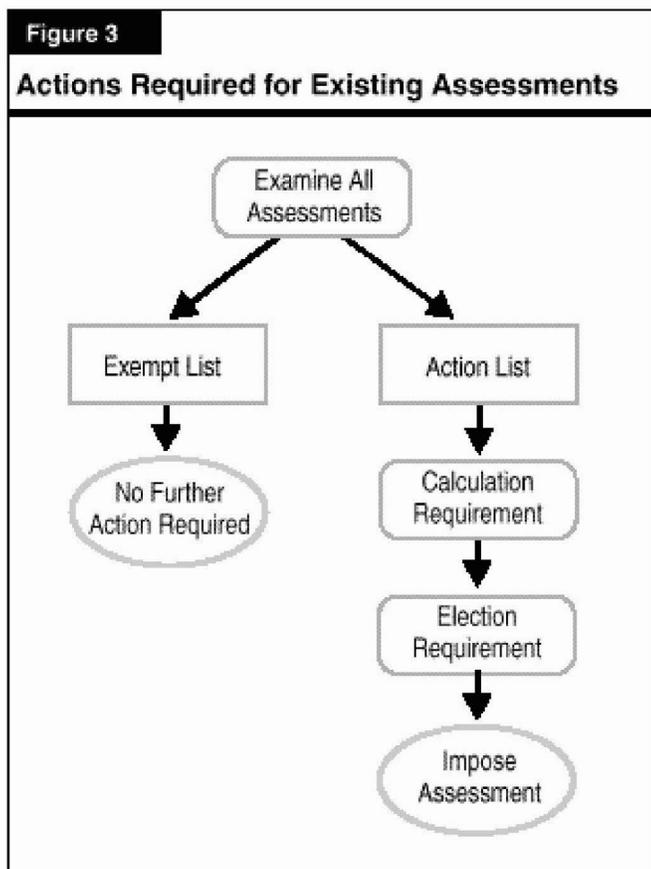
No. Our review indicates that general law cities and counties that imposed general taxes in the early 1990s, without a vote of the people, continue to be vulnerable to a challenge that they did not place their tax on the ballot as required by Proposition 62. In 1995, the California Supreme Court reversed earlier lower court decisions and found Proposition 62 to be constitutional.

***Are Mello-Roos taxes affected?***

No. Mello-Roos taxes are not affected by Proposition 218. Mello-Roos taxes—usually imposed on new subdivisions to pay for infrastructure—are special taxes and already require a two-thirds vote. There are a very limited number of cases, however, where a local government has used Mello-Roos law to impose an assessment without a two-thirds vote. We believe local governments must bring these assessments into compliance with Proposition 218's assessments provisions (discussed below).

## Requirements for Existing Assessments

Local governments must review all existing assessments, including standby-charges (which the measure defines as assessments). Figure 3 (see next page) shows the actions local governments must take to bring their existing assessments into compliance with Proposition 218.



## The Examination Requirement: Many Assessments Will Qualify for Exempt List

Local government must examine each assessment to determine whether it meets one of the conditions for placement on the "exempt list." These conditions are:

- The assessment was previously approved by voters--or by all the property owners at the time the assessment was created.
- All of the assessment proceeds are pledged to bond repayment.
- All the assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or "vector control" (such as mosquito control).

Our review indicates that more than half of all existing assessments are likely to be exempt. Generally, this is because the assessment's funds are used for one of the approved purposes or are pledged to bond repayment--or the assessment was agreed to by a land developer, the sole property owner at the time the assessment was established.

If an assessment is not exempt, then the local government must eliminate the assessment or bring it into compliance with Proposition 218's assessment calculation and election requirements (described below). Our review indicates that the types of assessments that are not likely to satisfy any of the conditions for exemption are: fire, lighting and landscaping, and park and recreation assessments.

## The Calculation Requirement: One of Proposition 218's Most Significant Changes

Local governments must recalculate all existing assessments that do not qualify for the exempt list. Our review indicates that in many cases, Proposition 218's provisions regarding the calculation of

assessments will result in local governments lowering the amount they collect in assessments from property owners, or eliminating the assessment. We identify the specific calculation provisions below.

**First: Determine If a Project or Service Provides Special Benefits.** The local government must determine whether property owners would receive a "special benefit" from the project or service to be financed by the assessment. Proposition 218 defines a special benefit as a particular benefit to land and buildings, not a general benefit to the public or a general increase in property values. If a project or service would not provide such a special benefit, Proposition 218 states that it may not be financed by an assessment. Our review indicates that local governments will find it difficult to demonstrate that some existing assessments for ambulance, library, police, business improvement, and other services satisfy this tightened definition of special benefit. As a consequence, some existing assessments may need to be eliminated.

**Second: Estimate the Amount of Special Benefit.** Local government must use a professional engineer's report to estimate the *amount* of special benefit landowners would receive from the project or service, as well as the *amount* of "general benefit." This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits.

**Third: Set Assessment Charges Proportionally.** Finally, the local government must set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis. Properties owned by schools and other governmental agencies--previously exempt from some assessment charges--now must pay assessments.

## Election Requirement: All Property-Owners Vote on Assessments

Local governments must mail information regarding assessments to all property owners. (Prior to Proposition 218, large communities could publish assessment information, rather than mail it to every property owner.) Each assessment notice must contain a mail-in ballot for the property owner to indicate his or her approval or disapproval of the assessment.

After mailing the notices, the local government must hold a public hearing. At the conclusion of the hearing, the local government must tabulate the ballots, weighing them in proportion to the amount of the assessment each property owner would pay. (For example, if homeowner Jones would pay twice as much assessment as homeowner Smith, homeowner Jones' vote would "count" twice as much as homeowner Smith's vote.) The assessment may be imposed only if 50 percent or more of the weighted ballots support the assessment.

## Questions

***Would part, or all, of an assessment be exempt if most of its proceeds are used for an approved program?***

Probably not. Proposition 218 states that an assessment is exempt if its proceeds are used *exclusively* for one or more of seven approved programs. However, the measure does not define what costs may be included under these approved programs. Thus, it is not clear if an assessment that funds streets (an approved program) and curbs or street lighting (not identified as approved programs) is exempt. Legislative action may be needed to clarify this.

***Is the difference between "general benefit" and "special benefit" clear?***

No. Proposition 218 defines a "special benefit" as a distinct benefit to real property in a specific area. All other benefits—including benefits to people's health, education, or safety, or general enhancements to property values—are considered "general benefits." While these two benefits are distinct in concept, in practice they may be difficult to distinguish. Because of the importance of the term "special benefit," legislative or court action may be needed to clarify its definition.

***Do renters get to vote?***

Renters may vote on an assessment if their lease agreement specifies that they are responsible for paying the assessment. This type of provision in a lease agreement is more common for commercial properties than for residential properties.

***Who gets to vote when an assessment is to be levied on public property or properties with multiple owners?***

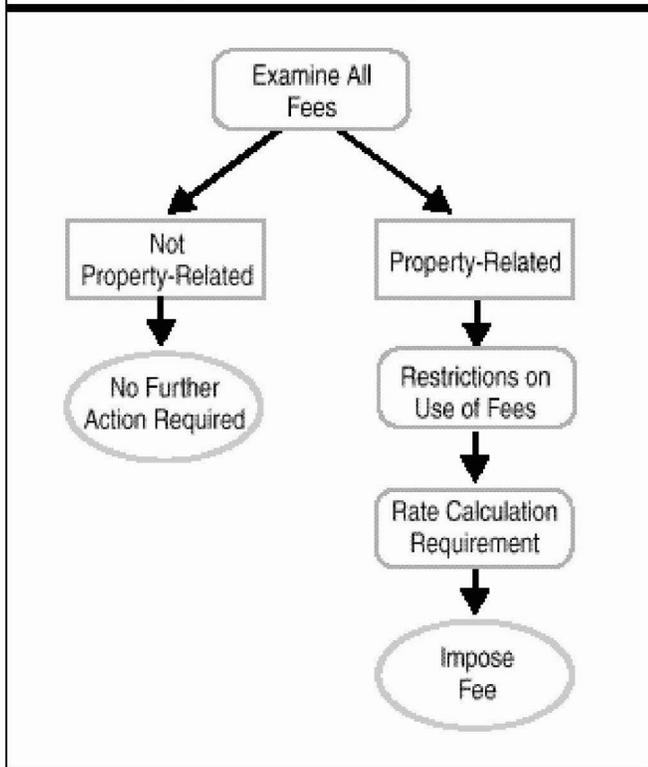
This is not addressed in the measure. Thus, it would require clarification.

## Requirements for Existing Fees

As with assessments, local governments must complete a multi-step review of all fees. Figure 4 summarizes the process.

Figure 4

### Actions Required for Existing Fees



## Examination Requirement: Identifying Property-Related Fees

Local government must begin by examining all existing fees to determine whether they are "property-related" fees, imposed as an "incident of property ownership." (We discuss this term and the controversy surrounding it in Chapter Two). As Figure 4 shows, if a fee is *not* property-related, then the local government need not take any further action regarding the fee. Conversely, if the fee is property-related, then the local government must make sure that the fee complies with Proposition 218's restrictions on use of fee revenues and the rate calculation requirements. The deadline for these actions is July 1, 1997.

## New Restrictions on Use of Fees

Proposition 218 specifies that no property-related fee may be:

- Levied to pay for a general governmental service, such as police or fire service.
- Imposed for a service not used by, or immediately available to, the property owner.
- Used to finance programs unrelated to the property-related service.

In order to comply with these restrictions, local governments will need to eliminate or reduce some existing fees. For example, some small cities currently charge property owners fees for ambulance or fire service. Proposition 218 does not permit governments to impose property-related fees for these purposes.

Similarly, some cities collect "franchise fees" or "in-lieu property taxes" from their water departments and deposit these revenues into their general funds. The cost of these franchise fees and taxes is passed onto local residents in terms of higher water fees. If water fees are considered property-related fees, then Proposition 218 would forbid this diversion of fee revenues. (Some local government

observers believe that this diversion of fee revenues was impermissible *prior* to Proposition 218, as well.)

**Possible Local Government Response to Fee Restrictions.** In some cases, it may be possible for a local government to restructure a property-related fee so that it would no longer be considered a fee imposed "as an incident of property ownership." For example, a mandatory per parcel garbage collection fee may be considered a property-related fee, while an optional garbage collection service charge may not. Similarly, some local governments may be able to show that their franchise fee or in-lieu property tax represents their water department's reasonable share of central administrative expenses. If so, then Proposition 218 would not prohibit this transfer of revenues from the water department. Finally, some local governments may elect to privatize certain functions formally financed by property-related fees. Proposition 218 imposes no limit on private fees.

## Fee Rate Calculation Requirement

After complying with Proposition 218's restrictions on the use of property-related fees, the local government must make sure that its property-related fees comply with the measure's calculation requirements. Specifically, local governments must make sure that no property owner's fee is greater than the proportionate cost to provide the property-related service to his or her parcel. Like assessments, this requirement may result in local governments setting property-related fee rates on a block-by-block, or parcel-by-parcel basis.

This fee rate calculation requirement--sometimes called the "proportionality" requirement--will make it difficult for local government to continue certain programs, such as those that offer reduced rates to low-income residents. This is because local governments typically finance these lower rates by charging higher rates to other property-owners. If these fees are considered property-related fees, the higher rates would not be permitted by Proposition 218. In order to continue these programs in the future, therefore, the local government would need to offset the cost of the program with other revenues, such as general tax revenues.

### Question

***Are regulatory fees—such as rent control, alarm, and weed abatement fees—considered property-related fees?***

This is not clear. Generally, we interpret Proposition 218's term "property-related fees" as including all fees that a property-owner has no feasible way to avoid. That is, a fee is property-related if land could not be owned and used without paying the fee. Accordingly, we do not consider fees for optional activities, such as the registration of alarm systems or the removal of weeds from neglected parcels, to be property-related. Rent control administrative fees are a closer call. Generally, we think these fees would be considered property-related if there were no practical way that the owner could avoid the fee, short of selling the property or fundamentally changing its use. Clearly, the definition of property-related fees will be a sensitive and important issue for the Legislature and courts.

## Chapter 4

# What Must a Local Government Do to Raise New Revenues?

In order to raise a new tax, assessment, or property-related fee, or to increase an existing one, local governments must comply with many of the same provisions discussed in the previous chapter. In general, these requirements are that local governments may use assessments and property-related fees only to finance projects and services that directly benefit property--and that most revenue-raising measures be approved in an election. Figure 5 summarizes the vote required in these elections.

<b>Figure 5</b>			
<b>New or Increased Taxes, Assessment, and Fees</b>			
<b>What Vote is Needed?</b>			
<b>Type</b>	<b>Vote Needed</b>	<b>Who Votes</b>	<b>Vote Requirement</b>
<b>Taxes</b>			
General	Yes	All voters in community or affected area	Majority
Special	Yes	All voters in community or affected area	Two-thirds
<b>Assessments</b>			
All	Yes	Property owners (and renters responsible for paying assessments) in affected area.	Majority, weighted in proportion to assessment liability.
<b>Fees</b>			
General, not property related	No	N/A	N/A
Property related	Yes, for any service other than water, sewer, or refuse collection.	Local government may choose: + Property owners (and renters responsible for paying fee) in affected area, or + Electorate in the affected area.	Majority of property owners or two-thirds of electorate. Local governments may weight ballots in proportion to fee liability.

This chapter explains the steps local government must take to raise a new tax, assessment or property-related fee, or to increase an existing one.

## Requirements for New Taxes

In order to impose or increase a tax, local government must comply with the following provisions:

- All general taxes must be approved by a majority vote of the people. (A 1986 statutory initiative--Proposition 62-- previously imposed this vote requirement on *general law* cities and counties. Proposition 218 expands this requirement to include *charter* cities, such as Los Angeles, Oakland, and San Francisco.)
- Elections for general taxes must be consolidated with a regularly scheduled election for members of the local governing body. (In an emergency, this provision may be waived by a unanimous vote of the governing body.)
- Any tax imposed for a specific purpose is a "special tax,"*even if its funds are placed into the community's general fund.* (Prior to Proposition 218, all taxes placed into a community's general fund were commonly considered general taxes, requiring only a majority vote.)

## Requirements for New Assessments

All new or increased assessments must follow the assessment calculation and election requirements discussed in the previous chapter. There are no exceptions to this requirement.

As a practical matter, this requirement will mean that programs that benefit people, rather than specific properties--such as libraries, mosquito abatement, recreation programs, police protection, and some business improvement programs--must be financed by general or special taxes or by other nonassessment revenues.

### Questions

***Must a local government comply with both Proposition 218's assessment approval process and the existing statutory process for assessment approval?***

Following both of these assessment approval processes is likely to be duplicative and confusing to property owners. Most local government observers agree that some legislative action to reconcile the two assessment approval processes is needed.

***Is an assessment considered "new or increased" if it is raised by a cost-of-living factor that was part of the assessment's rate structure?***

This is not clear. Proposition 218 states that a tax is not to be considered new or increased if it is increased to a level previously approved by the voters. However, the measure does not include any such provision regarding assessments or fees. It is possible that any increase in assessments may be subject to the new calculation and election requirements.

## Requirements for New Fees

To impose a new or increased property-related fee, local government must comply with the fee restriction and fee rate calculation requirements discussed in the last chapter.

Local governments must also:

- Mail information regarding the proposed fee to every property owner.
- Hold a hearing at least 45 days after the mailing.
- Reject the proposed fee if written protests are presented by a majority of the affected property owners.
- Hold an election on any property-related fee, other than a fee for water, sewer, or refuse collection. (Figure 5 shows the vote required in these elections.)

As a practical matter, local governments will find it much more difficult--and expensive--to impose or increase property-related fees. In some cases, local governments are probably more likely to try to raise revenues through non property-related fees or taxes.

### Question

***Could a local government impose a charge on property owners that is not an assessment, tax, or property-related fee?***

No. Proposition 218 states that all charges on property as an incident of property ownership must be a tax, assessment, or property-related fee. Proposition 218 further states that if such a charge on property is not a tax or an assessment, it is a property-related fee.

## Chapter 5

# May Residents Overturn Local Taxes, Assessments, and Fees?

Proposition 218 expands California residents' power to challenge local revenue raising measures.

## Greater Initiative Powers

Prior to Proposition 218, the extent to which local residents could use an initiative to challenge local government revenue raising methods was not certain. In a 1995 case, *Rossi v. Brown*, the California Supreme Court ruled that people had the power to use the initiative to repeal a minor tax. There have been no court rulings, however, addressing the question of whether an initiative may be used to repeal a more substantial revenue source.

Proposition 218 eliminates any ambiguity regarding the power of local residents to use the initiative by stating that residents of California shall have the power to repeal or reduce *any* local tax, assessment, or fee. In addition, the measure forbids the Legislature and local governments from imposing a signature requirement for local initiatives that is higher than that applicable to statewide statutory initiatives. As a consequence of these provisions, the only limits on local residents' ability to overturn local revenue raising measures appear to be those in the federal constitution, such as the federal debt impairment clause.

### Question

***Could a local initiative or lawsuit eliminate a revenue stream that is pledged to bond repayment?***

This question has evoked considerable controversy. Generally, many bond specialists indicate that the debt impairment clause in the federal constitution would prevent local residents from eliminating a new or existing revenue stream if that action would jeopardize the security of bonded indebtedness. Some local government observers, however, would like the Legislature to place a time limit on local initiatives or take other action to provide greater security to bond holders.

## Shift of Burden of Proof

Prior to Proposition 218's passage, the courts allowed local governments significant flexibility in determining fee and assessment amounts. A business or resident challenging the validity of a fee or assessment carried the "burden of proof" to show the court that the fee or assessment was illegal. Proposition 218 changed this legal standard by shifting the burden of proof to local governments. Now local governments must prove that any disputed fee or assessment charge is legal.

## Appendix I:

# Areas in Which Legislative or Judicial Clarification May Be Needed

As we discuss throughout this guide, while Proposition 218 is quite detailed in many respects, some important provisions are not completely clear. This appendix summarizes the major questions regarding Proposition 218 that must be resolved so that local governments can begin implementation.

Because Proposition 218 sets a July 1, 1997 deadline for local governments to bring existing fees and assessments into conformity with the measure's requirements, legislative or judicial clarification on questions related to assessments and fees is needed as soon as possible.

## Property-Related Fees

- What is included in the definition of a property-related fee?
- Are water charges that are based on metered use of water property-related fees?
- Are regulatory fees, such as rent control administrative fees, property-related fees?
- Are lease payments and other such charges on government-owned assets property-related fees?
- How precisely must local government allocate shares of costs for a property-related service? Can local government set general fee rate categories, or must local government determine the actual cost of service to every parcel?

## Assessments

- What is a "special benefit" and how can it be distinguished from a "general benefit?"
- Existing assessments used exclusively for sidewalks, streets, sewers, water, flood control, drainage systems, and vector control are exempt from the measure's calculation and election requirements. How broadly should these exemptions be interpreted?
- How precisely must local government allocate shares of costs for an assessment? Can local government set general assessment rate categories, or must local government determine the actual cost of service to every parcel?
- If an existing assessment is increased by a formula that was set forth at the time the existing assessment was imposed, must the assessment comply with the measure's calculation and election requirements? Similarly, need the measure go through these processes again if a *future* assessment is increased by a formula set forth at the time the new assessment was imposed?
- How should the existing statutory assessment approval process be reconciled with Proposition 218's assessment approval process?
- Some assessments are annually re-imposed by local government. Must a local government annually repeat the calculation and election procedures required by Proposition 218?
- If an assessment that is annually re-imposed by local government is currently eligible for the exempt list, must it comply with Proposition 218's calculation and election procedures when it is re-imposed next year?

## Elections

- What procedures should govern the assessment and fee elections?
- Who may vote on referendums to repeal assessments, fees, or taxes?
- How will a local government determine whether a renter is eligible to vote?
- Who gets to vote when a parcel is owned by multiple parties, or by a governmental entity?

## Taxes

- Are Mello-Roos taxes affected in any way? Similarly, how should assessments imposed under Mello-Roos law be treated?
- Is the measure's requirement that certain existing taxes be ratified by the voters an unconstitutional referendum on taxes?

## Debt

- Could a local initiative jeopardize a revenue stream pledged to the payment of existing (or future) debt?

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## Appendix II:

### Text of Proposition 218

This initiative measure adds Articles XIII C and D to the California Constitution.

## RIGHT TO VOTE ON TAXES ACT

### SECTION 1. TITLE.

This act shall be known and may be cited as the "Right to Vote on Taxes Act."

### SECTION 2. FINDINGS AND DECLARATIONS.

The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

### SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.

Article XIII C is added to the California Constitution to read:

## *ARTICLE XIII C* **2184**

**SECTION 1. Definitions. As used in this article:**

- (a) "General tax" means any tax imposed for general governmental purposes.
- (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.
- (c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.
- (d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

**SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:**

- (a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.
- (b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.
- (c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).
- (d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

**SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.**

**SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.**

Article XIII D is added to the California Constitution to read:

**ARTICLE XIII D**

**SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:**

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

SEC. 2. Definitions. As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on

*a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.*

*(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.*

*(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.*

*(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.*

*(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.*

*(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.*

*(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).*

*SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:*

*(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.*

*(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.*

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

**SEC. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges.** An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for

*increases in assessments in the conduct of elections under this subdivision.*

*(d) Beginning July 1, 1997, all fees or charges shall comply with this section.*

## **SECTION 5. LIBERAL CONSTRUCTION.**

*The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.*

## **SECTION 6. SEVERABILITY.**

*If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.*

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925 L Street, Suite 1000, Sacramento, CA 95814.

**Note:** *Understanding Proposition 218 was published in December 1996, less than one month after the state's voters approved Proposition 218. The report was written as a layperson's guide to Proposition 218 and has not been updated since 1996.*

*If you have questions about local finance or Proposition 218, you may wish to consult an attorney or review other online publications. For example, the sponsors of Proposition 218 (the [Howard Jarvis Taxpayers Association](#)) and the California League of Cities offer materials regarding Proposition 218 on their websites. The League of Cities' primary document regarding Proposition 218 is called "[Proposition 218: Implementation Guide](#)."*

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STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO  
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

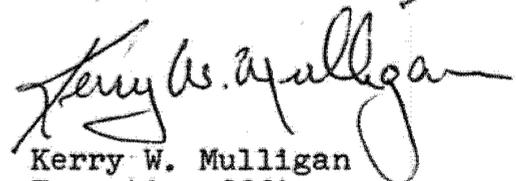
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968



Kerry W. Mulligan  
Executive Officer  
State Water Resources  
Control Board



## Water: Water Quality Standards

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# Water Quality Standards History

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## Statutory History

The first comprehensive legislation for water pollution control was the Water Pollution Control Act of 1948 (Pub. L. 845, 80th Congress). This law adopted principles of state and federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance. These principles were continued in the Federal Water Pollution Control Act (Pub. L. 660, 84th Congress) in 1956 and in the Water Quality Act of 1965. Under the 1965 Act, States were directed to develop water quality standards establishing water quality goals for interstate waters. By the early 1970's, all the States had adopted such water quality standards. Since then, States have revised their standards to reflect new scientific information, the impact on water quality of economic development and the results of water quality controls.

Due to enforcement complexities and other problems, an approach based solely on water quality standards was deemed insufficiently effective. In the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92500, Clean Water Act or CWA), Congress established the National Pollutant Discharge Elimination System (NPDES) whereby each point source discharger to waters of the U.S. is required to obtain a discharge permit. The 1972 Amendments require EPA to establish technology based effluent limitations that are to be incorporated into NPDES permits. In addition, the amendments extended the water quality standards program to intrastate waters and required NPDES permits to be consistent with applicable state water quality standards. Thus, the CWA established complementary technology-based and water quality-based approaches to water pollution control.

Water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed management. Water quality standards are State or Tribal law or regulation that: define the water quality goals of a water body, or segment thereof, by designating the use or uses to be made of the water; criteria necessary to protect the uses; and protect water quality through antidegradation provisions. States and Tribes adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Act. "Serve the purposes of the Act" (as defined in Sections 101(a), 101(a)(2), and 303(c) of the Act) means that water quality standards should: 1) include provisions for restoring and maintaining chemical, physical, and biological integrity of State waters, 2) provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water ("fishable/swimmable"), and 3) consider the use and value of State waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes, and navigation. See 40 CFR 131.2.

Section 303(c) of the CWA establishes the basis for the current water quality standards program. Section 303(c):

1. Defines water quality standards;
2. Identifies acceptable beneficial uses: propagation of fish, shellfish and wildlife, public, agricultural, industrial water supplies and navigation;
3. Requires that State and Tribal standards protect public health or welfare, enhance the quality of water and serve the purposes of the Act;
4. Requires that States and Tribes review their standards at least every three years;
5. Establishes the process for EPA review of State and Tribal standards, including where necessary the promulgation of a superseding Federal rule in cases where a State's or Tribe's standards are not consistent with applicable requirements of the CWA or in situations where the Administrator determines that Federal standards are necessary to meet the requirements of the Act.

The decade of the 1970's saw State and EPA attention focus on creating the infrastructure necessary to support the NPDES permit program and development of technology-based effluent limitations. While the water quality standards program continued, it was a low priority in the overall CWA program. In the late 1970's and early 1980's, it became obvious that greater attention to the water quality-based approach to pollution control was needed to effectively protect and enhance the nation's waters.

The first statutory evidence of this was the enactment of a CWA requirement that after December 29, 1984, no construction grant could be awarded for projects that discharged into stream segments which had not, at least once since December 1981, had their water quality standards reviewed and revised or new standards adopted as appropriate under Section 303(c). The efforts by the States to comply with this onetime requirement essentially made the States' water quality standards current as of that date for segments with publicly-owned treatment works (POTWs) discharging into them.

Additional impetus to the water quality standards program occurred on February 4, 1987, when Congress enacted the Water Quality Act of 1987 (Pub. L. 1004). Congressional impatience with the lack of progress in State adoption of standards for toxics (which had been a national program priority since the early 1980's) resulted in the 1987 adoption of new water quality standard provisions in the Water Quality Act amendments. These amendments reflected Congress' conclusion that toxic pollutants in water are one of the most pressing water pollution problems. One concern Congress had was that States were relying, for the most part, on narrative criteria to control toxics (e.g. "no toxics in toxic amounts"), which made development of effluent limitations in permits difficult. To remedy this, Congress adopted section 303(c)(2)(B), which essentially required development of numeric criteria for those water body segments where toxic pollutants were likely to adversely affect designated uses.

The 1987 Amendments gave new teeth to the control of toxic pollutants. As Senator Mitchell put it, Section 303(c)(2)(B) requires "States to identify waters that do not meet water quality standards due to the discharge of toxic substances, to adopt numerical criteria for the pollutants in such waters, and to establish effluent limitations for individual discharges to such water bodies." (From Senator Mitchell, 133 Cong. Rec. S733).

To assist States in complying with Section 303(c)(2)(B), EPA issued program guidance in December 1988 and instituted an expanded program of training and technical assistance.

Section 518 was another major addition in the 1987 Amendments to the Act. This section extended participation in the water quality standards and 401 certification programs to certain Indian Tribes. The Act directed EPA to establish procedures by which a Tribe could "qualify for treatment as a State," at its option, for purposes of administering the standards and 401 certification programs. The Act also required EPA to create a mechanism to resolve disputes that might develop when unreasonable

consequences arise from a Tribe and a State or another Tribe adopting differing water quality standards on common bodies of water.

Furthermore, with the 1987 Amendments, the Act explicitly recognized EPA's antidegradation policy for the first time. The intent of the antidegradation policy in EPA's regulation was and is to protect existing uses and the level of water quality necessary to protect existing uses and to provide a means for assessing activities that may lower water quality in high quality waters. Section 303(d)(4) of the Act requires that water quality standards in those waters that meet or exceed levels necessary to support designated uses "may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section."

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## Regulatory Requirements and Guidance

In the late 1960's and early 1970's the water quality standards program was initiated and administered based on minimal guidance and Federal policies--many of which are still reflected in the water quality standards program today.

EPA first promulgated a water quality standards regulation in 1975 (40 CFR 130.17, 40 FR 55334, November 28, 1975) as part of EPA's water quality management regulations mandated under Section 303(e) of the Act. As discussed earlier, the standards program had a relatively low priority during this time. This was reflected in the minimal requirements of the first Water Quality Standards Regulation. Few requirements on designating water uses and procedures were included. The Regulation merely required "appropriate" water quality criteria necessary to support designated uses. Toxic pollutants or any other specific criteria were not mentioned. The antidegradation policy was incorporated as a regulatory requirement.

State response to the initial regulation was varied and in some cases inadequate. Some States developed detailed water quality standards regulations while others adopted only general provisions which proved to be of limited use in the management of increasingly complex water quality problems. The few water quality criteria that were adopted addressed a limited number of pollutants and primarily described fundamental water quality conditions (e.g., pH, temperature, dissolved oxygen and suspended solids) or dealt with conventional pollutants.

In the late 1970s, a greater appreciation evolved on the need to expand and accelerate the control of pollutants in surface waters using water quality-based controls. It became clear that primary reliance on industry effluent guidelines or effluent standards under Section 307 of the Act would not comprehensively address pollutants, particularly toxic pollutants, and that existing State water quality standards needed to be better developed. EPA moved to strengthen the water quality program to complement the technology based controls.

To facilitate this effort, EPA decided to amend the Water Quality Standards Regulation to explicitly address toxic criteria requirements in State standards and other legal and programmatic issues. This effort culminated in the promulgation of a revised water quality standards regulation on November 8, 1983 (54 FR 51400), which is still in effect. This regulation is much more comprehensive than its predecessor and it includes many more specific regulatory and procedural requirements. Nonetheless, it is still a succinct and flexible regulation for a program with a scope as broad as the national water quality criteria and standards program.

The regulation specifies the roles of the States, Tribes and EPA and the administrative requirements for States and Tribes in adopting and submitting their standards to EPA for review. It also delineates the EPA requirements for review of State and Tribal standards and promulgation of federal standards.

The regulation provided States and subsequently Tribes with the option of refining their use designation process by allowing them to establish subcategories of uses, such as cold water and warm water aquatic life designations. The regulation expanded and clarified the factors that could be applied by a State in removing a designated use that is not an existing use. The regulation recognized that naturally occurring pollutant concentrations, naturally low or intermittent flow conditions, human caused conditions or sources of pollution that cannot be remedied, hydrologic modifications (such as dams or channelized streams), natural physical conditions, and widespread economic and social impact could be used to demonstrate that attaining a use designation is not feasible (see 40 CFR 131.10(g)). Part 131.10(h) identified circumstances in which States are prohibited from removing designated uses.

Much more specificity was provided in the 1983 regulation regarding the requirements for States on the form of water quality criteria adopted by the States. Under 40 CFR 131.11(b) of the regulation, States and Tribes may use the criteria developed by EPA under Section 304(a) of the Act, 304(a) guidance modified to reflect site-specific conditions, or criteria developed through other scientifically defensible methods. Section 304(a) criteria are the water quality criteria that EPA develops and provides in the form of guidance to States and Tribes pursuant to CWA section 304(a). In practice, States and Tribes have applied all of these provisions in setting water quality standards.

The 1983 regulation also clarified that States and subsequently Tribes may adopt discretionary policies affecting the implementation of standards, such as mixing zones, low flows, and variances. Such policies are subject to EPA review under 303(c). Section 131.11 of the regulation requires States and subsequently Tribes with water quality standards programs to review available information and "...to identify specific water bodies where toxic pollutants may be adversely affecting water quality ...and... adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use."

Under the statutory scheme, during the 3-year review period following EPA's 1980 publication of section 304(a) water quality criteria to the protect human health and aquatic life, States were expected to review those criteria and adopt standards for many priority toxic pollutants. A few States adopted large numbers of numeric toxics criteria, primarily for the protection of aquatic life. Other States adopted few or no water quality criteria for priority toxic pollutants. Some relied on a narrative "free from toxicity" criterion, and "action levels" for toxic pollutants or occasionally calculated site-specific criteria. Few States addressed the protection of human health by adopting numeric human health criteria.

In support of the 1983 Regulation, EPA simultaneously issued program guidance entitled *Water Quality Standards Handbook* (December, 1983). The Handbook provided guidance on the interpretation and implementation of the Water Quality Standards Regulation. This document also contained information on scientific and technical analyses that are used in making decisions that would impact water quality standards. EPA also developed the *Technical Support Document for Water Quality Based Toxics Control* (EPA 44/485032, September, 1985)(TSD) which provided additional guidance for implementing State water quality standards. In 1991, EPA revised and expanded the TSD. (EPA 505/2-90-001, March 1991). In 1994, EPA issued the *Water Quality Standards Handbook: Second Edition* (EPA-823-B-94-006, August 1994).

To accelerate compliance with CWA section 303(c)(2)(B) (created by the 1987 Water Quality Act), EPA started action in 1990 to promulgate numeric water quality criteria for those States that had not adopted sufficient water quality standards for toxic pollutants. The intent of the rule making, known as the National Toxics Rule, was to strengthen State water quality management programs by increasing the level of protection afforded to aquatic life and human health through the adoption of all available criteria for toxic pollutants present or likely to be present in State waters. This action culminated on December 22, 1992, with EPA promulgating Federal water quality criteria for priority toxic pollutants for 14 States and Territories (see 57 FR 60848).

Subsequent to the promulgation of criteria under the National Toxics Rule, EPA altered its national policy on the expression of aquatic life criteria for metals. On May 4, 1995 at 60 FR 22228, EPA issued a stay of several metals criteria (expressed as total recoverable metal) previously promulgated under the National Toxics Rule for the protection of aquatic life. EPA simultaneously issued an interim final rule that changed these metal criteria promulgated under the National Toxics Rule from the total recoverable form to the dissolved form.

The Water Quality Standards Regulation was amended in 1991 to implement Section 518 of the Act to expand the standards program to include Indian Tribes (56 FR 64893, December 12, 1991). EPA added 40 CFR 131.7 to describe the requirements of the issue dispute resolution mechanism (to resolve unreasonable consequences that may arise between a Tribe and a State or another Tribe when differing water quality standards have been adopted for a common body of water) and 40 CFR 131.8 to establish the procedures by which a Tribe applies for authorization to assume the responsibilities of the water quality standards and section 401 certification programs.

Water quality standards are essential to a wide range of surface water activities, including: (1) setting and revising water quality goals for watersheds and/or individual water bodies, (2) monitoring water quality to provide information upon which water quality based decisions will be made, (3) calculating total maximum daily loads (TMDLs), waste load allocations (WLAs) for point sources of pollution, and load allocations (LAs) for non point sources of pollution, (4) issuing water quality certifications for activities that may affect water quality and that require a federal license or permit, (5) developing water quality management plans which prescribe the regulatory, construction, and management activities necessary to meet the water body goals, (6) calculating NPDES water quality-based effluent limitations for point sources, in the absence of TMDLs, WLAs, LAs, and/or water quality management plans; (7) preparing various reports and lists that document the condition of the State's or Tribe's water quality, and (8) developing, revising, and implementing an effective section 319 management plan which outlines the State's or Tribe's control strategy for non point sources of pollution.

Also, as described in EPA's 40 CFR 131.21, EPA requires that water quality standards adopted by states and authorized tribes on or after May 30, 2000 must be approved by EPA before they can be used as the basis for actions, such as establishing water quality-based effluent limitations or total maximum daily loads (TMDLs), under the Clean Water Act. (See 65 FR 24641, April 27, 2000, for more information regarding this requirement).

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Last updated on Tuesday, April 03, 2012



# Enforcement News

## CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LOS ANGELES REGION

320 West Fourth Street, #200, Los Angeles, California 90013  
(213) 576-6600 • FAX (213) 576-6640  
<http://www.waterboards.ca.gov/losangeles>

**For Immediate Release**  
November 26, 2012

Contact: Samuel Unger, PE  
Executive Officer  
213-576-6605

### **LOS ANGELES WATER BOARD CRACKS DOWN ON SANITATION DISTRICTS FOR FAILURE TO COMPLY WITH SANTA CLARA RIVER CHLORIDE LIMITATIONS**

LOS ANGELES – The Los Angeles Regional Water Quality Control Board’s (Los Angeles Water Board) Executive Officer has issued an administrative civil liability complaint to the County Sanitation Districts of Los Angeles County (CSDLAC) for alleged violations of waste discharge requirements for its Valencia and Saugus Water Reclamation Plants.

The complaint seeks a total penalty of \$280,250 for the failure to complete Wastewater Facilities Plans and Programmatic Environmental Impact Reports by the required due date in 2011.

CSDLAC is required to submit the documents as part of a series of implementation tasks designed so that the Valencia and Saugus Water Reclamation Plants will meet waste load allocations for chloride in the Upper Santa Clara River.

The Upper Santa Clara River Total Maximum Daily Load for chloride was adopted in 2005 and updated in 2010 to protect the beneficial uses of the Santa Clara River, which include agricultural supply, groundwater recharge, and rare and endangered species habitat.

"The Los Angeles Regional Water Quality Control Board is committed to ensuring that all dischargers comply with the requirements of their permits," said Water Board Executive Officer Sam Unger. "This will protect and restore water quality and preserve the beneficial uses of the Santa Clara River as a source of irrigation water for agriculture in the Los Angeles Region."

The public has until December 26, 2012 to comment on the administrative civil liability complaint. The complaints are available for public review on the Los Angeles Water Board’s website at: [http://www.swrcb.ca.gov/rwqcb4/water\\_issues/programs/enforcement/EnformentActions.shtml](http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/enforcement/EnformentActions.shtml)

The Los Angeles Water Board protects and restores water quality in coastal watersheds in Los Angeles and Ventura Counties and in portions of Kern and Santa Barbara counties. The Los Angeles Water Board is scheduled to consider the complaints on February 21, 2013.

## Los Angeles Regional Water Quality Control Board

June 28, 2013

Ms. Grace Robinson Chan  
Chief Engineer and General Manager  
County Sanitation Districts of Los Angeles County  
1955 Workman Mill Road  
Whittier, CA 90607-4998

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Claim No. 7011 2970 0000 0645 4233

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER – ORDER NO. R4-2012-0160 FOR THE SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, VALENCIA WATER RECLAMATION PLANT, 28185 THE OLD ROAD, VALENCIA, CA (ORDER NO. R4-2009-0074, NPDES PERMIT NO. CA0054216, CI 4993) AND SAUGUS WATER RECLAMATION PLANT, 26200 SPRINGBROOK AVENUE, SANTA CLARITA, CA (ORDER NO. R4-2009-0075, NPDES PERMIT NO. CA0054313, CI 2960)**

Dear Ms. Chan:

On April 16, 2013, a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability (Stipulation) was entered into between the Executive Officer of the Regional Board and the Santa Clarita Valley Sanitation District of Los Angeles County.

On June 28, 2013, the Chief Deputy Executive Officer executed the Stipulation on behalf of the Regional Board, a copy of which is attached.

As noted in the Stipulation, the Permittee has agreed to pay \$225,000 in administrative civil penalties of which \$97,500 shall be suspended pending completion of a Supplemental Environmental Project (SEP). Payment of the remaining \$127,500 assessment is due and payable no later than thirty (30) days from the date on which this Order is issued. A check in the amount of \$127,500 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the State Water Resources Control on or before **July 29, 2013**. A copy of the check shall be sent to the Regional Board.

If you have any questions please contact Chris Lopez at (213) 576-6806 / [chlopez@waterboards.ca.gov](mailto:chlopez@waterboards.ca.gov) regarding this matter.

Sincerely,



Deborah Smith  
Chief Deputy Executive Officer

Enclosures: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R4-2012-0160

cc: (via email)  
Samuel Unger, P.E., Los Angeles Regional Water Quality Control Board  
Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board  
Nicole Johnson, Office of Chief Counsel, State Water Resources Control Board  
Julie Macedo, Office of Enforcement, State Water Resources Control Board  
Nicole Granquist, Downey Brand  
Michael Solomon, United Water Conservation District

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGIONSETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER R4-2012-0160 (Proposed)IN THE MATTER OF  
SANTA CLARITA VALLEY SANITATION DISTRICT  
OF LOS ANGELES COUNTY  
(VALENCIA AND SAUGUS WATER RECLAMATION PLANTS)

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Team (Prosecution Team), and the Santa Clarita Valley Sanitation District (SCVSD or Discharger) (collectively known as the Parties) and is presented to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**RECITALS**

1. SCVSD owns and operates the Valencia Water Reclamation Plant (hereinafter Facility or Valencia WRP), a tertiary wastewater treatment plant located at 28185 The Old Road, Valencia, California. The facility has a design capacity of 21.6 million gallons per day (mgd). The facility discharges tertiary-treated wastewater from Discharge Points 001 and 002 to the Santa Clara River, a water of the United States. SCVSD also owns and operates the Saugus Water Reclamation Plant (hereinafter Saugus WRP), a tertiary wastewater treatment plant located at 26200 Springbrook Avenue, Santa Clarita, California. The facility has a design capacity of 6.5 mgd. The facility discharges tertiary-treated wastewater from Discharge Point 001 to the Santa Clara River.
2. On May 6, 2004, the Los Angeles Water Board adopted Resolution No. 04-004, which revised and adopted the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL). This TMDL was approved by the State Water Resources Control Board (State Water Board) on July 22, 2004; the Office of Administrative Law (OAL) on November 15, 2004; and the United States Environmental Protection Agency (USEPA) on April 28, 2005. It became effective on May 4, 2005.
3. On December 11, 2008, the Los Angeles Water Board adopted Resolution No. R4-2008-012, which adopted site-specific chloride objectives and revised the Upper Santa Clara River Chloride TMDL. This resolution was approved by the

State Water Board on October 20, 2009; the OAL on January 26, 2010; and the USEPA on April 6, 2010. It became effective on April 6, 2010.

4. On June 4, 2009, the Los Angeles Water Board adopted Order No. R4-2009-0074 *Waste Discharge Requirements for the Santa Clarita Valley Sanitation District of Los Angeles County, Valencia Water Reclamation Plant Discharge to the Santa Clara River*. This Order became effective on July 24, 2009, and serves as National Pollutant Discharge Elimination System (NPDES) Permit No. CA0054216. Order No. R4-2009-0074 incorporates the Upper Santa Clara River Chloride TMDL Implementation Plan.
5. On June 4, 2009, the Los Angeles Water Board adopted Order No. R4-2009-0075 *Waste Discharge Requirements for the Santa Clarita Valley Sanitation District of Los Angeles County, Saugus Water Reclamation Plant Discharge to the Santa Clara River*. This Order became effective on July 24, 2009, and serves as National Pollutant Discharge Elimination System (NPDES) Permit No. CA0054313. Order No. R4-2009-0075 incorporates the Upper Santa Clara River Chloride TMDL Implementation Plan.
6. Order No. R4-2009-0074, Provision VI.C.8. (page 41), and Order No. R4-2009-0075, Provision VI.C.8. (page 40), read: "The discharger shall comply with the applicable TMDL-related tasks, and future revisions thereto, in Attachment K of this Order." Task No. 17(a) of Attachment K for both Orders requires that by May 4, 2011, SCVSD complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report (EIR) for facilities to comply with final effluent permit limits for chloride.
7. On May 2, 2011, SCVSD submitted a copy of a Notice of Exemption from the requirement to prepare an EIR or Negative Declaration. This Notice of Exemption did not meet the requirements of Task 17(a) because it did not constitute a programmatic EIR and it addresses actions to meet the conditional wasteload allocations (WLAs), not actions to meet the final effluent limits for chloride.
8. On May 2, 2011, SCVSD submitted a Wastewater Facilities Plan. The Wastewater Facilities Plan was inadequate because it was not a plan for actions to meet the final effluent limits for chloride of 100 mg/L. Additionally, the Wastewater Facilities Plan does not provide the facilities necessary to allow application of conditional WLAs.
9. On May 27, 2011, the Los Angeles Water Board issued a Notice of Violation (NOV) to SCVSD for failure to complete Task 17(a) from Attachment K of Order Nos. R4-2009-0074 and R4-2009-0075. The NOV directed SCVSD to complete Task 17(a) and submit the Wastewater Facilities Plan and Programmatic EIR for facilities to comply with final permit effluent limits for chloride to the Regional

Board. The NOV further directed SCVSD to submit a written response by June 27, 2011 that either: (1) confirms that SCVSD has corrected these violations with a brief description of how SCVSD has corrected them, or (2) identifies when SCVSD will have completed correcting these violations and a brief description of how SCVSD will correct them.

10. On June 27, 2011, SCVSD submitted a response to the NOV stating that SCVSD staff would recommend to its Board of Directors that staff prepare a Wastewater Facilities Plan and EIR for facilities to comply with a final effluent chloride limit of 100 mg/L. The response stated that, assuming the Board approved the staff recommendation, the Wastewater Facilities Plan and EIR would be completed by December 31, 2012.
11. On July 19, 2012, SCVSD submitted a letter to the Los Angeles Water Board with a compliance status update. According to the letter, at its July 26, 2011 meeting, the SCVSD Board of Directors approved their staff's recommendation to prepare a Wastewater Facilities Plan and EIR for facilities to comply with a final effluent chloride limit of 100 mg/L. SCVSD released a Notice of Preparation on January 6, 2012, seeking input on the scope for the Facilities Plan and EIR. According to the July 19, 2012 letter, due to the volume and nature of comments received in response to the Notice of Preparation, SCVSD would not be able to complete the Wastewater Facilities Plan and EIR by December 31, 2012. The letter stated that SCVSD would provide a new projected schedule for the production of the documents at a later date.
12. As of the date of this Order, SCVSD has not complied with Task 17(a) from Attachment K of Order Nos. R4-2009-0074 and R4-2009-0075.

#### **Regulatory Considerations**

1. As described in the above Recitals, SCVSD has violated Order Nos. R4-2009-0074 and R4-2009-0075 by failing to comply with Task 17(a) from Attachment K. The Los Angeles Water Board may assess administrative civil liability based on California Water Code Section 13385.
2. Water Code Section 13385(e) states: "*In determining the amount of civil liability imposed under this section, the regional board....shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.*"

3. The Stipulated Order is consistent with both the California Water Code and the Enforcement Policy, as described more fully in Attachment A. The Discharger's economic benefit is recovered in accordance with Water Code section 13385(e).

#### Settlement

4. On 26 November 2012, the Executive Officer of the Los Angeles Water Board issued Administrative Civil Liability Complaint (ACLC) R4-2012-0160 to the Discharger for \$280,250. The Parties thereafter engaged in settlement negotiations and have agreed to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the ACLC and that this Stipulated Order is in the best interest of the public.
5. The Parties have agreed to adjust three of the penalty calculation factors, as described in Attachment A to this Order (Potential for Harm; Per Day Factor; History of Violations). The basis for these factors is found in the State Water Resources Control Board's *Water Quality Enforcement Policy*.
6. To resolve the violations alleged in the ACLC by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$225,000 in liability against the Discharger. Consistent with the *Water Quality Enforcement Policy*, up to 50% of that amount can be dedicated toward a Supplemental Environmental Project. Therefore, the Parties have agreed that \$97,500 of the total liability (50%, after subtracting staff costs) will be allocated to a SEP, as described in Attachment B. In addition, the Discharger shall pay a total of \$127,500 to the State Water Resources Control Board's Cleanup and Abatement Account. Of that amount, approximately \$30,000 consists of staff costs and the balance is stipulated penalties.

#### Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **two hundred twenty five thousand dollars (\$225,000)**. Of this amount:
  - a. **One hundred and twenty-seven thousand five hundred dollars (\$127,500)** shall be paid into the Cleanup and Abatement Account. A single payment shall

be made not later than 30 days after the final execution of the Order. The check should be made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. A copy of the check shall be sent to Jenny Newman, Regional Water Quality Control Board, Los Angeles Region, 320 W. 4<sup>th</sup> Street, Los Angeles, CA 90013.

- b. The remaining liability of **ninety-seven thousand five hundred dollars (\$97,500)** shall be permanently suspended pending timely completion of the work, and submittal of the reports, described in Attachment B, *Supplemental Environmental Project*. The reports must document completion of the required tasks at a cost of at least \$97,500. If less than \$97,500 is spent on the project, then the Discharger shall submit the difference no later than 1 November 2015.
2. **Agreement of Discharger to Fund, Report, and Guarantee Implementation of SEP:** The Discharger represents that: (1) it will fund the SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Los Angeles Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) will guarantee implementation of the SEP by remaining liable for the entire cost of the SEP until it is completed and accepted by the Los Angeles Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Los Angeles Water Board has the right to require an audit of the funds expended by it to implement the SEP.
3. **Oversight of SEP:** The Discharger is solely responsible for paying for all oversight costs incurred to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the SEP.
4. **Anticipated 2013 Submission from SCVSD.** SCVSD, as lead agency, will circulate for public review a draft Facilities Plan and EIR for a project that complies with the TMDL on or about April 30, 2013, consider for approval a final Facilities Plan and EIR on or before October 31, 2013, and thereafter submit to the Los Angeles Water Board, pursuant to Order Nos. R4-2009-0074 and R4-2009-0075, a final Facilities Plan and certified EIR.
5. **SCVSD Settlement Protection.** By resolving the violations brought pursuant to the ACLC, SCVSD will not face additional enforcement for failure to comply with Task 17(a) from Attachment K of Order Nos. R4-2012-0074 and R4-2012-0075 for possible violations that could be brought from November 27, 2012 through April 30, 2013. However, the Los Angeles Water Board reserves all of its other enforcement rights, including but not limited to submission of engineering designs. If SCVSD fails to submit its final Facilities Plan and certified EIR by October 31,

2013, the Los Angeles Water Board may pursue further enforcement for compliance with Task 17(a) and is permitted to calculate any penalties from May 1, 2013, although the Los Angeles Water Board agrees not to commence any enforcement action, for any violations arising from Order Nos. R4-2012-0074 or R4-2012-0075, until on or after November 1, 2013.

6. **Publicity:** Should Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Los Angeles Water Board against the Discharger.
7. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
8. **Party Contacts for Communications related to Stipulated Order:**

For the Regional Water Board:

Jenny Newman  
Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

For the Discharger:

Grace R. Chan  
Chief Engineer and General Manager  
County Sanitation Districts of Los Angeles County  
1955 Workman Mill Road  
Whittier, CA 90601

9. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
10. **Matters Addressed by Stipulation:** Upon the Los Angeles Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the ACLC pursuant to Water Code sections 13323, 13350 and 13385. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.

11. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
12. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Los Angeles Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
13. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Los Angeles Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Los Angeles Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
14. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
15. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Los Angeles Water Board.
16. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
17. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in the ACLC, this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.
  18. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of the Stipulated Order.
  19. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Los Angeles Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
  20. **Los Angeles Water Board is Not Liable:** Neither the Los Angeles Water Board members nor the Los Angeles Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
  21. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
  22. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
  23. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order.

24. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
Los Angeles Valley Region

By: Samuel Unger  
Samuel Unger  
Executive Officer

Date: April 16, 2013

Santa Clarita Valley Sanitation District of Los Angeles County

ATTEST:

Santa Clarita Valley Sanitation District of Los Angeles County

By: Kimberly S. Compton  
Secretary

By: Michelle Antonelli  
Chairperson

Date: March 13, 2013

Approved as to Form

Lewis, Brisbois, Bisgaard, & Smith, LLP

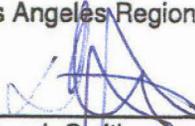
By: Ray J. Bisgaard  
District Counsel

### Order of the Los Angeles Water Board

1. In adopting this Stipulated Order, the Los Angeles Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Los Angeles Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Los Angeles Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Los Angeles Water Board for this matter.
2. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Los Angeles Water Board.

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Los Angeles Region.

By:

  
\_\_\_\_\_  
Deborah Smith  
Chief Deputy Executive Officer

Date:

6-28-13

Attachment A: Penalty Calculation Methodology  
Attachment B: Supplemental Environmental Project (SEP)

**ATTACHMENT A to SETTLEMENT AGREEMENT AND STIPULATION**  
**ACL Order R4-2012-0160**  
**Santa Clarita Valley Sanitation District**  
**Analysis of Enforcement Policy Penalty Methodology**

California Water Code (CWC) section 13385(e) requires the State Water Board and Regional Water Boards to consider several factors when determining the amount of civil liability to impose. These factors include in part: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf).

This attachment summarizes the Prosecution Team's selected factors presented in the original ACLC, and the ultimately selected factors agreed upon by the Parties (the Prosecution Team and Santa Clarita Valley Sanitation District) through settlement negotiations, which commenced after the ACLC was issued on November 26, 2012.

**Step 1 – Potential for Harm for Discharge Violations**

Not Applicable – This step does not apply since the violation of Order Nos. R4-2009-0074 and R4-2009-0075 alleged in the Complaint are non-discharge violations.

**Step 2 – Assessment for Discharge Violations**

Not Applicable – This step does not apply since the violation of Order Nos. R4-2009-0074 and R4-2009-0075 alleged in the Complaint are non-discharge violations.

**Step 3 – Per Day Assessments for Non-Discharge Violations**

Regional Board staff used the matrix set forth in Table 3 of the Enforcement Policy (page 16) to calculate an initial liability factor for the violation of the Orders, considering the **Potential for Harm** and the **Deviation from Requirement**.

*a. Potential Harm*

Staff determined that the **Potential for Harm** was **Moderate** because the violations of Task 17(a), which will lead to a delay in compliance with final effluent limits for chloride, will have an impact on salt sensitive agriculture beneficial uses. Thus, "the characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm" as described in the Enforcement Policy.

*b. Deviation from Requirement*

Staff determined that the **Deviation from Requirement** was **Moderate** because SCVSD did not submit the Wastewater Facilities Plan and Programmatic EIR by the required deadline, but it has taken steps to do so in the future. Thus, "the intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved)" as described in the Enforcement Policy.

*c. Per Day Factor*

From the range given in the matrix set forth in Table 3 of the Enforcement Policy non-discharge violations of this type, Staff selected a **Per Day Factor** of **0.35**, which is the average factor in the given range.

*d. Maximum per Day Liability Amount*

Pursuant to CWC section 13385, the Regional Board may assess a maximum administrative civil liability of **\$10,000** for each day in which the Dischargers fail to comply with requirements of Order No. R4-2009-0074.

*e. Days Subject to Liability*

SCVSD has been in violation for **572 days** for each Order, calculated from the May 4, 2011 due date for the Wastewater Facilities Plan and Programmatic EIR through November 26, 2012, the date the ACLC was issued.

However, in accordance with the Enforcement Policy (page 18), an alternative approach to penalty calculation for violations that last more than 30 days may be used if the Los Angeles Water Board can make express findings that the violation(s):

- a. Is (are) not causing daily detrimental impacts to the environment or the regulatory program;
- b. Result(s) in no economic benefit from the illegal conduct that can be measured on a daily basis; or
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Los Angeles Water Board staff has determined that the alternative penalty calculation approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis.

The alternative penalty calculation approach provides that for violations lasting more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of the violation, plus an assessment for each 5 day period of violation until the 30th day, plus an assessment for each 30 days of violation thereafter.

Using the alternative penalty calculation approach, **25 days** for the violation of each Order are subject to liability, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, and so forth for every additional 30 days of violation within the 501 day total.

Using the above information, the Initial Liability assessed per day was calculated to be **\$87,500**:

$$\begin{aligned} & \text{(Per Day Factor)} \times \text{(Days Subject to Liability)} \times \text{(Maximum per Day Liability Amount)} \\ & = (0.35) \times (25 \text{ days}) \times (\$10,000/\text{day}) \\ & = \$87,500 \text{ for each facility (Valencia and Saugus)} \end{aligned}$$

Settlement Considerations: In settlement negotiations, the Parties agreed to reduce the Potential for Harm factor from moderate to minor (step a, above) and ultimately selected a Per Day factor of 0.30 (step c, above). The resulting calculation is \$75,000 for each facility.

#### Step 4 – Adjustment Factors

Staff considered certain Permittee Conduct Factors to calculate assessment for the Violations:

*a. Culpability:*

SCVSD is culpable for the violations. The completion date for Task No. 17(a) is clearly listed in Order Nos. R4-2009-0074 and R4-2009-0075. In addition, SCVSD was also given notice to submit the required documentation in letters from the Los Angeles Water Board dated September 29, 2010; April 1, 2011; and May 27, 2011. SCVSD therefore was fully aware of the requirement of Order Nos. R4-2009-0074 and R4-2009-0075 and failed to comply. SCVSD's compliance with the TMDL in 2015, while not at issue in this Complaint, is jeopardized by SCVSD's failure to submit the initial documentation. In addition, extensive communications between the Regional Board staff and SCVSD staff led the Regional Board staff to presume that the technical documents would be submitted timely. Instead, to the extent that SCVSD has changed course with its remedial and technical intentions, contrary to public statements made to Regional Board staff and to the Regional Board in developing the TMDL, we hope that this Complaint provides the deterrence against

further violations and SCVSD's correspondence stating that the plan would be submitted by December 31, 2012 is accurate. However, to the extent that SCVSD claims it simply needed more time to meet the existing schedule, the May 2011 submittals claiming an "exemption" could have been avoided. Upon receiving the first notice, a reasonable and prudent person would have submitted the required technical documents to come into compliance. For these reasons, staff selected a factor of 1.3. The selection of this factor increases the base liability.

*b. Cleanup and Cooperation:*

SCVSD has voluntarily cooperated in returning to compliance, although is not currently in compliance. As of the date of the Complaint, SCVSD has taken steps to come into compliance with the Orders by approving the staff recommendation to prepare a Wastewater Facilities Plan and EIR, and by releasing a Notice of Preparation. Therefore, Staff selected a factor of 1.0. The selection of this factor neither increases nor decreases the base liability.

*c. History of Violations:*

SCVSD has previously violated effluent limits under NPDES Permit No. CA0054216. Therefore, staff selected a factor of 1.1, which is the minimum multiplier for repeated violations. The selection of this factor increases the base liability.

Settlement Considerations: In settlement negotiations, the Parties agreed to reduce the History of Violations factor to 1.0. Therefore, the selection of 1 will not further increase the base liability.

*Revised Assessment for Each Violation*

The initial assessment for the Violation is multiplied by the above factors to give a revised assessment of **\$97,500**:

$$\begin{aligned} & (\text{Initial Assessment}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History}) \\ & = (\$75,000) \times (1.3) \times (1.0) \times (1.0) \\ & = \$97,500 \text{ for each violation} \end{aligned}$$

**Step 5 – Determination of Total Base Liability Amount**

Since there are two violations being assessed liability, the **Total Base Liability Amount** is **\$195,000** (\$97,500 (Valencia, Order No. R4-2009-0074) + \$97,5000 (Saugus, Order No. R4-2009-0075).

**Step 6 – Ability to Pay and Ability to Continue in Business**

SCVSD is a large public agency that has the ability to increase rates. The Total Base

Liability Amount will not affect the Permittee's ability to continue in business. Accordingly, the Total Base Liability Amount was not adjusted. The burden of proof is on SCVSD to indicate if it has the inability to pay the recommended liability.

#### **Step 7 – Other Factors as Justice May Require**

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this adjustment. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

Staff costs incurred by the Los Angeles Water Board to date are \$30,000. This amount was added to the Total Base Liability Amount, bringing the **adjusted Total Base Liability Amount to \$225,000:**

$$\begin{aligned} (\text{Adjusted Total Base Liability}) &= (\text{Total Base Liability}) + (\text{Staff Costs}) \\ &= (\$195,000) + (\$30,000) \\ &= \$225,000 \end{aligned}$$

#### **Step 8 – Economic Benefit**

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

Staff estimates the benefit of non-compliance to be approximately \$10,000 which is an estimate based on the interest able to be generated by SCVSD between May 4, 2011, when the EIR and Wastewater Facilities Plan was due, and December 31, 2012, the date by which SCVSD has promised to come into compliance. This figure was generated using the ABEL model developed by the EPA. Staff is currently treating this cost as a delayed cost rather than an avoided cost.

**Settlement Considerations:** The negotiated settlement of \$225,000 will recover SCVSD's economic benefit, in accordance with the Water Code.

#### **Step 9 – Maximum and Minimum Liability Amounts**

The **Minimum Liability Amount** is equivalent to 110 percent of the **Economic Benefit** derived from the violation. Using the economic benefit estimated in Step 8, the minimum liability amount is \$11,000 (economic benefit plus 10%).

The **Maximum Liability Amount** is **\$11,440,000**, which is calculated by multiplying the maximum \$10,000 per day rate under Water Code Section 13385, subdivision (c), and 1,144 days, the total number of days SCVSD has been in violation.

Settlement Considerations: The negotiated settlement of \$225,000 is between the maximum and minimum administrative civil liability amounts, and is therefore consistent with the Enforcement Policy.

**Step 10 – Final Liability Amount**

In accordance with the above methodology, Staff recommends a **Final Liability Amount** of **\$280,250**. This Final Liability Amount is within the statutory minimum and maximum amounts.

Settlement Considerations: The negotiated settlement of \$225,000 recovers a majority of the Prosecution Team's recommended administrative civil liability and, in the Prosecution Team's opinion, the settlement is in the best interests of the public.

**ATTACHMENT B to SETTLEMENT  
AGREEMENT AND STIPULATION**

**ACL Order R4-2012-0160**

**Santa Clarita Valley Sanitation District**

**SEP Proposal**

**CITY OF SANTA CLARITA LOW IMPACT DEVELOPMENT PARKING LOT RETROFIT  
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**PROPOSAL/ WORK PLAN REQUIREMENTS**

**Project title**

City of Santa Clarita Low Impact Development (LID) Parking Lot Retrofit

**Organization proposing the project [project manager's name, email address, and phone number; type of organization (public, private, non-profit, etc.)]**

City of Santa Clarita (Public)

Project Manager: Heather Lea Merenda  
[HMERENDA@santa-clarita.com](mailto:HMERENDA@santa-clarita.com)  
(661) 284-1413

Santa Clarita Valley Sanitation District of Los Angeles County (Public)

Contact: Matt Bao  
[mbao@lacsds.org](mailto:mbao@lacsds.org)  
(562) 908-4288 extension 2809

**Name of the independent management company who would report solely to the Regional Board, to oversee the implementation of the SEP, including all contact information (If applicable)**

Not Applicable

**Third party completing the project including all contact information (If applicable)**

Not Applicable

**Names and statement of qualifications and experience for key project team members**

Travis Lange, Environmental Services manager, City of Santa Clarita

Heather Lea Merenda, Sustainability Planner, City of Santa Clarita

*Qualifications:* Qualified SWPPP Development, Certified Professional in Storm Water Quality

**Name and location of the project, including watershed (creek, river, bay) where it is located**

- Ventura Coastal, Ventura River, Santa Clara River, Santa Monica Bay, Los Angeles Country Coastal, Los Angeles River, or multiple watersheds

Name: City of Santa Clarita LID Parking Lot Retrofit

Location: The proposed project site would be located in the City of Santa Clarita (City). Project will retrofit one of the City owned parking lots within the City boundaries. Possible locations include the City Corporate Yard Employee Parking Lot at 25663 Avenue Stanford, Santa Clarita CA 91355 and City Parks Parking Lots (list of parks can be found at <http://www.santa-clarita.com/index.aspx?page=343>). The proposed project site is estimated to be approximately 5,000 square feet.

Watershed: Santa Clara River Watershed

**Description of the project and how it fits into one or more of the following SEP categories:**

- **Pollution prevention**
- **Environmental restoration**
- **Environmental auditing**
- **Compliance education/development of education materials**
- **Watershed assessment (e.g., citizen monitoring, coordination, and facilitation)**
- **Watershed management facilitation services**
- **Non-point source program implementation**

**Project Description:**

*Background:*

The Santa Clara River is regarded as the largest natural river system in Southern California. The Santa Clara River flows approximately 84 miles from its headwaters near Acton, in the San Gabriel Mountains, westward through Los Angeles and Ventura counties, to its delta between the cities of Ventura and Oxnard. The 45-mile long portion of the Santa Clara River and its tributaries within Los Angeles County is referred to as the "Upper Santa Clara River watershed" while the portion in Ventura County is referred to as the "Lower Santa Clara River watershed."

The Upper Santa Clara River watershed, where the proposed project is located, consists of approximately 680 square miles of mostly rugged topography and natural land. Urban development is concentrated in the City of Santa Clarita and its four communities (Canyon Country, Newhall, Saugus, and Valencia) and the Los Angeles County unincorporated communities of Stevenson Ranch, Castaic, West Ridge, and West Creek. There are also rural communities with some urbanization in Val Verde, Agua Dulce and Acton. Surface flows are ephemeral in Reach 7 (between Bouquet Canyon Creek and Lang Gauging Station) and Reach 8 (above Lang Gauging Station) and are perennial for the majority of Reach 5 (from Blue Cut to The Old Road) and Reach 6 (from The Old Road to Bouquet Canyon Creek). The beneficial use designations for the Upper Santa Clara River include IND, PROC, AGR, GWR, FRSH, REC1, REC2, WARM, WILD, BIOL, and WET.

Native habitats occupying the upland portions of the watershed include chaparral, coastal sage scrub, and oak woodlands. The floodplains of the Upper Santa Clara River and its tributaries support a mix of cover including open channel, a variety of native habitats, and developed areas. The most significant habitats are cottonwood woodlands, willow woodlands, and riparian scrub. Multiple threats to the health of the watershed exist. Runoff from parking lots is one of the urban runoff issues of concern.

*Project Overview:*

Infiltration of urban runoff has increasingly been recognized as a sustainable stormwater management strategy that helps protect water quality in surface and ground waters by reducing stormwater runoff and pollutant loadings. The State Water Resources Control Board and the California Coastal Commission have endorsed this type of best management practice as highly preferable to other stormwater treatment efforts. This has been recently reaffirmed by the "Reining in the Rain" statewide conference hosted by the Coastal Commission. The Low Impact Development Center, Inc. has also promoted infiltration with concern for parking lots. LID is a way, using engineering design, to help restore the pre-development hydrologic regime landscapes. This design approach incorporates strategic planning with best management practices to improve water quality, while allowing for development or infrastructure rehabilitation to occur. The proposed project will retrofit an existing City public parking lot by including LID strategies such as planting areas that allow for infiltration, permeable pavers, and/or porous concrete to allow for stormwater absorption below parking and walking areas.

*How the Project Fits into the SEP Categories:*

*Pollution Prevention or Reduction* – This proposed project would utilize LID strategies at an existing City owned parking lot to reduce stormwater runoff impacts. Pollutants of concern from parking lots can include sediment, nutrients, trash, metals, bacteria, oil, and grease. LID strategies can result in pollutant removal through settling, filtration, adsorption, and biological uptake.<sup>1</sup>

*Environmental Restoration* – The proposed project will potentially lower pollutant loading to the Santa Clara River by better managing stormwater runoff at the source. Due to the high traffic volumes that regularly travel through City public parking lots, loading to the Santa Clara River could be reduced, which could improve wildlife habitats along the Santa Clara River and enhance recreational uses.

**Description of how the project benefits water quality and/or quantity**

In the Municipal Guide to Low Impact Development, it explains LID “is an ecologically friendly approach to site development and storm water management that aims to mitigate development impacts to land, water, and air. The approach emphasizes the integration of site design and planning techniques that conserve natural systems and hydrologic functions on a site ... Specifically, LID aims to ... decentralize and micromanage stormwater at its source.” Both permeable paving and infiltration trenches are elements of LID. Nutrients and metals are held in check by porous pavements. The trenches will remove sediment, nutrients, trash, metals, bacteria, oil, grease, and organics from stormwater runoff. All of these will reduce pollutants in the stormdrain system. Infiltration reduces hydro-modification impacts.

**Description of how the project benefits the public**

The City of Santa Clarita Low Impact Development (LID) Parking Lot Retrofit project benefits the public by better managing stormwater at City-related facilities, potentially improving local surface water quality, and restoring the direct hydrological connection between localized rainfall and the groundwater basin.

**Documented support by one or more of the following:**

- Other agencies
- Public groups
- Impacted persons

In addition to the City, non-profit organizations have provided support for these types of projects for years. SCOPE, the Santa Clarita Organization for Planning and the Environment, is a local non-profit organization that has actively lobbied and supported this project for ten years. Lynne Plambeck, president of SCOPE, can be contacted at (661) 255-6899.

**Monitoring plan or Quality Assurance Project Plan (QAPP) if applicable – required for all projects and tasks involving use of existing environmental data and those involved with the collection of new information e.g. the sampling and analysis project**

- Guidance for QAPP <http://www.epa.gov/quality/qs-docs/g5-final.pdf>

Not Applicable

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<sup>1</sup> U.S EPA, *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, December 2007.

## Detailed description of the scope of work, work products and project milestones

### *Scope of Work*

The SEP is expected to occur over eighteen (18) months for site selection, design, bid process, permitting, construction, and final inspection.

The City of Santa Clarita has diverse soil types, varying by location, in the over 50 square miles of City land. Site selection for this project would assess soil type and permeability as part of the design, and would incorporate actions necessary, if any, to ensure successful project implementation (e.g., amending soils with more permeable structure). Further, site assessors would refer to guidance in the California Stormwater Quality Association (CASQA) LID Manual for Southern California, CASQA Best Management Practices (BMP) Handbook, and other professional design standards in selecting and developing the site. The proposed project site would be approximately 5,000 square feet.

The work will include the following: removal and excavation of asphalt, soil excavation, installation of subsurface material (piping, gravel, media), installation of LID materials (geotextile fabric, permeable pavers or porous concrete), and landscaping.

### *SEP Work Product*

Quarterly Progress Reports  
Final Report  
SEP Certificate of Completion

### *SEP Milestones*

Construction Plan  
Completion of LID Parking Lot Retrofit

## Include or reference a scope of work, including a budget

A task list and estimated budget for the SEP is included in Attachment A

## Schedule for periodic monitoring (quarterly at a minimum) on the performance of the SEP to monitor the timely and successful completion of the SEP

- Reports should include a list of all activities on the SEP since its adoption, all SEP activities during the quarter, an accounting of funds expended, and the proposed work for the following quarter
- Copies of the reports must be provided to the Regional Board and the Division of Financial Assistance of the State Board

The City will provide quarterly progress reports, as well as a final report, to the Regional Water Board and the Division of Financial Assistance at the State Water Resources Control Board, on activities undertaken with the proposed project. At a minimum, the reports will include a list of all activity on the SEP for each reporting period, an accounting of funds expended, and the proposed work for the following quarter. Reports will be submitted no later than the first of the second month following the end of each reporting period in accordance with the schedule shown below. Until such time as expenditure of SEP funds has commenced, the City may submit only the report due on August 1. The City shall submit progress reports on the SEP until the proposed project is completed and the SEP contribution is fully expended or otherwise approved by the Regional Board Executive Officer.

<i>Reporting Period</i>	<i>Report Submittal Date</i>
January - March	May 1
April - June	August 1
July - September	November 1
October - December	February 1

Time schedule for implementation with single or multiple milestones and which identifies the amount of liability that will be suspended or excused upon the timely and successful completion of each milestone

- Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP

The SEP is expected to occur over eighteen (18) months for site selection, design, bid process, permitting, construction, and final inspection. The project will be completed by November 2015. A project schedule is included in Attachment B.

*Milestones and Liability*

Milestone	Deadline	Liability Suspended or Excused Upon Completion
Construction Plan	December 1, 2014	\$15,000
Completion of LID Parking Lot Retrofit	November 1, 2015	\$82,500
	<b>Total</b>	<b>\$97,500</b>

Contain or reference performance standards and identify measures or indicators or performance in the scope of work

LID performance guidelines recommended by EPA (<http://water.epa.gov/polwaste/green/index.cfm>)

CASQA LID Manual for Southern California

CASQA BMP Handbook

U.S EPA, Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices, December 2007.

**Discharger responsibility**

The Santa Clarita Valley Sanitation District is ultimately responsible for ensuring that the SEP monies are expended for the project described, and remains liable for the SEP amount under the Settlement Agreement and Stipulated ACL until the SEP is completed and accepted by the Los Angeles Water Board.

**ATTACHMENT A: TASK LIST AND PROJECT BUDGET**

<b>Task</b>	<b>Amount of Work</b>	<b>\$/Unit</b>	<b>Estimated Cost</b>
Design			\$15,000
Asphalt Removal and Recycling/Soil Excavation	Approx. 5,000 square feet	Approx. \$5 per square foot	\$25,000
Aggregate/Gravel/Media	Approx. 500 cubic yards	Approx. \$20 per cubic yard	\$10,000
Geotextile Fabric	Approx. 5,000 square feet	Approx. \$1.50 per square foot	\$7,500
Plant Material	Approx. 100 plants	Approx. \$50 per plant	\$5,000
Permeable Pavers or Porous Concrete	Approx. 1,400 square feet	Approx. \$25 per square foot	\$35,000

Total: \$97,500

Notes

- Depending on site location, amount of work for each task will vary. For example, potential sites will differ in requirements for the amount of plant material, permeable pavers, or porous pavers.
- Depending on the design, plants could range from 1 gallon to 15 gallon, and would consist of site-appropriate species of shrubs, perennials, and/or trees
- Unit Prices (\$/Unit) are preliminary estimates and will vary based on several factors such as site location, market value, and type and quantity of materials.

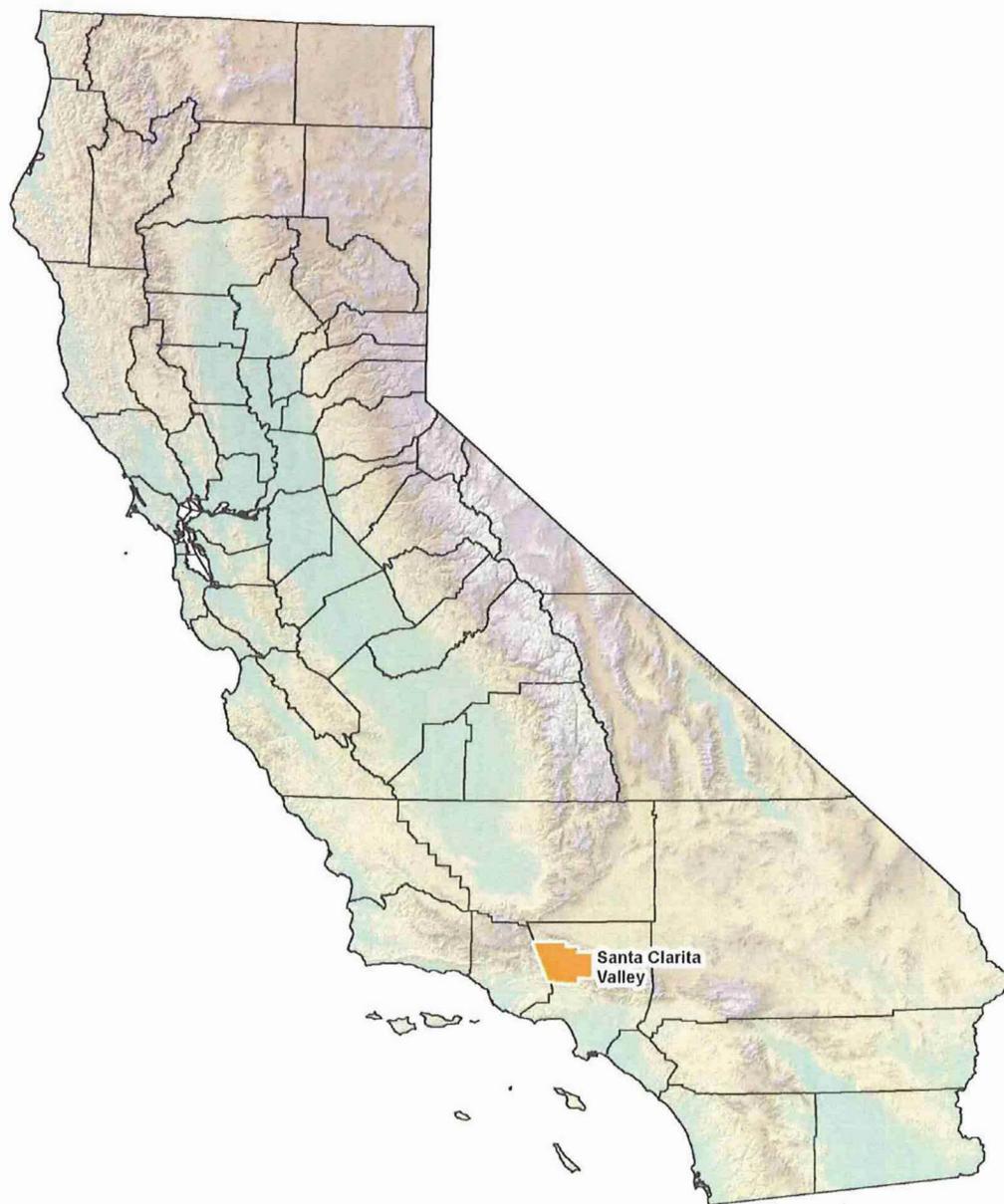


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STATE MANDATES

THE UNFUNDED  
WASTEWATER  
DESALINATION MANDATE  
Santa Clarita Valley Sanitation District









# CHLORIDE (SALT)

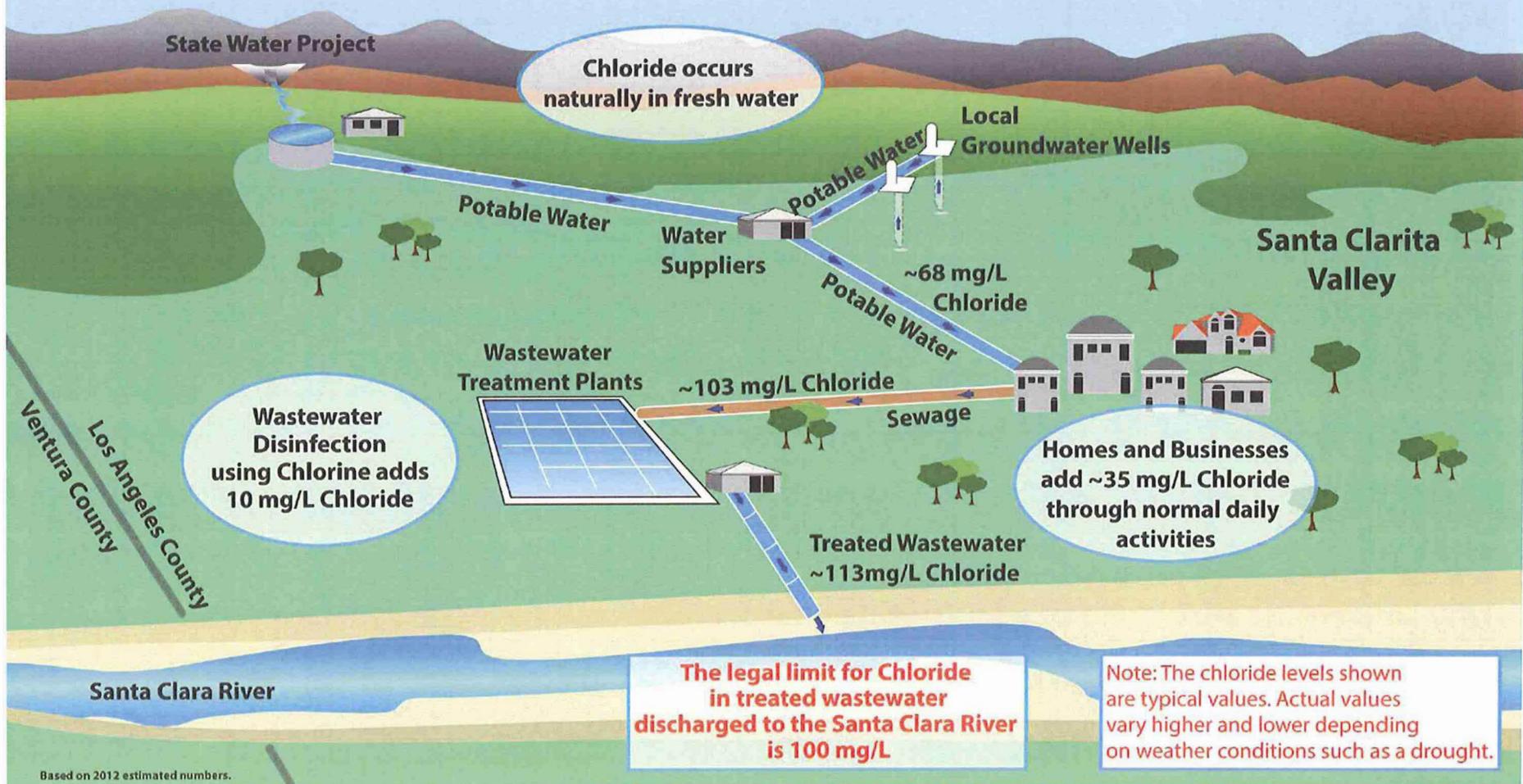
Common table salt  
is sodium chloride  
(NaCl)



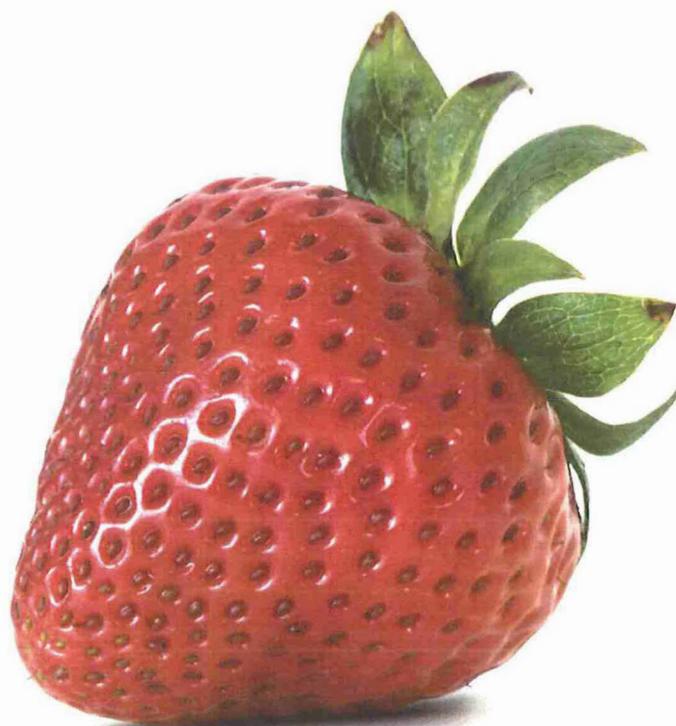
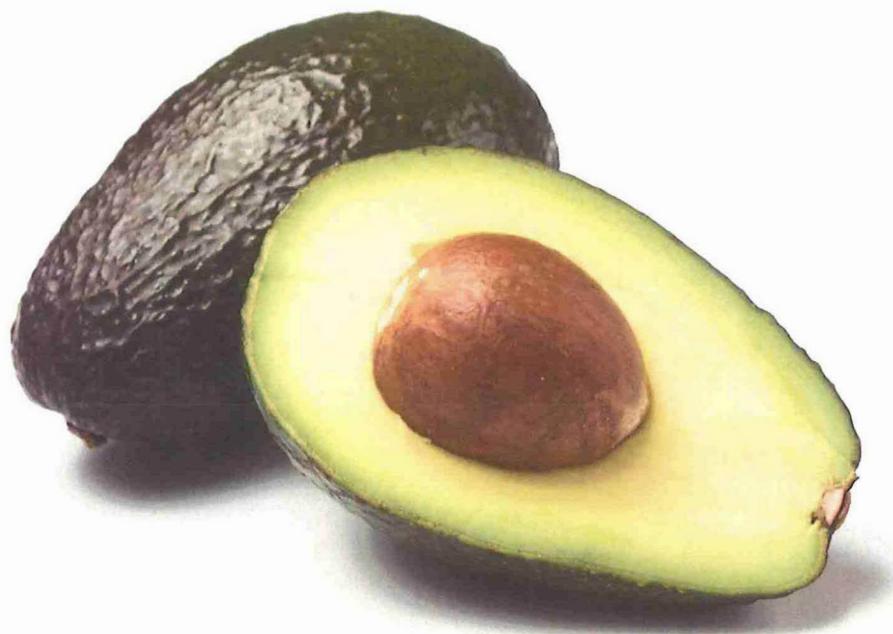
- Drinking water limit is **250** mg/L chloride
- Limit for groundwater in Ventura County is **200** mg/L chloride
- Standard limit to protect agriculture is **142** mg/L chloride
- Regional Board limit for these parts of the Santa Clara River is  
**100** mg/L chloride

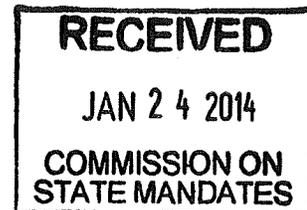


# HOW DOES CHLORIDE GET INTO TREATED WASTEWATER?









Comments from Councilman TimBen Boydston a representative from the City of Santa Clarita speaking on behalf of himself and other concerned taxpayers of the State of California

- The unfunded mandate is a result of the abuse and misuse of the Federal Clean Water Act.
- There has never been any crop damage recorded from chloride salt in the irrigation water coming from the Santa Clarita Valley Watershed.
- The demand by the State to spend hundreds of millions of dollars to remove chloride salt is based on the claim of one farmer who had "leaf tip burn" on some avocado trees. No reduction in the size of the fruit or crop yield was recorded, only a condition (not seen on the site visit) which can also be caused by heat, too much fertilizer, and other impurities.
- The amount of chloride salt allowed by the State in the Calleguas Watershed, which is the next door valley, is 150mg/liter and the avocado crops there are thriving.
- A literature survey (no actual laboratory or field studies) was conducted by a group of scientists (several with conflicts of interest since they worked for the downstream agricultural interests) which resulted in a range of "safety" for avocado crops of between 100mg/liter and 270 mg/liter.
- The Scientists recommended further studies to get a more precise number, but the Sanitation District said that the State will not allow us the time to conduct these studies.
- The desire for large quantities of very low chloride water by the agricultural interests downstream stems from their need to leach chloride salts from their soil and refill their aquifers with more water from inland sources. This is needed because they have over pumped their aquifer for years and saltwater intrusion from the ocean (34,000mg/liter) has spoiled much of their supply.
- The State is mandating that we pay for the removal of chloride salt because of a TMDL that was established by a State agency, but the TMDL is not based on scientific studies, rather it is a result of the lobbying of staff and members of the Regional Water Quality Control Board.
- As a taxpayer of California I am asking for one thing. Reject this demand by the State that we as taxpayers of Santa Clarita pay for any chloride salt removal facilities until we are given the time and permission to conduct actual scientific studies. This will result in knowing what level of chloride salt in irrigation water actually harms avocado crops in our watershed.

# Boydston challenges data

Councilman speaks out as a citizen during chloride meeting in Saugus

By Jim Holt  
Signal Senior Staff Writer

Santa Clarita City Councilman Tim Ben Boydston called the whole issue of chloride cleanup a scam Wednesday night after local sanitation officials presented their plan for reducing how much of the

salty compound the sanitation district discharges into the Santa Clara River.

"I've been fighting this scam for five years," said Boydston, speaking as a civilian.

"I'm curious about where the strawberry crops are that we are harming," he said, refer-

ring to Ventura County farmers downstream.

Farmers of salt-sensitive crops such as strawberries and avocados are considered by state water regulators to be "beneficial users" of water in the Santa Clara River.

As such, they are protected under state and federal laws to receive

uncontaminated water, including water not contaminated by salty sodium chloride in the natural water of the Santa Clara River.

Nine Regional Water Quality Control Boards throughout the state enforce those laws. It was

See CHLORIDE, A5

## Sparse turnout in second of six city meetings on water quality

CHLORIDE from A1

the Los Angeles board that fined the Santa Clarita Valley Sanitation District \$225,000 in November for having failed to meet the obligations of its permit to discharge chloride into the Santa Clara River.

On Wednesday, local sanitation officials held their second of six Santa Clarita Valley public hearings in Saugus at Rosedell Elementary School in an effort to gauge which plan they should pursue in reducing the amount of chloride discharged into the Santa Clara River.

Their first meeting was held in Castaic on Tuesday where a sparse crowd of about a dozen civilians showed up.

Their follow-up meeting in Saugus elicited the same sparse turnout — less than a dozen interested parties.

District spokesman Phil Friess answered Boydston's question, saying:

"Based on what I know, I don't believe the crops are being harmed."

Boydston continued to challenge district officials about the fundamental premise on which the chloride debate hinges — the scientific data which dictates what concentration of chloride in the water is detrimental to salt-sensitive crops.

"What I have here," he said patting an open binder he placed on the public comment podium, "is the study which is part of the fantasy called 'the science.'"

To verify the veracity of the binder and its contents, Boydston showed the binder to Friess, who said he recognized the document.

Boydston continued to rail against the findings of the sanitation district.

In reading from the document, he said: "We were unable to determine an appropriate threshold for

chloride (concentration in water)."

Through meetings such as the one held Tuesday night, sanitation officials are hoping the public will help them choose one of the four chloride-removal options they've devised.

The district is expected to comply with state mandates for discharged chloride into the Santa Clara River so that the concentration does not exceed 100 milligrams of chloride per liter of natural river water.

If they fail to adopt a plan for compliance by Oct. 31 then the state is expected to issue more fines.

Boydston cited chloride concentration levels expected by each of the other regional water boards in California, noting that Santa Clarita Valley is set with the lowest expectation of 100 mg/L.

[jholt@signalscv.com](mailto:jholt@signalscv.com)  
661-287-5527

The watershed-based approach is known as the Alternative Water Resources Management Plan (AWRM), which was described in Section 6.6.4. As previously discussed in Response to Comment P6-1, the need or appropriateness of the Chloride TMDL limit for the SCR is not under evaluation in the Draft Facilities Plan and EIR. The Santa Clarita Valley Sanitation District (SCVSD) is not responsible for establishing or justifying these limits. For more than a decade, the SCVSD repeatedly challenged the Chloride TMDL, but was unsuccessful. The SCVSD is now responsible for complying with these limits. Therefore, as stated in Section 1.4, the first project objective is to provide compliance with the Chloride TMDL for SCVSD wastewater treatment and discharge facilities.

The Executive Summary for the Draft Facilities Plan and EIR was prepared in accordance with §15123 of the California Environmental Quality Act (CEQA) Guidelines, which states that a summary should “be as clear and simple as reasonably practical.” In an effort to provide a clear and simple description of the highly technical Chloride TMDL, the Executive Summary used the following language: “The State of California has determined that high levels of chloride (salt) harm salt-sensitive avocado and strawberry crops along Highway 126, downstream from the Santa Clarita Valley’s (Valley’s) two wastewater (sewage) treatment plants owned and operated by the Santa Clarita Valley Sanitation District (SCVSD).” This sentence does not say that there are currently salt-sensitive crops along Highway 26 that are being damaged by chloride levels in the SCR.

No revisions to the Draft Facilities Plan and EIR are required in response to this comment.

### **Response to Comment P6-3**

The comment suggests that the chloride limit exists because of agricultural coalition lobbying and is not supported by science.

As previously discussed in Response to Comment P6-1, the RWQCB-LA is responsible for regulating discharges to the SCR to protect beneficial uses. As discussed in Section 3.3.3, in 1997, the RWQCB-LA staff was directed to conduct a 3-year study to determine appropriate chloride objectives that would protect salt-sensitive crops. During the 3-year study, the RWQCB-LA proposed listing several reaches of the SCR on the 303(d) list of Water Quality Limited Segments for chloride. In May 1999, the Environmental Protection Agency listed Reaches 5 and 6 of the SCR, which are discharge points for the Valencia Water Reclamation Plant and Saugus Water Reclamation Plant, respectively. This resulted in the development of the Chloride TMDL by the RWQCB-LA. In 2002, Resolution No. 02-018 was adopted, which set a Waste Load Allocation (WLA) limit of 100 mg/L for these reaches.

In 2004, the RWQCB-LA adopted Resolution No. 04-004, which revised the interim WLA and Implementation Plan for the Chloride TMDL. The Implementation Plan required the SCVSD to fund scientific studies to re-assess the chloride limit. The studies were conducted by expert consultants selected jointly by the SCVSD, the RWQCB-LA, and Ventura County interests. The result of the studies, which was reviewed by an independent Technical Advisory Panel (TAP), was that a chloride range of 100 to 117 mg/L would be protective of avocados and most other salt-sensitive crops.

Regarding the need for an experimental study (i.e., field study), the TAP found that while it would be possible to conduct greenhouse or laboratory studies, it would be difficult to extrapolate those lab results to the field. In addition, multiple members of the TAP felt that performance of extended field studies would not be useful in refining the protective threshold. In 2006, the

shallow as 150 to 175 feet or as deep as 500 to 600 feet. Cost to pump water from this depth is more expensive than surface-water diversion; therefore, surface-water diversion is used as much as possible.

## Avocado Production on Camulos Ranch

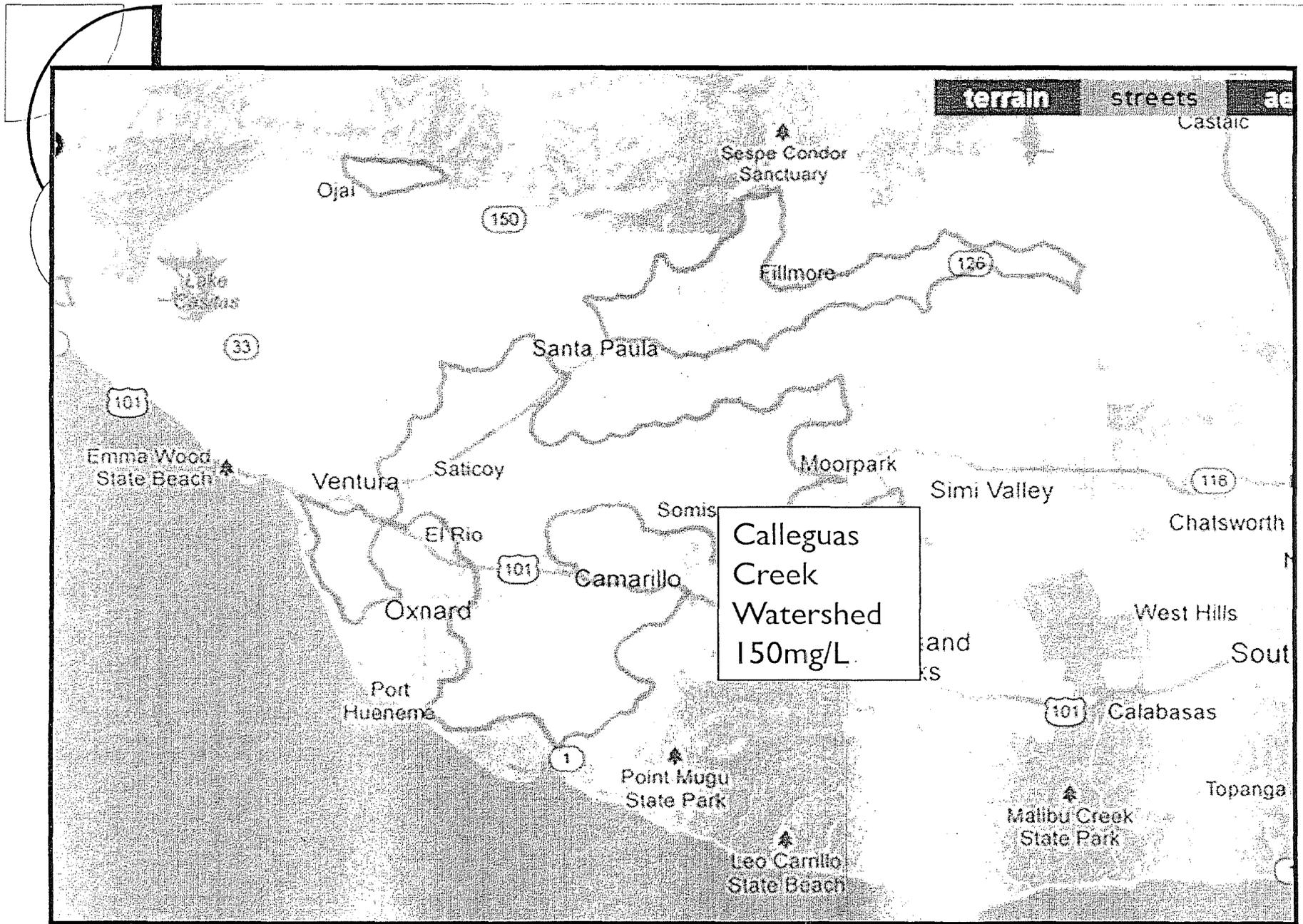
Avocado production has been conducted on Camulos Ranch for nearly 60 years. A 12-acre orchard exists that has been in production for approximately that duration. This orchard contains many varieties of avocado; however, most are on Mexican rootstock. Another 60-acre orchard is about 3 to 4 years old. The goal of Camulos Ranch is to have 150 to 200 acres of avocados in the future. Mr. Freeman said that "diversity of agricultural production and crop type on Camulos Ranch is essential to a sustainable farming operation, and avocados are an essential part of that." He was hired as ranch manager, partly, to provide that diversity.

The avocado trees on Camulos Ranch "commonly have tip burn" (see photographic documentation provided to the interviewer by Mr. Freeman). In addition, Mr. Freeman said that he believes the citrus trees are also experiencing burn and yield loss because of unsuitable irrigation water quality. ~~At the time of the site visit, the avocado trees on Camulos Ranch essentially did not have leaf tip burn.~~ It was mentioned that "very little leaf tip burn was visible at this time due to the excessive leaching provided by the winter and spring rains of this past year." However, older leaves (<1 year old) did show signs of past leaf-tip burn.

One hundred seventeen acres of avocados were recently planted in Piru Canyon owned by Rancho Temiscal.

Mr. Freeman indicated that in his experience "most people actually under-irrigate avocados." Applied water for avocado irrigation in the area can range from "3 to 5 feet," but mostly on the lower end of this range.

In general, avocado production on Camulos Ranch does not vary significantly from other areas visited with respect to irrigation method and cultural practices.



5

University of Idaho; M.S. from the University of Nebraska, B.S. from Latvia University of Agriculture. He is the author and co-author of 4 technical publications, 4 abstracts, and 6 technical proceedings.

**Ben A. Faber, Ph.D.**

Dr. Faber works with the Ventura County Cooperative Extension, serving as the soils/ water/subtropical horticulture advisor in Ventura County. He has research experience in plant nutrition and soil management. His current research focuses on irrigation requirements of avocado and citrus, methods of controlling groundwater nitrate pollution, effects of yard waste mulches on citrus production and various methods for controlling micronutrient deficiencies in avocado. Dr. Faber received his Ph.D. from the University of California, Davis; M.S. Soil Fertility, University of California, Davis; B.S. Biology, University of California, Santa Cruz. He is the author and co-author of multiple technical papers and publications, including 18 publications developed over the last six years.

**S.R. Grattan, Ph.D.**

Dr. Grattan is a professor at the University of California, Davis, where he serves as the plant-water relations specialist in the Department of Land, Air, and Water Resources, Hydrologic Science Division. His research areas include irrigation management with saline water; plant response in saline environments; uptake of nutrients and trace elements by plants in saline environments; and crop water use. He also performs international consulting work with the World Bank, USDA/OICD, and USAID, and has previously served as a research assistant with the University of California, Riverside, and as a research plant physiologist at the USDA/ARS Salinity Laboratory. Dr. Grattan received his Ph.D. in Soil Science from the University of California, Riverside; M.S. in Soil Science from the University of California, Riverside; B.S. Soil and Water Science from the University of California, Davis. He is the author and co-author of 15 technical proceedings/presentations, 74 refereed publications, and over 100 reports.

**John Letey, Jr. Ph.D.**

Dr. Letey is Professor Emeritus of Soil Science, Soil and Water Sciences Unit, University of California, Riverside and Director of the Center for Water Resources, University of California, Riverside. He has also served as the Chair, Department of Soil and Environmental Sciences; Director, University of California Kearney Foundation of Soil Science; Associate Director, University of California Water Resources Center; California State Water Quality Coordinator; and Director, University of California Salinity/Drainage Program. His research areas include irrigation, salinity, drainage, and plant-water relationships. He received his Ph.D. in Soil Science from the University of Illinois, and his B.S. in Agronomy from Colorado State University, and has served on numerous state, federal and international advisory committees; University of California and Soil Science Society of America task forces and committees; and editorial boards. He is the author and co-author of over 80 international presentations, technical papers, publications and reports.

**Darrell H. Nelson, B.S.**

Mr. Nelson is a consultant with Fruit Growers Laboratory, and a farm operations manager and farmer in Ventura County. He is the former President and Laboratory Director of the Santa Paula and Stockton Fruit Growers Laboratory. He received his B.S. in Soil and Water Science from the University of California, Davis, and has made presentations on the use of scientific information to implement best management practices and the use of nutrient budgets. He has also been active in the appraisal of drinking water quality for regulatory purposes and irrigation water for suitability to specific crops. He has advised the Los Angeles Regional Water Quality Control Board on Best Management Practices and the use of Nutrient Budgets as they relate to Total Maximum Daily Loads (TMDLs), and is currently serving on the California Avocado Commission Research Committee as co-chairman of the management and physiology sub committee.

## ***I. Introduction and Summary of Key Findings***

### **A. Purpose**

The Upper Santa Clara River (USCR) Chloride TMDL Collaborative Process was instituted to determine a threshold for chloride in the eastern end of reach 4, as well as the entirety of reaches 5 and 6 of the Santa Clara River. As part of the Collaborative Process, an Agricultural Chloride Threshold Study (ACT Study) was conducted. This study consisted of a Literature Review and Evaluation (LRE) prepared by CH2M Hill, which was then examined by a panel of experts in the fields of agriculture, chemistry, and soil science. This panel of experts, known as the Technical Advisory Panel (TAP) met several times over the course of the study to provide oversight and advice to the stakeholders and consulting teams. In their final meeting on July 11<sup>th</sup> 2005, they were asked to examine a draft of the LRE, and come to a decision as to its accuracy. During their deliberation, six key questions were developed. These questions served to guide the overall discussion of the TAP as they made their decision.

The TAP identified six key scientific issues to structure their discussion:

- 1. Please comment on the adequacy of the literature for supporting an interim number or guideline for the level of chloride that will reduce plant yields. Please comment specifically on the adequacy of the literature to justify the avocado threshold recommendations in the Literature Review Evaluation and provide your opinion on the accuracy of CH2M Hill's conclusion that there is insufficient literature to provide a recommended number or range for strawberries and nursery crops. If you are not in agreement with the range provided in the LRE, how would you modify it to feel the guideline concentration range would prevent detrimental impacts on avocado yields?*
- 2. What are the relative impacts of TDS and chloride on avocado yield? Do you believe that it is scientifically possible to separate the effects of the two stresses? Please document the evidence supporting your conclusions.*
- 3. Would you recommend that an experimental study be conducted to produce more meaningful information than is available in the current literature? Why or why not? If yes, what elements or characteristics should such a study include?*
- 4. How can local knowledge best be integrated into the study? Describe, "what works" based on information from local experience.*
- 5. Please discuss the validity of plant injury, growth, and yield as metrics of injury. Do you conclude that if there is plant injury there will be a reduction in yield? On what do you base your conclusion?*
- 6. Please provide any general comments on the Literature Review Evaluation.*

The TWG, which is comprised of a variety of stakeholders representing growers, water purveyors, elected officials, public agencies, environmental organizations, and other interested parties, examined the Literature Review Report and then generated a list of comments which were then forwarded to the TAP for their consideration. The TAP response to comments is included as an appendix to this document.

### **B. TAP Membership Information**

Oleg Daugovish, Ph.D.

Dr. Daugovish works with the Ventura County Cooperative Extension, where he serves as the farm advisor for strawberry and vegetable crops in Ventura County. He conducts research and educational programs with emphases on pest control and environmental quality of production, addressing the needs of organic farmers in Ventura County. He has also served as a research assistant with the Department of Plant, Soil and Entomological Sciences at the University of Idaho; Department of Agronomy at the University of Nebraska; and the Stensund Ecological Center. Dr. Daugovish received his Ph.D. from the

Kenneth K. Tanji, Sc.D.

Dr. Tanji is Professor Emeritus of Hydrology, Department of Land, Air and Water Resources, University of California, Davis. He has also served as the Senior and Principal Laboratory Technician, Department of Irrigation; Lecturer in Water Science, Department of Water Science and Engineering; Professor of Water Science, Department of Land, Air and Water Resources; Vice Chair and Chair, Department of Land, Air and Water Resources; and Professor of Hydrology, Department of Land, Air and Water Resources. He has more than 45 years of research experience dealing with salinity in agricultural lands in California, the Western U.S. and foreign countries, and is currently involved with developing a salinity management guide for irrigation of landscapes using recycled water. Dr. Tanji received his Sc.D. in Agricultural Science-Irrigation, Drainage and Hydrological Engineering from Kyoto University; M.S. in Soil Science-Soil Chemistry from the University of California, Davis; B.S. in Chemistry from the University of Hawaii. He is the author and co-author of 6 books, 28 book chapters, 158 papers, and more than 200 technical reports and proceedings.

### C. Definitions

In an effort to clarify the work of the Agricultural Chloride Study, the TAP developed the following definitions to differentiate the terms "Threshold" and "Guideline":

*Threshold Concentration for Chloride Injury:* A specific and absolute numerical value of chloride concentration beyond which, according to the scientific literature, plant injury will occur. In the case of avocados this refers to the concentration beyond which leaf injury will occur.

*Guideline Concentration for Chloride Injury:* A range of numerical values of chloride concentration beyond which, according to the scientific literature, plant injury is likely to occur. The range establishes the likely lowest value at which injury might begin to occur and the likely highest value at which injury might begin to occur. For example, a guideline range for a hypothetical constituent might begin at 3 ppm as the lower bound or 5 ppm as the upper, depending on conditions.

### D. Summary of Findings

The key differences between the majority report and the two minority reports center on three key issues: threshold value, the importance of TDS and ion-specific effects, and handling the need for incorporating local knowledge into the study. The chart below summarizes the positions of the majority and two minority reports on each of these issues.

	Threshold Value	TDS Vs. Ion-Specific Effects	Local Conditions
<u>Majority Report</u>	<p>The lower limit at which chloride would be unlikely to cause damage to avocados on Mexican rootstock is somewhere around 100 mg/L.</p> <p>The upper limit, however, is much less clear to the panelists. The TAP majority suggests that 117 mg/L would be a conservative upper-protective limit and a limit of 140 mg/L may be protective but only under ideal, non-restricting conditions.</p>	<p>It seems clear that TDS has a negative impact on avocado as it does with other salt-sensitive crops. Chloride is a contributor to salinity, and studies have shown that avocado is sensitive to this specific ion.</p> <p>Separating the two effects (TDS and chloride) might be possible by controlled experiments, but it would be extremely difficult and long-term in nature. Extrapolating the results back to irrigation water Cl guidelines would again be difficult.</p>	<p>A correlational survey of local water quality, yield and management practices would provide useful information. However, establishing a precise relationship between chloride and yield may not be possible in light of the large number of management and environmental factors that can impact tree yield.</p>
<u>Minority Report 1</u>	<p>Using the soil concentration range of 355 to 540 mg/L from table 4 results in a range of 177 to 270 mg/L in the irrigation water.</p>	<p>All of the experimental evidence strongly leads to the conclusion that TDS is the critical factor for avocados and chloride is minor except to the extent that it contributes to TDS.</p>	<p>Although I agreed that a survey-based study to document local information on water quality and yield would be helpful, the probability of gaining definitive information is very low.</p>
<u>Minority Report 2</u>	<p>To utilize a level above 100 mg/l, which has been used successfully for the past 40 plus years, would be detrimental to the continued health of these crops.</p>	<p>I feel that the difference between the effects of chloride and total dissolved solids (TDS) are easily observed in the field and can therefore be separated in research trials.</p>	<p>Local knowledge and experience must be integrated into the study process for the determination of chloride thresholds for the plants in question.</p>

## **II. Majority Report**

Four of the members of the TAP, Steve Grattan, Ken Tanji, Ben Faber, and Oleg Daugovish reached a consensus decision on their response to the LRE. Ben Faber and Steve Grattan prepared an overall response representing this consensus that appears below. This group will be referred to as the TAP Majority. In addition, the majority report section contains supplemental information presented by Steve Grattan and Ken Tanji, as well as the individual responses of each of the four TAP members.

### **A. Overall Responses to Key Issues**

Steve Grattan and Ben Faber wrote the following responses to the six key issues on behalf of the TAP Majority. The individual members of the TAP Majority approved each response before it was included in the majority report.

S.R. Grattan and Ben Faber  
Agricultural Chloride Threshold Study Technical Advisory Panel

#### **1: Adequacy of the Literature**

The TAP majority concurs with the findings of the LRE that there is very little scientific literature to base an interim guide for a TMDL on strawberry and nursery crops. The TAP majority believes however that there is sufficient documentation for avocado to set an interim guideline. In the process of setting such a guideline for avocado, because of this tree's very sensitive nature, it would be protective for most other sensitive crops as well. However, it is uncertain that all nursery crops would be protected. The lower limit at which chloride would be unlikely to cause damage to avocado is somewhere around 100 mg/L. The upper limit, however, is much less clear to the panelists. The TAP majority suggests that 117 mg/L would be the conservative upper-protective limit. Of these three panelists, one suggested that a range of 100 to 140 mg/l is appropriate depending upon site specific conditions where a higher value is more appropriate where other factors affecting avocado are not restricting while a lower value is more appropriate where the trees are prone to additional stresses, inflexibilities in water delivery, and poorer management. The other TAP majority members concur with this assessment. The panelists indicate that these are not threshold values but guideline ranges that would be acceptable.

#### **2: Relative Impacts of TDS and Chloride**

It seems clear that TDS has an impact on avocado as it does with other salt-sensitive crops. Chloride can be a contributor to salinity and a number of studies have shown that avocado is sensitive to this specific ion producing tree injury. The TAP majority is uncertain whether chloride or TDS is the most the limiting factor and feel the current literature is insufficient to make this distinction. Separating the two effects (TDS and chloride) might be possible by controlled experiments, but it would be extremely difficult and long-term in nature. Moreover, there would be uncertainty regarding extrapolation of the results to develop irrigation water-quality guidelines.

#### **3: Need for an Experimental Study**

The TAP majority believe it would be possible to do controlled greenhouse or laboratory studies that would give a correct range of chloride values that caused damage to avocados with a particular scion/rootstock combination. Nevertheless, TAP majority members indicated that it would be difficult to extrapolate those lab results to the field.

In 2004, the RWQCB-LA adopted Resolution No. 04-004, which revised the interim WLA and Implementation Plan for the Chloride TMDL. The Implementation Plan required the SCVSD to fund scientific studies to re-assess the chloride limit. The studies were conducted by expert consultants selected jointly by the SCVSD, the RWQCB-LA, and Ventura County interests. The result of the studies, which was reviewed by an independent Technical Advisory Panel (TAP), was that a chloride range of 100 to 117 mg/L would be protective of avocados and most other salt sensitive crops.

Regarding the need for an experimental study (i.e., field study), the TAP found that while it would be possible to conduct greenhouse or laboratory studies, it would be difficult to extrapolate those lab results to the field. In addition, multiple members of the TAP felt that performance of extended field studies would not be useful in refining the protective threshold. In 2006, the RWQCB-LA elected not to extend the chloride implementation schedule to allow for the completion of additional field studies and revised the Chloride TMDL to shorten the scientific study schedule. In 2007, the SCVSD appealed the Chloride TMDL to the State Water Resources Control Board (SWRCB), but the appeal was unsuccessful and the revision was upheld.

Depending on the length (between 2 and 10 years) and type (strawberry and/or avocado) of field study, the estimated cost to conduct a field study would range from approximately \$0.5 million to \$4.2 million. Because the overall schedule was condensed by the RWQCB-LA, which was upheld by the State Water Resources Control Board in 2007, it would not have been feasible to perform a field study and meet the shortened implementation deadline of May 15, 2015.

No revisions to the Draft Facilities Plan and EIR are required in response to this comment.

### ***Response to Comment A13-6***

The comment questions whether any source control measures in addition to the elimination of the automatic water softeners (AWS) are available.

A chloride source report for the SCV was developed in 2002 and, since 2005, is updated annually by the SCVSD. In 2002, approximately 45 percent of the chloride in wastewater was from the water supply, while approximately 29 percent was from AWS. Other sources included industrial, commercial, wastewater disinfection, and residential at approximately 2, 3, 8, and 13 percent, respectively. Procedures have been instituted whereby industrial and commercial sources must meet a 100 mg/L chloride limit or control their chloride discharges to the extent technologically and economically feasible. Chloride contributed through wastewater disinfection is being addressed with the proposed change to UV disinfection in Alternatives 2, 3, and 4 (see Section 6 of the Draft Facilities Plan and EIR). Residential sources identified were human waste, laundry products, other cleaning products, and swimming pool backwash. Of these sources, either (1) there is no feasible manner in which the source can be removed or (2) the source does not contribute a large enough amount of chloride such that removal of the source would significantly reduce the chloride loading in the treated wastewater discharged to the SCR.

No revisions to the Draft Facilities Plan and EIR are required in response to this comment.

### ***Response to Comment A13-7***

The comment requests additional cost information for treating potable water rather than wastewater to remove chlorides.

# Seawater Intrusion in a Coastal California Aquifer



*This report is a summary of recent work on seawater intrusion in aquifers underlying the Oxnard Plain, Ventura County, California. It is part of a series of reports describing the results of the U.S. Geological Survey's Southern California Regional Aquifer-System Analysis (RASA) study of a southern California coastal ground-water basin. The geologic setting and hydrologic processes that affect seawater intrusion in aquifers underlying the Oxnard Plain are similar to those in other coastal basins in southern California.*

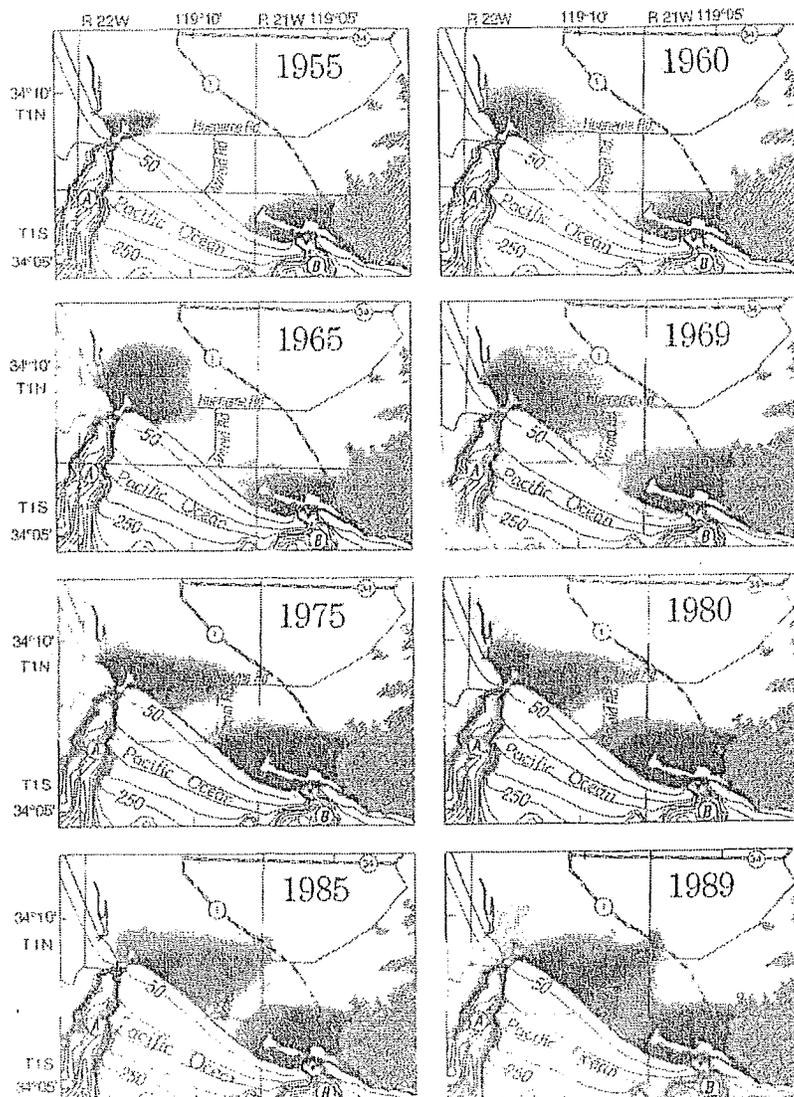
## Introduction

Seawater intrusion in aquifers underlying the Oxnard Plain, Ventura County, California, was first observed in the early 1930's and became a serious problem in the mid-1950's (California Department of Water Resources, 1965) (fig. 1). Historically, local agencies responsible for the management of ground water used a criterion of 100 milligrams per liter (mg/L) chloride to define the leading edge of the seawater front. It was assumed that all high-chloride water from wells behind the front originated from seawater that entered aquifers through outcrop areas in submarine canyons. Recent work (Izbicki, 1991; Stamos and others, 1992) showed that other sources of high-chloride water to wells are present and that the areal extent of seawater intrusion in the upper aquifer system is smaller than previously believed.

## Hydrogeology

The Oxnard Plain, 60 miles northwest of Los Angeles, has an area of 120-square miles (mi<sup>2</sup>) and is underlain by a complex system of aquifers more than 1,400 feet thick. These aquifers (like many similar coastal aquifers in southern California) can be divided into an upper and a lower aquifer system (fig. 2).

The upper aquifer system consists of relatively flat-lying alluvial deposits about 400 feet thick and contains two aquifers that have been developed for water supply—the Oxnard and Mugu aquifers. The Oxnard aquifer, about 180 feet below land surface, is the primary water-yielding zone. The Oxnard aquifer is underlain by the Mugu aquifer and overlain by a thick, areally extensive clay deposit. This clay deposit separates the Oxnard aquifer from a shallow unconfined aquifer that previous researchers have referred to as the 'perched aquifer.' (Use of this name in this report does not imply that perched conditions exist in the Oxnard Plain.) The Oxnard and Mugu aquifers crop out in Hueneme and Mugu submarine



### EXPLANATION

UNCONSOLIDATED DEPOSITS	CHLORIDE CONCENTRATIONS (mg/L)
CONSOLIDATED ROCKS	100-250
BATHYMETRY—Depth of water, in feet below sea level. Interval 50 feet	250-500
	500-1,000
	>1,000

Map note:  
 (A) Indicates Hueneme Canyon  
 (B) Indicates Mugu Canyon



**Figure 1.** Chloride concentrations in water from wells in the upper aquifer system in the Oxnard Plain, 1955-89. (Data from California Department of Water Resources and County of Ventura Public Works Agency.)

## MORE STORIES ABOUT

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Beyond current water replenishment projects -- such as a Santa Clara River diversion dam, settling ponds and recharge basins near Saticoy -- Hanson said Ventura County water agencies need to end coastal pumping during droughts that draws down water tables and allows greater saltwater intrusion.

"I think they're on the right track; they're one of the better sets of water agencies [in California] as far as trying to get something going," Hanson said. "What they still need to do is align their management strategies with climatic cycles."

For example, during the last big drought from 1985 to 1991, well pumping in some coastal areas increased 11%, Hanson said. He said a better response would have been for farmers and water agencies to sharply cut back on pumping near the coast, because freshwater basins there were already low from lack

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Of course, farmers need to pump more water during droughts because so little rain bathes their fields in the winter and spring. So local water officials have built a dam-and-pipeline system designed to capture Santa Clara River water five miles inland and deliver it to the coastal Oxnard Plain and the over-pumped Pleasant Valley area south of Camarillo.

"Replacing water near the coast with inland well water has been our strategy for a long time," said Steve Bachman, groundwater manager for the United Water Conservation District. "The USGS is just confirming what we're attempting to do. We've been working with them."

Getting that done has been a costly and lengthy process.

The centerpiece of the United system is the \$31-million Freeman Diversion Dam, completed in 1990, and a two-pronged set of pipelines that deliver river water either directly to coastal farms for immediate use or to settling ponds or gravel pit reservoirs, where the water filters down into underground basins for storage.

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The dam is designed to capture about 12,700 acre-feet of Santa Clara River water each year. An acre-foot is 326,000 gallons, or enough water to supply two typical homes for 12 months. The county uses about 480,000 acre-feet of water a year, two-thirds of it on agriculture.

In recent years, much of the captured water has been funneled into the shallow Oxnard Aquifer, which has been substantially replenished in the last decade, Bachman said.

The problem now is United's inability to pump the water out when needed, because the district's wells have traditionally reached into deeper basins where water would still be available during drought. So United last year began a \$2-million project to drill four new wells into the Oxnard basin near Saticoy.

Pumping from the shallow basin will allow the area's deeper basins -- which are seriously over-pumped -- to refill, Bachman said. In time, both shallow and deep basins will be replenished, he said. "You just hope that during the good times, you've done enough water management that you can survive a prolonged drought," Bachman said. "If we're not pumping from the coast during wet years, that will slow the [saltwater] intrusion during dry ones."

Very wet years in 1992, 1995 and 1998 have helped Ventura County's water basins. Bachman said conversion of three additional gravel pits near the river as part of the huge RiverPark community planned along Vineyard Avenue will add 10,000 to 15,000 acre-feet of storage.

A state-authorized groundwater management agency has also imposed pumping limits and fines on cities and farmers, cutting pumping substantially from historic levels.

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# Agricultural Chloride Thresholds by Regional Board

Region	No.	AGR Cl Threshold
North Coast	1	None
San Francisco	2	< 142 mg/L Cl
San Luis Obispo	3	< 142 mg/L Cl
Los Angeles	4	100 - 355 mg/L Cl *
Central Valley	5	None
Lahontan	6	None
Colorado River	7	None
Santa Ana	8	< 175 mg/L Cl
San Diego	9	< 140 mg/L Cl

\* The 100 mg/L threshold is located in the Santa Clara River watershed.

## Minutes

### COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 24, 2014

Present: Member Eraina Ortega, Chairperson  
Representative of the Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Andre Rivera  
Representative of the State Treasurer  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Don Saylor  
County Supervisor

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Ortega called the meeting to order at 10:03 a.m.

Executive Director Heather Halsey called the roll.

#### **ELECTION OF OFFICERS**

Executive Director Heather Halsey stated that the annual election of officers is the first order of business.

Chairperson Ortega asked for nominations for the chairperson.

Member Alex nominated the Director of Finance. Member Chivaro seconded. Director of Finance Michael Cohen was elected chairperson by a vote of 7-0.

Chairperson Ortega asked for nominations for vice-chairperson. Member Alex nominated the Treasurer. With a second by Member Chivaro, the California State Treasurer Bill Lockyer was elected vice-chairperson by a vote of 7-0.

#### **APPROVAL OF MINUTES**

Member Olsen made a motion to adopt the minutes. With a second by Member Chivaro, the December 6, 2013 hearing minutes were adopted by a vote of 7-0.

**PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

The Chairperson asked if there was any public comment. There was no response.

**CONSENT CALENDAR**

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 9      *Accounting for Local Revenue Realignments*, 05-TC-01  
 Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15;  
 Revenue & Taxation Code Sections 97.68, 97.70, 97.71, 97.72, 97.73  
 Statutes 2003, Chapter 162; Statutes 2004, Chapter 211; Statutes 2004,  
 Chapter 610  
 County of Los Angeles, Claimant
  
- Item 10     *Crime Statistic Reports for Department of Justice*, 12-PGA-01 (02-TC-04  
 and 02-TC-11 and 07-TC-10)  
 Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3),  
 13014, 13023, and 13730(a)  
 Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB  
 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter  
 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000,  
 Chapter 626 (AB 715)  
 and  
 Penal Code Section 13023  
 Statutes 2004, Chapter 700 (SB 1234)  
*Crime Statistics Reports for the Department of Justice Amended*  
 State Controller's Office, Requestor

INCORRECT REDUCTION CLAIMS

- Item 11     Adoption of Statement of Decision for *Health Fee Elimination*, 05-4206-I-04  
 and 05-4206-I-08  
 Education Code Section 76355  
 Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.);  
 Statutes 1987, Chapter 1118  
 Fiscal Years 1999-2000, 2000-2001, 2001-2002 and 2002-2003  
 San Mateo Community College District and San Bernardino Community  
 College, Claimants

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

- Item 12\* *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31  
Education Code Sections 66010.2, 66010.7, 66721.5, 66731, 66732, 66736, 66738, 66740, 66742, 70902, 78015, and 78016  
Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1991, Chapter 1198; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187  
California Code of Regulations, Title 5, Sections 53203, 53207, 55001, 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106  
Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18  
Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Claimants
- Item 13\* *Parental Involvement Programs*, 03-TC-16  
Education Code Sections 11504, 49091.10, 51101, 51101.1  
Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998, Chapter 1031; and Statutes 2002, Chapter 1037  
San Jose Unified School District, Claimant
- Item 14\* *Williams Case Implementation I, II, and III*, 05-TC-04, 07-TC-06, and 08-TC-01  
Education Code Sections 14501, 33126(b), 35186, 41020, and 42127.6 as Added or Amended by  
Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)  
San Diego County Office of Education, and Sweetwater Union High School District, Claimants

ADOPTION OF PROPOSED RULEMAKING CALENDAR

- Item 15\* Proposed Rulemaking Calendar, 2014

Executive Director Halsey announced that the parties agreed to add Items 9, 10, and 11 to the Consent Calendar. Chairperson Ortega asked if there was any objection to adding Items 9, 10, and 11 to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment. Member Alex made a motion to adopt the consent calendar. With a second by Member Saylor, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)**

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181(c)**

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

**TEST CLAIMS**

Item 4 *Public Guardianship Omnibus Conservatorship Reform, 07-TC-05*

Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923

Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363)

County of Los Angeles, Claimant

This test claim seeks reimbursement for costs incurred by counties who comply with the Omnibus Conservatorship and Guardianship Reform Act of 2006, which made comprehensive reforms to California's probate conservatorship program.

Senior commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt the proposed statement of decision to deny the test claim.

Parties were represented as follows: Hasmik Yaghobyan, representing the claimant; Connie Draxler, deputy director, Los Angeles County Public Guardian, Lee Scott, Michael Byrne, and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 6-1. Member Saylor dissented.

Item 5 *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), 08-TC-03*

Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8 and adding Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2006, Chapter 337 (SB 1128) amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code;

Statutes 2006, Chapter 886 (SB 1849), amending Sections 290.46, 1202.8; repealing Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2007, Chapter 579 (SB 172) amending Sections 290.04, 290.05, 290.3, and 1202.7; adding Sections 290.011, 290.012; and repealing and adding Section 290 to the Penal Code; and

California Department of Mental Health's Executive Order, SARATSO  
(State Authorized Risk Assessment Tool for Sex Offenders) Review  
Committee Notification, issued on February 1, 2008

County of Los Angeles, Claimant

This test claim alleges reimbursable state-mandated costs related to the Sex Offender Punishment and Control Act, the Sex Offender Registration Act, and an alleged executive order from the SARATSO review committee.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision to partially approve the test claim.

Parties were represented as follows: Hasmik Yaghobyan, representing the claimant; Michael Byrne and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation to partially approve the test claim was adopted by a vote of 7-0.

Item 6      *Upper Santa Clara River Chloride Requirements*, 10-TC-09

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008, approved by United States Environmental Protection Agency April 6, 2010

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

The test claim alleges reimbursable state-mandated increased costs resulting from a resolution which amended the Basin Plan for the Santa Clara River adopted December 11, 2008, by the California Regional Water Quality Control Board for the Los Angeles region.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision denying the test claim.

Parties and interested parties were represented as follows: Claire Collins, District Counsel for the Santa Clarita Valley Sanitation District and Paul Beck, District Counsel for the Santa Clarita Valley Sanitation District, representing the claimant; Jennifer Fordyce, Los Angeles Regional Water Quality Control Board; Michael Lauffer, State Water Resources Control Board; Michael Byrne and Susan Geanacou, representing the Department of Finance. Public testimony was given by Scott Wilk, California Assembly Member, 38<sup>th</sup> Assembly District; Laurene Weste, Mayor of the City of Santa Clarita; and TimBen Boydston, Councilmember of the City of Santa Clarita.

Following discussion among the Commission members, staff, and parties and public testimony by interested persons, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Saylor, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 6-0 with Member Ramirez abstaining.

## **MANDATE REDETERMINATION**

- Item 7      *Local Recreational Areas: Background Screenings (01-TC-11)*, 12-MR-02  
Public Resources Code Section 5164  
Statutes 2001, Chapter 777  
As Alleged to be Modified by: Statutes 2010, Chapter 719 (SB 856)  
California Department of Finance, Requestor

This was the second hearing in the mandate redetermination process and the issue before the Commission was whether to adopt a new test claim decision to supersede the previously adopted test claim decision. At the first hearing on this redetermination request, on December 6, 2013, the Department of Finance made an adequate showing that the state's liability under Public Resource Code section 5164 had been modified by a subsequent change in law to now provide fee authority sufficient to cover the costs of the mandated activities.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision as its new test claim decision, ending reimbursement for the activities under the test claim statute, beginning July 1, 2011.

Parties and interested parties were represented as follows: Lee Scott, Michael Byrne and Susan Geanacou, representing Requestor, the Department of Finance.

Department of Finance indicated concurrence with the staff recommendation and there was no further discussion. Member Alex made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the proposed statement of decision as its new test claim decision, ending reimbursement for the activities under the test claim statute, beginning July 1, 2011, was adopted by a vote of 7-0.

## **PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 8      *Local Recreational Areas: Background Screenings (01-TC-11)*, 12-MR-02  
Public Resources Code Section 5164  
Statutes 2001, Chapter 777  
As Alleged to be Modified by: Statutes 2010, Chapter 719 (SB 856)  
California Department of Finance, Requestor

These parameters and guidelines pertain to the new test claim decision adopted for the *Local Recreation Areas: Background Screenings* mandate under the mandate redetermination process, reflecting the end of reimbursement for the program.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Lee Scott, Michael Byrne and Susan Geanacou, representing Requestor, the Department of Finance.

Department of Finance indicated concurrence with staff and there was no further discussion. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Rivera, the motion to adopt the staff recommendation adopting the proposed statement of decision and parameters and guidelines was adopted by a vote of 7-0.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)**

- Item 16 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer  
*Note: This item will only be taken up if an application is filed.*

No applications were filed.

**STAFF REPORTS**

- Item 17 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 18 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 19 Executive Director: Mid-year Workload Update and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item.

Member Alex thanked Commission staff for dealing with a huge backlog and for continued professional work on all the test claims. Member Ramirez echoed those comments and noted for the record, however, that some claimants and members of the public may get frustrated by the mandates process and that she does too, but that she knows the Commission has to follow the law. Member Ramirez suggested that, perhaps, more energy should be directed at getting programs properly funded and authorized. Member Saylor commended staff on an incredible job and noted, however, that many claims that come before the Commission are clearly not mandates that can be reimbursed through this process and then there are others that are but he wished for greater clarity for the claimants as well as for the process. Ms. Halsey explained that Commission staff participated in the statewide county conference put on by the State Controller to present how the mandates process works. Member Saylor continued that there is growing dismay and concern among local governments around “does this work?” and “what can be done?”.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).**

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604)  
[*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g.,*

D.3 a.(3), D.3 a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

2. *California School Board Association (CSBA) v. State of California et al.*  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*  
(petition and cross-petition).  
California Supreme Court, Case No. S214855  
(Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153)  
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

## B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

### **REPORT FROM CLOSED EXECUTIVE SESSION**

At 12:05 p.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1) and that no action was taken.

### **PERSONNEL (action)**

- Item 20 [TENTATIVE] Salary Adjustment and Revision of CEA Level: Attorney to the Commission/Chief Legal Counsel (CEA B), pursuant to Government Code Section 17529

Member Olson moved to adjust the Chief Legal Counsel's salary for merit by 5 percent as soon as California Department of Human Resources rules will allow. With a second by Member Ramirez, the motion passed with a unanimous vote.

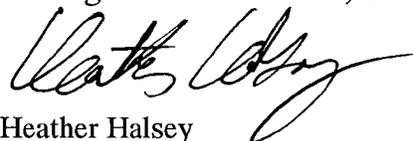
- Item 21 [TENTATIVE] Salary Adjustment: Executive Director, pursuant to Government Code Section 17530

Assistant Executive Director Jason Hone presented this item. He explained that Item 21 is a salary adjustment for the Executive Director.

Member Olson moved to adjust the Executive Director's salary by 5 percent effective on the anniversary of her appointment. With a second by Member Rivera, the motion passed with a unanimous vote.

**ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 12:06 p.m.

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey  
Executive Director

**PUBLIC MEETING**  
**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.  
**DATE:** Friday, January 24, 2014  
**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
*(Commission Chair)*  
Representative for MICHAEL COHEN, Director  
Department of Finance

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

ANDRÉ RIVERA  
Representative for BILL LOCKYER  
State Treasurer

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
*(Items 2, 3, 16, and 19)*

JASON HONE  
Assistant Executive Director  
*(Item 8)*

CAMILLE N. SHELTON  
Chief Legal Counsel  
*(Item 18)*

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

TYLER ASMUNDSON  
Commission Counsel  
(Item 4)

MATTHEW B. JONES  
Commission Counsel  
(Items 5, 6, 7, and 8)

KERRY ORTMAN  
Program Analyst  
(Item 17)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For County of Los Angeles

HASMIK YAGHOBYAN  
SB 90 Administration  
County of Los Angeles Auditor Controller's Office  
500 West Temple, Room 525  
Los Angeles, California 90012

CONNIE D. DRAXLER  
Deputy Director  
Office of the Public Guardian  
County of Los Angeles  
320 West Temple Street  
Los Angeles, California 90012

For Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 5:**

For County of Los Angeles

HASMIK YAGHOBYAN  
SB 90 Administration  
County of Los Angeles Auditor-Controller's Office  
500 West Temple, Room 525  
Los Angeles, California 90012

For Department of Finance

MICHAEL BYRNE  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 6:**

For Santa Clarita Valley Sanitation District of  
Los Angeles County:

CLAIRE HERVEY COLLINS  
Lewis Brisbois Bisgaard & Smith LLP  
221 B, Figueroa Street, Suite 1200  
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For Santa Clarita Valley Sanitation District of  
Los Angeles County:

PAUL BECK  
Lewis Brisbois Bisgaard & Smith LLP  
221 B, Figueroa Street, Suite 1200  
Los Angeles, California 90012

PHILLIP FRIESS  
Head, Technical Services Department  
Santa Clarita Valley Sanitation Department  
1955 Workman Mill Road  
Whittier, California 90601

LAURENE WESTE  
Mayor  
City of Santa Clarita  
23920 Valencia Boulevard  
Santa Clarita California 91355

SCOTT WILK  
Assembly Member  
38<sup>th</sup> Assembly District  
27441 Tourney Road, Suite #160  
Santa Clarita, CA 91355

TIMBEN BOYDSTON  
Councilmember  
City of Santa Clarita  
23920 Valencia Boulevard  
Santa Clarita California 91355

For Los Angeles Regional Water Quality Control Board:

JENNIFER FORDYCE  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For State Water Resources Control Board:

MICHAEL LAUFFER  
Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, California 95814

For Department of Finance

MICHAEL BYRNE  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

Appearing Re Item 7 and Item 8:

For Requestor Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

MICHAEL BYRNE  
Department of Finance





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**Commission on State Mandates – January 24, 2014**

1           Our first item this morning is election of  
2 officers.

3           At the January 25<sup>th</sup>, 2013, hearing, the  
4 Commission on State Mandates elected Ana Matosantos as  
5 Director of Finance, as the chairperson of the  
6 Commission; and John Chiang, State Controller, as  
7 vice-chairperson.

8           State law requires the members to elect a  
9 chairperson and a vice-chairperson of the Commission on  
10 State Mandates at the first hearing of the year.

11          CHAIR ORTEGA: Okay, are there any nominations  
12 for the chair?

13          MEMBER ALEX: Yes. I will move that the  
14 Director of the Department of Finance be the chair of the  
15 Commission.

16          MEMBER CHIVARO: I'll second that

17          CHAIR ORTEGA: Any other nominations?

18          *(No response)*

19          CHAIR ORTEGA: Without objection, I'll close  
20 the nominations.

21          All those in favor?

22          *(A chorus of "ayes" was heard.)*

23          CHAIR ORTEGA: Opposed?

24          *(No response)*

25          MEMBER SAYLOR: I would like a speech -- an

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1 acceptance speech.

2 CHAIR ORTEGA: We can call Michael up here.

3 Okay, thank you.

4 Let's see, the second officer is the -- or are  
5 there any nominations for the vice chair?

6 MEMBER ALEX: I can nominate the Treasurer for  
7 the vice chair.

8 MEMBER CHIVARO: Second.

9 CHAIR ORTEGA: Any other nominations?

10 *(No response)*

11 CHAIR ORTEGA: Okay, without objection, the  
12 nominations will be closed.

13 All those in favor?

14 *(A chorus of "ayes" was heard.)*

15 CHAIR ORTEGA: Any opposed?

16 *(No response)*

17 CHAIR ORTEGA: Okay, thank you.

18 MS. HALSEY: Item 2 is the adoption of  
19 the minutes.

20 CHAIR ORTEGA: Are there any objections or  
21 corrections to the December 6<sup>th</sup> minutes?

22 *(No response)*

23 CHAIR ORTEGA: Any comments from the public on  
24 the minutes?

25 *(No response)*

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1 CHAIR ORTEGA: No?

2 Is there a motion?

3 MEMBER OLSEN: I move adoption.

4 CHAIR ORTEGA: A motion by Ms. Olsen.

5 MEMBER CHIVARO: Second.

6 CHAIR ORTEGA: Second by Mr. Chivaro.

7 All those in favor?

8 *(A chorus of "ayes" was heard.)*

9 CHAIR ORTEGA: Any opposed or abstain?

10 *(No response)*

11 CHAIR ORTEGA: Okay, the minutes are approved.

12 MS. HALSEY: Public comment. Now, we can take  
13 up public comment. Public comment is for matters not on  
14 the agenda.

15 Please note though that the Commission cannot  
16 take action on items not on the agenda. However, it can  
17 schedule issues raised by the public for consideration at  
18 future meetings.

19 CHAIR ORTEGA: Okay, is there any general  
20 public comment?

21 *(No response)*

22 CHAIR ORTEGA: Seeing none, we'll move to the  
23 next item, the Consent Calendar.

24 MS. HALSEY: Next, we have a proposal to add  
25 three items to the Consent Calendar: 9, 10, and 11.

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1 CHAIR ORTEGA: Okay, any objection from the  
2 Members of adding Items 9, 10, and 11 to the Consent  
3 Calendar?

4 *(No response)*

5 CHAIR ORTEGA: Seeing none, any objections or  
6 comments from the public on those items?

7 *(No response)*

8 CHAIR ORTEGA: Okay, seeing none, a motion on  
9 the Consent Calendar?

10 MEMBER ALEX: So moved.

11 CHAIR ORTEGA: Moved by Mr. Alex.

12 MEMBER SAYLOR: Second.

13 CHAIR ORTEGA: Second by Mr. Saylor.

14 CHAIR ORTEGA: All those in favor of the  
15 consent -- do we need a vote on the consent?

16 All those in favor of the Consent Calendar?

17 *(A chorus of "ayes" was heard.)*

18 CHAIR ORTEGA: Any opposed or abstain?

19 *(No response)*

20 CHAIR ORTEGA: Seeing none, the Consent  
21 Calendar is adopted.

22 MS. HALSEY: Thank you.

23 Next, we have appeal of Executive Director  
24 decisions. And there are no appeals of Executive  
25 Director decision scheduled for this hearing.

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1           Item 4, do we have all of the -- before I swear  
2 in, do we have all the witnesses for Item 4 here?

3           MS. SHELTON:    Hasmik?

4           MS. YAGHOBYAN:  Yes.

5           MS. HALSEY:    Yes?

6           Okay, good.

7           Now, let's go ahead and swear everyone in who  
8 is going to be testifying on the Item 7 portion of the  
9 hearing.

10                       *(Parties and witnesses stood.)*

11           MS. HALSEY:  Do you solemnly swear or affirm  
12 the testimony which you are about to give is true and  
13 correct based on your personal knowledge, information, or  
14 belief?

15                       *(Chorus of "I dos" was heard.)*

16           MS. HALSEY:  Thank you.

17           The first item we'll be taking up this morning  
18 is Item 4, a test claim on *Public Guardianship Omnibus*  
19 *Conservatorship Reform*.

20           And Commission Counsel Tyler Asmundson will be  
21 presenting that item.

22           MR. ASMUNDSON:  Good morning.

23           This test claim requests reimbursement for  
24 costs incurred by counties who comply with the Omnibus  
25 Conservatorship and Guardianship Reform Act of 2006,

1 which made comprehensive reforms to California's probate  
2 conservatorship program.

3 The test-claim statute imposes new requirements  
4 on the county office of the public guardian to receive  
5 continuing education, beginning an investigation within  
6 two business days of receiving a referral for  
7 conservatorship or guardianship, and file a petition for  
8 appointment as guardian or conservator when there is no  
9 one else qualified and willing to act, and there is a  
10 imminent threat to the person's health or safety or the  
11 person's estate.

12 However, these activities are triggered by  
13 the county's discretionary decision to create the  
14 Office of Public Guardian pursuant to Government Code  
15 section 27430, which specifies that the board of  
16 supervisors may, by ordinance, create or terminate the  
17 Office of Public Guardian.

18 As the courts have made clear, reimbursement  
19 is not required when requirements imposed by the statute  
20 are triggered by local government's discretionary  
21 decision to participate in a program. Therefore, the new  
22 requirements imposed upon the public guardian do not  
23 create a state-mandated program within the meaning of  
24 Article XIII B, section 6 of the California Constitution.

25 In addition, all other activities pled are

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1       either not required by local government or are triggered  
2       by a court order. Activities required to comply with  
3       mandates of the courts are not eligible for reimbursement  
4       under Article XIII B, section 6.

5               Staff recommends that the Commission adopt the  
6       proposed statement of decision to deny the test claim.

7               Will the parties and witnesses please state  
8       your names for the record?

9               MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of  
10       County of Los Angeles.

11              MS. DRAXLER: Connie Draxler, deputy director,  
12       Los Angeles County Public Guardian.

13              MR. SCOTT: Lee Scott, Department of Finance.

14              MR. BYRNE: Michael Byrne, Department of  
15       Finance.

16              MS. GEANACOU: Susan Geanacou, Department of  
17       Finance.

18              CHAIR ORTEGA: Ms. Yaghobyan?

19              MS. YAGHOBYAN: Thank you. Good morning.

20              Well, as you can see, the Commission staff's  
21       analysis, although correctly pointed that there are  
22       mandated activities proposed on the local agencies  
23       because of this new act; but, however, they said the  
24       reimbursement should be denied because of the Government  
25       Code section 72430, which the County created the body of

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1 public guardian and it was discretionary. And we also,  
2 if we decide just to get rid of the public guardian  
3 department or division, we can just dissolve it and there  
4 will be no penalty.

5 And in further support of their decision, the  
6 staff is citing three cases which, reviewing the cases  
7 reveals not only these cases are distinguishable from the  
8 County's test claim, but also they support our positions.  
9 Because none of these cases, the activities there were --  
10 like the counties or local agencies, they did not -- it  
11 didn't rise to compel to be either practical or legal  
12 compulsion. It was completely voluntary.

13 For example, one of the cases, the school board  
14 decided to hire a police officer versus the security.  
15 So they had the option. They didn't have to hire police  
16 officers and then go on and try to get reimbursement for  
17 POBR.

18 On the other hand, with the County's position,  
19 although creating a public guardian body was  
20 discretionary, on the other hand, the activities imposed  
21 by this Act, they're not discretionary. We are compelled  
22 to do it.

23 So if the Court orders the county or public  
24 guardian to take over incompetent or mentally ill  
25 people's affairs, we can't say no. Even if we didn't

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1 have a public guardian body, still we have to go on and  
2 find and hire private/public guardians to do the  
3 activities. Otherwise, we would not be in compliance of  
4 the law; and we would be legally compelled to do it; and  
5 otherwise, we would be facing the consequences.

6 So we don't think that the staff analysis  
7 correctly points out the magnitude of us not providing  
8 the services because the only question one can ask --  
9 let's say if we get rid of the public guardian body, so  
10 what's going to happen? If there's an imminent danger,  
11 we have to take over, or the court orders us to take over  
12 somebody's affair, what are we going to do? We just have  
13 to find the person or the body to do the work.  
14 Otherwise, like I said, we would be subject to legal  
15 consequences.

16 The second disagreement or dispute we have with  
17 the Commission staff analysis, they say that because  
18 court mandates are barred from reimbursement; but what  
19 they are not realizing, I believe, is that this is not a  
20 court mandate. This mandate was enacted -- this statute  
21 was enacted by the Legislature. And the codes are  
22 mandated by, they're not mandating. So the Court has to  
23 order when there are situations or circumstances, they  
24 order the county to take over an incompetent person's  
25 legal affairs.

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1           So it is not the court mandate; rather, it's a  
2           court order. So, therefore, that disclaimer does not  
3           apply.

4           In conclusion, the public guardian clearly --  
5           all the cases cited by the Commission, they're -- they  
6           seem significantly different because there are other  
7           alternative resolutions, other alternative options for  
8           the local agencies to take. But in this case, with the  
9           County's case, the County carries a core mandatory  
10          function, and there is no alternative means of carrying  
11          that function, except having the public guardian body.

12          So what would you do if we don't have this body  
13          and we have these activities that we are ordered by the  
14          court? So what are we supposed to do?

15          Like I said, even if you get rid of the public  
16          guardian, we will still have to take on these orders by  
17          court or if there is imminent danger, we have to step in  
18          and then protect these people that they can't protect  
19          themselves.

20          But keep in mind, that this Act came into the  
21          picture, enacted as a result of all those articles in the  
22          paper, that people, that they could not take care of  
23          their estate or their affairs and all these articles in  
24          that, you know -- and then the State, there was a reason  
25          to enact this statute, saying that if there's an imminent

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1 danger to people's lives and liberty, people who cannot  
2 take care of themselves or control themselves, that the  
3 County has to step in and take over.

4 So we have no option but to do it; otherwise,  
5 we are going to be held responsible or legal  
6 consequences.

7 Now, Connie Draxler, our director, she is going  
8 to give you more -- a bigger picture of the program.

9 MS. DRAXLER: Thank you, Commissioners, for  
10 allowing me to speak with you today. I apologize if  
11 I cover a little bit more or in depth of what Hasmik did;  
12 but I do want to explain the public guardian program.

13 Not many individuals do understand what a  
14 public guardian does.

15 First of all, we generally have two areas of  
16 responsibility: mental-health conservatorships and  
17 probate conservatorships.

18 The Omnibus Act, of course, is focusing on the  
19 probate conservatorships. But throughout the analysis,  
20 there are references back to the Welfare and Institutions  
21 Code and to our responsibilities with regards to our  
22 mentally ill population. So I do want to make sure that  
23 we're not confusing the two populations.

24 The mandates under the Welfare and Institutions  
25 Codes were codified in the LPS Act in the late 1960s. So

1 even though the L.A. County Public Guardian asked for  
2 the creation of the public guardian back in 1945, that  
3 was all about our mentally ill individuals and not about  
4 the probate cases. And, again, I would say that the  
5 LPS Act superseded that 1945 request for the creation of  
6 the Office of the Public Guardian.

7 Public guardians statewide provide  
8 conservatorship and administrative services to older and  
9 dependent adults who are at risk for physical, emotional,  
10 and financial abuse, or are unable to care for  
11 themselves. As a health and safety program, the public  
12 guardian is the essential link to law enforcement and  
13 adult protective services -- both funded through various  
14 state funding streams.

15 We are also the provider of last resort for the  
16 most vulnerable and at-risk disabled and elderly persons.  
17 No other county department or agency has the legal  
18 capability or mandate to provide care and life-management  
19 decisions for this population. And without probate  
20 conservatorships, other protective agencies and superior  
21 court would have no viable resource to protect this  
22 vulnerable adult population.

23 The analysis appears to imply that counties  
24 could decide to terminate the office of the public  
25 guardian. This action, if a county would decide to do

1 that, would actually take us back to pre Omnibus Act  
2 time.

3 There were counties that, at the time, prior to  
4 Omnibus Act, that discretionarily decided not to pursue  
5 certain conservatorships. That's the whole reason for  
6 *The LA Times* article and the whole reason for the  
7 legislative acts that took place.

8 The Legislature did not want to have the public  
9 guardian have the discretion to only do cases coming from  
10 the court, but to actually require us to be involved with  
11 cases in imminent threat to our older adult and dependent  
12 adult vulnerable population.

13 So I think it is kind of -- I don't believe  
14 it would be realistic at this point, since counties have  
15 been filing these conservatorships for the past seven  
16 years under the mandate and the Probate Code, to think  
17 that a county government at this point could eliminate  
18 the program.

19 Realistically, what would happen? There would  
20 be no one available to assist our most vulnerable  
21 population.

22 It is unfortunate that at the time that the  
23 Omnibus Act was created, the inconsistency in the  
24 Government Code was not realized, that there was the  
25 "may" in the Government Code and the Probate Code was

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1       enacting the "*shall*." Unfortunately, that's not  
2       something anyone caught; but at this point, do not hold  
3       individual counties and public guardian programs  
4       responsible for failing to rectify that inconsistency.

5               Also recognize that the circum surrounding the  
6       Government Code, when that was enacted, or even some of  
7       the references back to 1945, when we asked for the  
8       creation of the office and had it as a "*may*," was a  
9       different time and place.

10              The identification and awareness of elder abuse  
11       and the need to protect older adult -- older, vulnerable  
12       adults now requires someone to provide these services and  
13       ensure that these services are being met.

14              There is no discretion at this point, and I  
15       don't think that any county could at this point decide to  
16       eliminate the public guardian without negative outcomes  
17       and increased liability.

18              Thank you.

19              CHAIR ORTEGA: Department of Finance?

20              MR. SCOTT: The Department of Finance concurs  
21       with staff.

22              CHAIR ORTEGA: Any comments or questions from  
23       the commissioners?

24              MEMBER SAYLOR: A question.

25              CHAIR ORTEGA: Please.

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1 MEMBER SAYLOR: A question of the public  
2 guardian.

3 You are -- I'm sorry, I missed your name.  
4 Was it Connie Drexler?

5 MS. DRAXLER: Connie Draxler.

6 MEMBER SAYLOR: Ms. Draxler, so how many  
7 counties actually have offices of public guardian?

8 MS. DRAXLER: Every county does. And it's  
9 actually in the 24000 code of the Government Code. We're  
10 listed as one of the county officials, and so every  
11 county has a public guardian. It may be called "public  
12 guardian" or it may be called "public conservator."

13 MEMBER SAYLOR: So all 58 counties have this  
14 office?

15 MS. DRAXLER: Correct.

16 MEMBER SAYLOR: So are there responsibilities  
17 that are required by state law of those offices?

18 MS. DRAXLER: Under -- it depends on which part  
19 of the requirements we're talking. If we're talking  
20 about their LPS conservatorship program, there are  
21 mandates.

22 The Welfare and Institutions Code 5351  
23 designates that the county board must identify a county  
24 conservatorship investigator for the mental-health cases.  
25 Generally, in almost every county that I'm aware of,

1 that's public guardian or public conservator.

2 On the probate side, we're governed under 2920,  
3 and many other statutes within the Probate Code, which  
4 require us, A, to accept any order from the court to  
5 investigate whether or not a probate conservatorship is  
6 necessary and potentially file.

7 I will note that prior to the Omnibus Act, we  
8 did, in fact, get orders from the court. When a private  
9 individual goes into court, files a conservatorship, if  
10 something would happen with that private family member,  
11 they become incapacitated and you get a vacancy in that  
12 conservatorship role, the court has to find someone to  
13 fill that vacancy. It is usually the public guardian  
14 that they turn to, to fill that vacancy and to become the  
15 successor conservator.

16 I will also indicate, although I can't confirm  
17 because it was prior to my time with L.A. County, that  
18 at one time L.A. County did submit SB-90 reimbursement  
19 claims for those specific actions, that we received  
20 reimbursement on court-ordered referrals to file probate  
21 conservatorships. I understand that was suspended. But  
22 at one time, those activities were considered a program  
23 that should be reimbursed.

24 What the Omnibus Act did is take it one step  
25 further. Not only were we required to take stuff from

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1 the court, but we were now required to investigate and  
2 petition for any case that involved imminent threat for  
3 any individual, any citizen within our county.

4 MEMBER SAYLOR: So a comment -- or, I'm sorry,  
5 if there are other questions, I'd appreciate those. But  
6 I have a comment.

7 CHAIR ORTEGA: Go ahead.

8 MEMBER RAMIREZ: I have some questions.

9 CHAIR ORTEGA: Sure, Ms. Ramirez.

10 MEMBER RAMIREZ: Thank you.

11 I'm familiar with this, having practiced some  
12 of that law in the past.

13 But I would like to ask you if -- I was going  
14 to ask you before you mentioned the reimbursement  
15 situation, who funds the public guardian office now at  
16 this time in L.A. County?

17 MS. DRAXLER: We are now a net County cost  
18 program. Prior to the Omnibus Act, we were one of those  
19 counties that had no county funding. Prior to the  
20 Omnibus Act, we relied on a few memorandums of  
21 understanding with hospitals that paid for our services;  
22 and we got some reimbursement from Targeted Case  
23 Management, which is a federal Medi-Cal reimbursement  
24 program for our clients that were Medi-Cal.

25 We are now -- we have those sources still

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1 available, and we are now receiving net county costs to  
2 fund our probate program.

3 MEMBER RAMIREZ: When you're dealing with a  
4 conservatee who has means -- which you probably do  
5 occasionally encounter -- do any part of your costs come  
6 from the estate of that person?

7 MS. DRAXLER: Absolutely. We are entitled to  
8 court-ordered fees for our services. We do have to file  
9 court accountings on every case that we do to show the  
10 services that we provided; and then the court will  
11 determine, A, whether or not those requests for fees will  
12 be approved; and then if they are, then the second step,  
13 is their funding within the estate to take that. If  
14 there is no funding, obviously, we don't get reimbursed  
15 for the court order.

16 MEMBER RAMIREZ: And I do have a question for  
17 staff, Mr. Asmundson.

18 MR. ASMUNDSON: Yes.

19 MEMBER RAMIREZ: Could you distinguish for us  
20 what the difference would be between a court order to  
21 take some action, do some work for an individual  
22 conservatee, and legislative mandate?

23 MR. ASMUNDSON: Well, in this instance, as the  
24 witness pointed out, the prior law stated that the Court  
25 could -- or it said "may" appoint the public guardian to

1 act. And here, the Legislature changed the language to  
2 require the court to do that when they find that there's  
3 no one else willing to act.

4 However, it's kind of a red herring because the  
5 Government Code does not require that the public guardian  
6 exist and allows the county to eliminate the position.  
7 There is nothing -- absolutely nothing that requires them  
8 to continue to do this.

9 And the amended statute, section 2920, speaks  
10 only to the public guardian. It does not speak to the  
11 county generally. That's why we found that this is not a  
12 mandate. Because it doesn't say the county must perform  
13 these services, it says the specific office of public  
14 guardian, which may be eliminated.

15 MEMBER RAMIREZ: Could you mention any other  
16 county or special district mandates that are  
17 discretionary -- not mandates that are discretionary,  
18 that's a contradiction. But discretionary programs,  
19 such as the public guardian program that we've dealt with  
20 in the Commission?

21 MR. ASMUNDSON: I can't. Not off the top of my  
22 head.

23 MS. SHELTON: We've had a lot of claims dealing  
24 with a "may," "shall," where we're talking about Peace  
25 Officer Procedure Bill of Rights which was mentioned by

1 the County earlier, where by the plain language of that  
2 statute, imposed requirements on school districts who  
3 employed peace officers. And we had information on the  
4 record in that case where a majority of the school  
5 districts had their own police department. But the Court  
6 still indicated that it still was a choice of theirs to  
7 have that department.

8 Just to back-tail on what Tyler was saying,  
9 under the Constitution, under Article XIII B, section 9,  
10 any order from the Court as an order from the court is  
11 not eligible for reimbursement under Section 6.

12 So here, although the statute did change the  
13 "may" to a "shall" with the direction to the court, the  
14 findings are still the same. So there was really  
15 technically no change in law there. Because under prior  
16 law, the court still had to make those findings, and  
17 still would be subject to an appealable order, had the  
18 court not made the findings consistent with the evidence  
19 in the record. So there was really no change in that  
20 respect to that subdivision.

21 MS. DRAXLER: May I?

22 I would actually respectfully disagree. Prior  
23 to the Omnibus Act, the Code -- there's two sections of  
24 the Probate Code that references, you know, the actions  
25 of the public guardian.

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1           In section 2920(b), there was a "shall" there  
2 prior to the Omnibus Act. The Court could -- we had to  
3 act if the Court ordered us.

4           The "may" was in all other populations. So if  
5 we got a referral from outside the court or some activity  
6 from adult protective services law enforcement referred  
7 to us, we had discretion not to move forward in that in  
8 those cases -- in those particular referrals or clients.

9           But there was the "shall" there for the court  
10 prior to the Omnibus Act, because we always -- we would  
11 receive those orders, and had been for years, and acting  
12 on those orders. And we could not refuse them.

13           MR. ASMUNDSON: If I can clarify?

14           Actually, there was a "shall" and a "may."

15           MS. DRAXLER: Yes.

16           MR. ASMUNDSON: But the "shall" applied to the  
17 public guardian. It said, "The public guardian shall  
18 apply for appointment as guardian or conservator if the  
19 court so orders. The court may make an order under this  
20 subdivision on motion of an interested party."

21           MS. DRAXLER: Yes.

22           MR. ASMUNDSON: So the court had discretion.  
23 But what Camille was trying to point out is that if  
24 certain evidence was presented, the court really couldn't  
25 say no. If they required a conservator or a guardian,

1 the court, after being presented with that evidence,  
2 would make the public guardian perform those services.

3 MS. DRAXLER: If there was no one else  
4 available to provide those services.

5 MR. ASMUNDSON: Yes.

6 MS. SHELTON: And still, all of that is  
7 stemming from a court order.

8 MEMBER SAYLOR: Okay. Another question. This  
9 is a question.

10 Tyler, so if all the counties have responded to  
11 the circumstance that exists of people needing certain  
12 kinds of attention and courts making orders by  
13 establishing this office, if all 58 counties have done  
14 so, and then the Legislature establishes requirements  
15 for those offices, I imagine -- it seems to me, with the  
16 presumption that the offices exist and will continue  
17 to exist, isn't that a practical compulsion?

18 Or how do you sort out that it's a  
19 discretionary act? This -- I get that the language issue  
20 is there, and that the word "may" exists in the statute.  
21 But isn't there a real consideration here, that the only  
22 way that counties have been able to carry out this  
23 function is through the office that all 58 of them have  
24 established?

25 MR. ASMUNDSON: Well, I'm not going to deny

1 that all counties have opted into this program, and that  
2 there would likely be consequences if they decided to  
3 terminate the office of the public guardian within, let's  
4 say, L.A. County, for instance, because they may be  
5 serving a population already.

6 However, when you're talking about practical  
7 compulsion, the result has to be -- it has to be a  
8 negative result, double taxation or something else, upon  
9 the county, not a population. So here, if they chose  
10 not to have a public guardian, you might likely have  
11 consequences to the population that's being served. But  
12 there is not a punishment or something that happens to  
13 the county itself.

14 MEMBER SAYLOR: A question to L.A.: If your  
15 office, the Office of the Public Guardian, was  
16 eliminated, would the County still have responsibilities  
17 that they would have to carry out on behalf of the  
18 clients? And wouldn't they have to find some way to  
19 contract or have some other private party do that at the  
20 expense of the County?

21 MS. YAGHOBYAN: Yes.

22 MS. DRAXLER: The elimination --

23 MS. YAGHOBYAN: You do because specifically,  
24 that's distinguishable from the case of *POBR* that  
25 Camille -- that your counsel mentioned it, too. Because

1 in that case, the Court said it is extra, it's voluntary  
2 and discretionary because they didn't have to hire police  
3 officers. So if they didn't hire police officers, so  
4 there was no legal consequences.

5 But in this case, let's say if we eliminate the  
6 public guardian, what will happen? We will still have to  
7 carry the court's order or act whenever there's an  
8 imminent danger. So it wouldn't change any -- make any  
9 difference.

10 We will not be in compliance with the Act if we  
11 didn't do that or got rid of the public guardian. This  
12 is where that practical compulsion comes into play.

13 MS. DRAXLER: We would also have the current  
14 700 probate conservatees that are under our authority,  
15 that have been ordered to -- that the court has ordered  
16 us to be conservator, that something would need to be  
17 done. We could not just walk into court and say, "Sorry,  
18 Your Honor, we've decided to eliminate this program.  
19 Here are your 700 cases back. Find someone to serve."

20 We're the last resort. They've already gone  
21 through all of those options, and we were the last  
22 resort. There is no one else for the court to turn to.

23 So there would be an immediate danger and  
24 impact to those 700 cases, and any going forward that  
25 would be placed on conservatorship with the public

1 guardian.

2 The option -- only option would be for the  
3 County to contract with someone else to provide that  
4 service; because there's -- you can't leave a vacancy  
5 in the conservatorship program for who's serving as  
6 conservator.

7 CHAIR ORTEGA: Camille?

8 MS. SHELTON: Just a couple. I think we're  
9 going -- we're talking about a lot of things, and I think  
10 I want to try to bring it back to this analysis. Because  
11 all of the activities that we are discussing are the  
12 ones that are triggered by the court order. Those, no  
13 matter if you find that the public guardian office has to  
14 exist, that would still not result in a reimbursable  
15 state-mandated program because it is coming from a court  
16 order.

17 So the only three activities that we're talking  
18 about are complying with continuing education, beginning  
19 an investigation, and filing the initial petition.

20 And under the law, the office of public  
21 guardian does not have to exist. There are alternatives.

22 If you turn to page 18, Footnote 58, there's a  
23 statute referenced, section 10002, which authorizes the  
24 county counsel, a different department within the county,  
25 to file the petition and to get a different conservator,

1 whether public or private.

2 There are options under the Code.

3 So just to bring it back to the three  
4 activities that truly are mandated by the State; and  
5 those are listed on page 6 of your executive summary.

6 CHAIR ORTEGA: Can I ask a question in  
7 follow-up to that then?

8 Are you saying that if the duties were shifted  
9 to the county counsel, then a petition -- a request for  
10 reimbursement for the county counsel staff could  
11 potentially be reimbursable?

12 MS. SHELTON: Well, right now, that statute  
13 says it authorizes county counsel to bring the petition.  
14 It doesn't require them to do that.

15 I agree. We had a difficult time with this  
16 analysis because clearly the Legislature is trying to  
17 require the public guardians to do something; and they  
18 didn't do a very good job in capturing all the different  
19 statutes in the different codes.

20 But they also -- you know, you could argue,  
21 when you're doing legislative intent, they did not make  
22 any changes to the statute authorizing the public  
23 guardian's office and they did not make any changes to  
24 the Welfare and Institutions Code section 10002,  
25 authorizing the county counsel's office to file the

1 petition.

2 MS. DRAXLER: So county counsel files the  
3 petition, but you have to name someone to actually act as  
4 the conservator.

5 So, yes, the County Counsel files our petitions  
6 right now. We don't actually go in and file our  
7 petitions right now. They are our attorney of record,  
8 and they file our petitions on our behalf. That's true  
9 for a private individual, too. They'll get an attorney  
10 to file on their behalf. But you have to name someone;  
11 and, in fact, you can't name someone to act as  
12 conservator unless they agree to serve as conservator.  
13 So they couldn't go into the court and name us unless we  
14 agreed to serve in that capacity.

15 MS. SHELTON: And the appointment of the  
16 conservator is an order of the court. And then the court  
17 maintains jurisdiction over the entire conservatorship  
18 and issues an order regarding all the functions and  
19 services provided by the conservator.

20 CHAIR ORTEGA: I'm going to let some other  
21 folks ask some questions.

22 Ken, go ahead.

23 MEMBER ALEX: So it strikes me as a fairly  
24 technical mandate situation here. So if the Legislature  
25 had directed the county to -- if a certain quantum of

1 evidence existed to take action, that would be a mandate;  
2 but because it directs the court to issue an order at the  
3 point that there is evidence, that that becomes a  
4 non-mandate.

5 MS. SHELTON: Well, there are two different  
6 subdivisions.

7 MEMBER ALEX: Okay.

8 MS. SHELTON: Okay, the first subdivision in  
9 (a) is directing the public guardian's office to file the  
10 petition in those imminent cases discussed earlier. And  
11 the second subdivision was always there, and it  
12 authorized the court to appoint a conservator in those  
13 cases where also the same findings had to be made as are  
14 being made now.

15 That statute was one of the "may's" authorizing  
16 the court to make the order, was changed to a "shall."  
17 You know, "The court *shall* make the order of  
18 conservatorship."

19 And the analysis there is that those findings,  
20 that doesn't create a new state-mandated program there  
21 because under prior law, the court would have still had  
22 to make the order if the evidence was presented.  
23 Otherwise, it was an appealable order. And it's a  
24 requirement imposed on the court which, under trial court  
25 funding, they're not eligible to get their costs through

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1 mandate reimbursement, anyway.

2 So any function following the court order on to  
3 the public guardian's office is a mandate of the court  
4 and not a mandate from the State.

5 MEMBER SAYLOR: This includes continuing  
6 education requirement for conservators?

7 MS. SHELTON: No, no, those three -- those  
8 three activities are a mandate of the state, you know,  
9 if you were to find that the office of public guardian  
10 was required by law to exist. So it would be -- the  
11 three activities were: continuing education, doing the  
12 investigations upon, you know --

13 MS. DRAXLER: Within two days.

14 MS. SHELTON: -- within two days, and then the  
15 filing of the petition, which really is a function of the  
16 county counsel's office.

17 MS. DRAXLER: Although anyone can file a  
18 petition.

19 MS. SHELTON: Yes.

20 MS. DRAXLER: We just choose as a government  
21 agency to use our attorneys. But a private individual  
22 can file.

23 MS. SHELTON: And let me just make that clear.  
24 Just that the language in the statute is requiring the  
25 public guardian's office to file a petition in those

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1 imminent cases, when there is no one else available.

2 CHAIR ORTEGA: Are there any other questions?

3 *(No response)*

4 CHAIR ORTEGA: Comments?

5 MEMBER SAYLOR: Yes. I think this kind of gets  
6 to the heart of some of the work that we do here.

7 Yes, we are making judgments on the basis --  
8 we're making quasi-judicial determinations based on  
9 evidence presented and based on interpretations of the  
10 statutes. But there is also a practicality of what we're  
11 doing. And I believe that this is one of the cases that  
12 I'm beginning to see where, why would anybody bother with  
13 this whole process of state-mandate review?

14 This is incredible. There is no practical  
15 choice for our county other than to have an office of  
16 public guardian. It's demonstrated by the fact that all  
17 58 counties do it. The requirements that are imposed in  
18 these three areas, they're very specific new, additional  
19 requirements on those offices. The counties don't have a  
20 practical option to eliminate the office of public  
21 guardian. They come forward and say, "Look, you're  
22 asking us to do more. You're demanding and requiring us  
23 to do more. We appreciate -- you know, those are all  
24 good ideas, great, wonderful. We're not going to be  
25 eliminating the office of public guardian. There's no

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1 way we could do it." "We'd have to go back in," they're  
2 saying, "and establish some other office to do it; and  
3 then we'd have the same requirement to go there."

4 I just can't see us taking such a narrow view  
5 on this claim. So I won't be supporting the staff  
6 recommendation in this case.

7 And I think it is worth noting that it's un- --  
8 to me, it seems very unlikely that the Legislature  
9 assumed that counties would be faced with a choice to  
10 eliminate the public guardian's office rather than comply  
11 with the requirements that they made in this Omnibus Act.  
12 The Legislature's intent had to be, it seems to me, to  
13 continue these offices and simply bolster and strengthen  
14 their quality and their timeliness.

15 That was what they were doing. They weren't  
16 setting out a choice that you either do these additional  
17 requirements or eliminate the office entirely. That was  
18 not even in the cards. They thought the offices would  
19 continue because they were all in place. So I can't  
20 support this.

21 And I hope that somebody is listening to this  
22 box who is a member of the Legislature because if this  
23 Commission takes the path that our staff have recommended  
24 based on the interpretation of the statutes, I hope that  
25 those statutes change very quickly.

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1 CHAIR ORTEGA: Ms. Ramirez?

2 MEMBER RAMIREZ: Well, this is our quandary as  
3 a commission. We are very legalistic, and I think this  
4 is sometimes why people are very unhappy with the legal  
5 profession because we do take a look at the law, and  
6 sometimes it's very draconian.

7 I think the problem is the Legislature -- the  
8 legislative process, that doesn't take into consideration  
9 what these things cost. Obviously, we've got to have a  
10 public guardian's office everywhere. I mean, it's how  
11 we treat our ill and elderly folks who are dependent is  
12 a hallmark of our society. It's got to be paid for.

13 But I see the quandary is, our Commission,  
14 what we're obligated to do, and what is the precedent if  
15 we go beyond our strict mandate about what we can and  
16 cannot allow.

17 So I sympathize. I hope the public guardian  
18 remains healthy. But I think the problem is in the  
19 Legislature, not with the Commission's charter.

20 MEMBER ALEX: I want to echo Ms. Ramirez's  
21 comments. And I do agree with Mr. Saylor that the  
22 Legislature hopefully will take note of this. We're not  
23 allowed to do equity. That's kind of a part of our  
24 charter. And I think the mandate issue is set out  
25 clearly by staff. And thank you for that. But this is a

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1 very tough pill to swallow.

2 CHAIR ORTEGA: Okay, any other questions or  
3 comments?

4 *(No response)*

5 CHAIR ORTEGA: Is there a motion?

6 MEMBER ALEX: All right, I'll move this staff  
7 recommendation.

8 MEMBER RAMIREZ: Second.

9 CHAIR ORTEGA: We have a motion by Mr. Alex and  
10 a second by Ms. Ramirez.

11 Please call the roll.

12 MS. HALSEY: Mr. Alex?

13 MEMBER ALEX: Aye.

14 MS. HALSEY: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HALSEY: Ms. Olsen?

17 MEMBER OLSEN: Aye.

18 MS. HALSEY: Ms. Ortega?

19 CHAIR ORTEGA: Aye.

20 MS. HALSEY: Ms. Ramirez?

21 MEMBER RAMIREZ: Aye.

22 MS. HALSEY: Mr. Rivera?

23 MEMBER RIVERA: Aye.

24 MS. HALSEY: Mr. Saylor?

25 MEMBER SAYLOR: No.

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1 MS. RAMIREZ: With regret.

2 CHAIR ORTEGA: Then the motion is approved.

3 Thank you, everyone.

4 We'll move to Item Number 5.

5 MS. HALSEY: Commission Counsel Matt Jones will  
6 present Item 5, a test claim on SARATSO.

7 MS. YAGHOBYAN: Good morning.

8 MR. JONES: Good morning. This test claim  
9 alleges reimbursable state-mandated costs related to the  
10 Sex Offender Punishment and Control Act, the Sex Offender  
11 Registration Act, and an alleged executive order from the  
12 SARATSO review committee.

13 Staff finds that the test-claim statutes  
14 imposed new mandated activities on counties to receive  
15 training on the Sex Offender Risk-Assessment Tool as  
16 identified by the SARATSO review and training committees,  
17 and to administer risk assessments to eligible persons as  
18 specified.

19 In addition, staff finds that the test-claim  
20 statutes impose a number of reporting and documentation  
21 requirements to be completed prior to the sentencing of  
22 an eligible offender.

23 Staff recommends that the Commission adopt the  
24 proposed statement of decision, partially approving the  
25 test claim.

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1 Will the parties and witnesses please state  
2 your names for the record?

3 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of  
4 County of Los Angeles.

5 MR. BYRNE: Michael Byrne, Department of  
6 Finance.

7 MS. GEANACOU: Susan Geanacou, Department of  
8 Finance.

9 MS. YAGHOBYAN: Thank you.

10 Generally, the County of Los Angeles agrees  
11 with the staff's recommendation. The only disagreement  
12 we have is the part that they are denying the mandate for  
13 the probations in situations where there should be  
14 intensive supervision versus regular supervision. And  
15 that happens when the SARATSO does the evaluation and if  
16 the persons are called or categorized as "high risk,"  
17 which is six and more, their supervision is -- it's  
18 supposed to be more intense.

19 So the staff is recommending to deny that part  
20 of the activity, saying that this is the part of the  
21 punishment and crime so, therefore, it's one of those  
22 disclaimers to reimbursement, so it shouldn't be  
23 reimbursed.

24 We disagree because this is not a part of  
25 punishment. Because the population under SARATSO is not

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1     only the sex offenders -- registered sex offenders who  
2     are on probation. The registered sex offenders could be  
3     released from probation but still under SARATSO, still  
4     needs intensive supervision.

5             The purpose of the SARATSO statute was to try  
6     to eliminate reoffending by these registered sex  
7     offenders. So once you are categorized as a sex  
8     offender, a registered sex offender, you have lifetime  
9     registration until you get pardoned by an official or an  
10    elected official. Otherwise, you have to register.

11            So one thing to keep in mind is that this is  
12    not a part of punishment because everybody else -- it  
13    applies to everybody, it's not only the people who are on  
14    probation. Therefore, although it's a Penal Code  
15    section, but that doesn't automatically make it part of  
16    punishment or punitive. Therefore, we don't think it's  
17    punishment or crime, so it should be reimbursed, the  
18    intensive supervision on certain probationers.

19            CHAIR ORTEGA: Thank you.

20            MR. BYRNE: The Department of Finance concurs  
21    with the staff recommendation.

22            CHAIR ORTEGA: Okay, Matt, do you want to...?

23            MR. JONES: I will answer any questions the  
24    Members have. But otherwise, staff recommends adoption  
25    of the decision.

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1 CHAIR ORTEGA: Are there any questions or  
2 comments from the Members?

3 *(No response)*

4 CHAIR ORTEGA: No?

5 *(No response)*

6 CHAIR ORTEGA: Is there a motion?

7 MEMBER CHIVARO: I'll move staff  
8 recommendation.

9 MEMBER OLSEN: Second.

10 CHAIR ORTEGA: Okay, motion by Chivaro and  
11 second by Ms. Olsen.

12 Please call the roll.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Mr. Ramirez?

22 *(No response)*

23 MS. HALSEY: Ms. Rivera?

24 *(No response)*

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER RAMIREZ: I'm sorry, we got up there.

2 MS. HALSEY: Sorry.

3 MEMBER RAMIREZ: Start again.

4 The R's, you got them..

5 MS. HALSEY: Where did I leave off?

6 MEMBER RAMIREZ: I didn't hear my name.

7 MS. HALSEY: We have Ms. Ortega?

8 CHAIR ORTEGA: Yes. Aye.

9 MS. HALSEY: And, Ms. Ramirez?

10 MEMBER RAMIREZ: Aye.

11 MS. HALSEY: Mr. Rivera?

12 MEMBER RIVERA: Aye.

13 MS. HALSEY: Mr. Saylor?

14 MEMBER SAYLOR: Aye.

15 CHAIR ORTEGA: Thank you.

16 Item 6.

17 Before we start on Item number 6, I do want to  
18 say that we have a lot of folks here on this item, so  
19 we're going to set a time limit for each side, of  
20 45 minutes for each side. And I will try to keep a  
21 little bit of attention to the time and give you a  
22 heads-up when your approaching the end of your allotted  
23 slot.

24 Thank you.

25 MS. HALSEY: Was everybody sworn in, or do I

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1 need to re-administer the oath?

2 For all the witnesses who are here who haven't  
3 been sworn in yet, I will re-administer the oath.

4 If you would please stand and raise your right  
5 hand.

6 *(Parties and witnesses stood.)*

7 MS. HALSEY: Do you solemnly swear or affirm  
8 the testimony which you are about give is true and  
9 correct based on your personal knowledge, information,  
10 and belief?

11 *(Chorus of "I dos" was heard.)*

12 MS. HALSEY: Thank you.

13 Commission Counsel Matt Jones will present  
14 Item 6, a test claim on *Upper Santa Clara River Chloride*  
15 *Requirements*.

16 MR. JONES: This test claim alleges  
17 reimbursable state-mandated increased costs resulting  
18 from a resolution adopted December 11<sup>th</sup>, 2008, by the  
19 California Regional Water Quality Control Board for the  
20 Los Angeles region.

21 Staff finds that the resolution does not impose  
22 any new mandated activities because the resolution  
23 imposes a lower level of service than required under  
24 prior law.

25 In addition, staff finds that the test-claim

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1 executive order does not impose new costs mandated by  
2 the State as defined under section 17514, because the  
3 claimant has authority to raise fees or assessments  
4 sufficient to cover the cost of the program.

5 And staff wants to point out that this mandate  
6 determination is a question of law, not of equity. The  
7 fairness of the costs of the Regional Board's order are  
8 not at issue. And it's not the Commission's purview to  
9 consider the reliability of the science behind the  
10 Regional Board order of the efficacy of the decision.  
11 Therefore, staff recommends that the Commission adopt  
12 the proposed statement of decision denying the test  
13 claim.

14 Will the parties and witnesses please state  
15 your names for the record?

16 MS. COLLINS: Claire Collins, District Counsel  
17 for the Santa Clarita Valley Sanitation District.

18 MR. BECK: Paul Beck, District Counsel for  
19 Santa Clarita Valley Sanitation District.

20 MS. FORDYCE: Jennifer Fordyce, attorney for  
21 Los Angeles Regional Water Quality Control Board.

22 MR. LAUFFER: Michael Lauffer with the State  
23 Water Resources Control Board.

24 MR. BYRNE: Michael Byrne, Department of  
25 Finance.

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1 MS. GEANACOU: Susan Geanacou, Department of  
2 Finance.

3 CHAIR ORTEGA: Ms. Collins?

4 MS. COLLINS: Thank you.

5 Good morning, Commissioners, Counsel, staff.

6 May I stand to present, if that's all right?

7 Your commission is charged with reviewing test  
8 claims that the State has imposed an unfunded mandate on  
9 a local agency. The voters essentially said, there are  
10 local agencies that are put between a rock and a hard  
11 place by state mandates and that the State should,  
12 therefore, pay.

13 We come to you today because the District and  
14 the people it serves are caught between that rock and a  
15 hard place.

16 The essence of this claim is that the State has  
17 required the District to desalinate wastewater. Not  
18 drinking water, but fully treated wastewater that comes  
19 out of a publicly owned treatment works. This is water  
20 that is otherwise perfectly clean and safe for humans and  
21 animals. And to our knowledge, there is not a single  
22 other treatment works in this state or in the nation that  
23 is required to desalinate wastewater that goes to a  
24 surface water pond.

25 CHAIR ORTEGA: Ms. Collins, I'm going to

1 interrupt you for just a second and go back to what the  
2 staff said earlier about the science behind the issue.  
3 And that's not before the Commission.

4 MS. COLLINS: I understand.

5 CHAIR ORTEGA: So I'm going to ask you to stick  
6 to the decision that is before us today.

7 MS. COLLINS: Let me give you some context.

8 So this is the state of California, as you can  
9 see. The Santa Clarita Valley -- not to be confused with  
10 Santa Clara -- is located about 35 miles northwest of the  
11 City of Los Angeles, as you can see on the map.

12 Santa Clarita Valley consists of the City of  
13 Santa Clarita plus unincorporated county portions. And  
14 you can see on this map as well, a blue line that runs  
15 through that. That's an approximation of the Santa Clara  
16 River.

17 The Santa Clara River, however, is not wet in  
18 all places. It actually goes dry in many portions and  
19 runs wet only during high-rain events.

20 Chloride. Chloride is the word that is  
21 obviously throughout this entire TMDL -- or, I'm sorry,  
22 throughout this entire test claim. It's the title of the  
23 test claim. But it's really just salt, right? We  
24 learned in high-school chemistry that sodium chloride is  
25 the chemical name for salt. And that's really what we're

1 talking about today. So to some degree, I'm just going  
2 to talk about salt.

3 I know you don't want me to talk about this,  
4 but just to give context, again, the drinking water limit  
5 generally is about 250 milligrams per liter. That's the  
6 degree to which usually you can taste salt in water. The  
7 limit for groundwater in Ventura County, which is where  
8 most irrigation water comes from, is 200 milligrams per  
9 liter. The standard limit to protect agriculture is 142.  
10 But the limit at issue in this case is 100 milligrams per  
11 liter, which is basically a few grains of salt for a big  
12 bottle of Dasani.

13 Now, the only potential beneficiary of this is  
14 a single user on the river. And what I'd like to do is  
15 orient you to how this works because we're talking about,  
16 again, chloride. And most people don't know what that  
17 means.

18 So this graphic, what it shows, is really  
19 what's happening, the real-world implications of what  
20 happens here.

21 This is a graphic that depicts the Santa  
22 Clarita Valley. And here, you can see the two sources of  
23 the drinking water in Santa Clarita Valley. One is the  
24 state, the state's water project; and the other is local  
25 groundwater. That local groundwater goes to a water

1 treatment facility where it's then distributed to homes  
2 and businesses in the Santa Clarita Valley.

3 At the point it's delivered to users, as of  
4 last year, it had about 68 milligrams of chloride per  
5 liter. So the influent water already has potentially  
6 moderately high chloride.

7 The homes and businesses then use it. They  
8 wash their dishes with it; they wash their laundry. And  
9 chloride is part of the discharge that everybody puts  
10 into the sewer. And so homes and businesses add  
11 approximately, at last year, about another 35 milligrams  
12 of chloride to the water.

13 That then runs into the sewer to our treatment  
14 plants. And there are two of them in Santa Clarita. And  
15 at that point currently, we disinfect it with chlorine,  
16 and that adds about 10 milligrams of chloride.

17 We're planning on doing a new treatment through  
18 UV light, which will reduce that by about 6.

19 But ultimately, as it enters our plants, it's  
20 about -- it's over 100. And as it leaves our plants,  
21 it's about 113, as of last year. But two-thirds of that  
22 is from the influent water. It's not added by the people  
23 of Santa Clarita; it can't be controlled by them.

24 That ultimately goes into the Santa Clara  
25 River, which goes downstream, ultimately leading to the

1 ocean.

2 This is a Google map, essentially looking at  
3 some of the same areas.

4 You may notice, Santa Clarita also -- most  
5 people recognize it by Six Flags Magic Mountain. That's  
6 the gateway to going over the Grapevine.

7 So here's the 5, which you would take to go  
8 over the Grapevine.

9 The City of Santa Clarita is here (*pointing*).  
10 And in the papers, you'll see reference to Reach 4B, 5,  
11 and 6, which I would assume most people have no idea what  
12 that means. So this is the picture that shows you what  
13 that means.

14 Our water reclamation plants, or recycling  
15 plants, are located at Saugus and Valencia, right next to  
16 the river. This is Reach 6. The river is dry north of  
17 this. We're the only flow that contributes to this  
18 portion of the river. It comes out of the water  
19 treatment plant. If it runs dry again a little bit  
20 around here at the end of Reach 6, going to Reach 5, then  
21 the Valencia Water Treatment Plant discharges water into  
22 the river.

23 It crosses over the Ventura County line and  
24 into Reach 4B, where the only identified diverter of  
25 water is one ranch, Camulos Ranch. That ranch has

1 alleged that high chloride levels might contribute to  
2 lower crop yields for avocados and strawberries. They're  
3 the only diverter of surface water here.

4 So ultimately, what is being requested here is  
5 that those two water reclamation plants bring that water  
6 down to 100 milligrams per liter, which requires desal --  
7 desalinization -- I think we've got it -- for these.

8 The issues that Santa Claritas face is that  
9 that desal plant is going to cost \$130 million to build.  
10 And they don't receive any of the water that comes out of  
11 that for their use as it goes downstream to Camulos  
12 Ranch.

13 It turns out that most of Camulos Ranch, we  
14 understand, grows on groundwater. And that limit is  
15 200 milligrams, twice what the limit is that the District  
16 is required to treat this to. And for that reason, the  
17 District has consistently fought this permit limit for  
18 decades.

19 The primary basis that the staff report states  
20 for denying this test claim is that there is prior law  
21 here. And we disagree with that. And we have staff  
22 members here who have participated in the negotiations.  
23 But the 100-milligram limit has been constantly and  
24 consistently fought for over a decade. And to the  
25 degree there were previous orders, those orders were

1 constantly and consistently on appeal or in negotiations.  
2 So we dispute the fact that there was a prior law of  
3 100 milligrams per liter, because we have tried to  
4 negotiate and change that over the entire period here, at  
5 least starting in 2002, and leading up to 2008, when the  
6 District, under the face -- or in the face of millions  
7 of dollars of fines from the Regional Board, relented,  
8 and moved forward with the 100-milligram-per-liter limit  
9 in conjunction with an alternative plan, which is talked  
10 about in the papers as AWRM, the Alternative Water  
11 Resources Management Plan. It's since been abandoned by  
12 the District.

13 Excuse me for a second.

14 Now, the District has, as I said, fought this  
15 for years. It appealed -- it made comments, it appealed  
16 to the State Board, it got remanded. The District, in  
17 fact, got special legislation in order to remove water  
18 softeners, because water softeners were contributing to  
19 the salt level in the effluent. It has removed something  
20 like a third of all the salt by taking out almost  
21 8,000 water softeners from its residents over the last  
22 ten years.

23 In the middle of this, the Board has reduced  
24 the timetables for compliance. And despite being able  
25 to take out a third of the chloride, it wasn't enough to

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1 get down to that 100-milligram-per-liter limit, which --  
2 and, again, I know you don't want us to talk about the  
3 science -- but the District has maintained from the  
4 beginning, it didn't have a basis and was a discretionary  
5 decision on the part of the Regional Board that  
6 assessed or that set the permit limit.

7 So we maintain that the prior law here is the  
8 current levels which are much, much higher, which are  
9 influent water plus a certain margin that accounts for  
10 all of the salt that goes in from families and businesses  
11 and all the salt that goes in from treatment.

12 The staff analysis also states that because the  
13 District was asked to do it faster, that that isn't a  
14 state mandate because doing things faster isn't  
15 necessarily a higher level of service. Now, we disagree  
16 with that in our papers. You reviewed them.

17 If you ask Fed Ex to deliver something in two  
18 days instead of four, that's a higher level of service.  
19 If you drive a car faster down the freeway at 60 than at  
20 45, that's a higher level of speed.

21 We believe that in demanding that the District  
22 come into compliance sooner, that itself is also a higher  
23 level of service.

24 Finally, the staff report says that even if  
25 this were a state mandate, that the District -- or if

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1 this were a mandate, the District has fee authority  
2 and, therefore, it can't be a state mandate, to which  
3 we respond: We can't raise fees from the folks who  
4 primarily benefit from this \$130 million plant. It's a  
5 \$130 million plant, and the primary beneficiary is  
6 outside of the jurisdiction. It's across the Ventura  
7 County line. There is no way to recover those costs,  
8 which are significant for a small community like Santa  
9 Clarita. It's \$130 million to build a plant that's going  
10 to create desalinated water to go to a single ranch that  
11 can't prove that it's being harmed.

12 It also can't collect from the State water  
13 project, which is the source of two-thirds of the salt.  
14 So it's without a remedy from the sources of the  
15 beneficiaries of the program. And instead, the 65,000  
16 homes that live in Santa Clarita Valley are forced to pay  
17 the entire freight of the \$130 million project.

18 Really, this is a situation where one community  
19 is uniquely positioned based on geography to have to  
20 handle a very, very large capital project. And we don't  
21 see that there is a true benefit to that community, and  
22 the community has been frustrated by that, and that's why  
23 it's come to you.

24 I want to say one last thing, and it relates  
25 back to water pollution in general. Now, most people.

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1 when they think about water pollution, they think about  
2 cleaning up real harms to real people or animals. And  
3 that's really the only thing we've got here is  
4 speculative harm to a crop that has never been proven.

5 This is not like the chemical spill in West  
6 Virginia earlier this month. There, noxious chemicals  
7 were poorly contained -- or contained. There were lax  
8 regulators. It got out, it got into a river, it smells  
9 disgusting, people can't drink the water, and it's real  
10 harm.

11 Now, somebody did something wrong there, right?  
12 Someone failed to contain pollutants. Someone failed to  
13 put in protective devices; and those people should be  
14 held accountable, and those people should pay to clean up  
15 their own mess.

16 MEMBER ALEX: Look, this is really not relevant  
17 to this mandate determination. We are not a regulatory  
18 body dealing with the issue of pollution.

19 MS. COLLINS: I understand.

20 MEMBER ALEX: And I'm sure you've had many  
21 discussions about this with the regulators.

22 MS. COLLINS: Yes.

23 MEMBER ALEX: So if we could kind of move to  
24 the mandate, we'd appreciate it.

25 MS. COLLINS: So the District maintains that

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1 the mandate is a discretionary number that was put in  
2 place over a period of time, that was not finalized until  
3 2010.

4 And we maintain that the prior-law argument is  
5 not what really happened in the real world. This was  
6 negotiated over a long period of time, and it's now put  
7 the District in place where it has to raise \$130 million,  
8 and doesn't have the ability to collect that money from  
9 the primary causes nor the primary beneficiaries.

10 MEMBER ALEX: Thank you.

11 MS. COLLINS: The other witnesses who we listed  
12 today are available for questions and for any other  
13 questions that the commissioners may have.

14 MEMBER RIVERA: Actually, I do. Just one  
15 question.

16 CHAIR ORTEGA: Okay.

17 MEMBER RIVERA: Regarding the fee authority,  
18 you're stating that you cannot charge the residents  
19 themselves.

20 Can you not charge that fee authority to the  
21 ranch? Can you do that?

22 MS. COLLINS: Commissioner, the ranch is  
23 outside of the jurisdiction of the sanitation district,  
24 which ends at the Los Angeles County line.

25 MEMBER RIVERA: Okay.

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1 CHAIR ORTEGA: Finance?

2 MR. BYRNE: The Department of Finance concurs  
3 with the staff recommendation.

4 CHAIR ORTEGA: Are there any questions or  
5 comments?

6 Yes?

7 MEMBER RAMIREZ: I'd just like to ask staff to  
8 respond to the comments or the argument.

9 MR. JONES: Would you mind if I let the Water  
10 Board respond first?

11 MS. FORDYCE: Good morning. Jennifer Fordyce,  
12 attorney for the Los Angeles Regional Water Quality  
13 Control Board.

14 The Los Angeles Regional Board also concurs  
15 with the staff analysis and proposed statement of  
16 decision.

17 We really appreciate your staff's careful and  
18 thoughtful work in analyzing the specific facts of this  
19 case.

20 Your staff has drafted a well-reasoned and  
21 legally supportable decision which correctly concludes  
22 that the 2008 resolution that was adopted by the Regional  
23 Board does not constitute a reimbursable state-mandated  
24 program.

25 The claimant's comments concerning the

1     appropriateness of the 100-microgram-per-liter chloride  
2     limit and water-quality objective is not relevant to the  
3     test claim at issue today, as your counsel has advised  
4     you.

5             The 100-microgram-per-liter chloride water-  
6     quality objective was first established in 1978 and  
7     remains the water-quality objective today.

8             The issue today does not concern whether the  
9     100-microgram-per-liter limit is the correct limit, the  
10    wrong limit. The question today is whether it was a new  
11    limit as adopted by the Regional Board in 2008. And it  
12    wasn't.

13            At issue today is whether the 2008 resolution  
14    constitutes a reimbursable state mandate program. And  
15    we assert it does not, as it does not impose a new  
16    program or higher level of service.

17            We disagree with the characterization that  
18    there was somehow a continuous appeal between 2002 and  
19    2008. There were at least three separate actions. There  
20    wasn't an appeal, but in June 2002, adopting the TMDL,  
21    when it goes to the State Board, it's not necessarily an  
22    appeal; it's an approval process. For a TMDL to become  
23    effective, it has to be adopted -- it has to be approved  
24    by the State Water Board, Office of Administrative Law,  
25    and then US EPA.

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1           So it necessarily has to go through those  
2 steps, anyway. It's not necessarily an appeal.

3           And, as you know, from the facts, the 2002 TMDL  
4 was sent back to the Regional Board for reconsideration;  
5 and the Regional Board adopted a new resolution which  
6 then it was approved by US EPA in -- I'm sorry, I had the  
7 facts --

8           MS. SHELTON: 2008.

9           MS. FORDYCE: Thank you.

10          And so, here, as your staff noted in the  
11 proposed decision, the appropriate measure is to compare  
12 the test-claim statute, which is the 2008 resolution,  
13 with the law immediately prior to the alleged mandate.

14          As of here, the law that was in effect  
15 immediately prior to the alleged mandate was the 2006  
16 resolution, which became effective in 2008.

17          So we, therefore, encourage the Commission to  
18 adopt the proposed statement of decision. And we thank  
19 you for the opportunity to address you, and we're here  
20 for any questions.

21          CHAIR ORTEGA: Is there any other public  
22 comment on this item?

23          MS. COLLINS: There's three.

24          CHAIR ORTEGA: Please, come on up.

25          MR. WILK: I'll go first.

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1           Good morning. My name is Scott Wilk. I'm the  
2 State assemblyman for the 30<sup>th</sup> Assembly District, which  
3 comprises the Santa Clarita Valley and northwest  
4 San Fernando Valley in L.A. County, and then the  
5 wonderful City of Simi Valley in Ventura County.

6           Again, thank you for the opportunity to make  
7 some public comments here regarding the state mandate  
8 test claim.

9           You know, inscribed on the front wall of the  
10 State Assembly chamber is the statement, "It's the duty  
11 of the Legislature to pass just laws."

12           I believe it's also the duty of regulators to  
13 apply those laws justly; and this is a situation where  
14 I believe that the Los Angeles Regional Water Quality  
15 Board has not done that.

16           I'm not going to address sound science in  
17 deference to the chair, but that certainly is an issue.

18           The second issue is that federal law states  
19 that the water has to be discharged for the benefit of  
20 downstream users. And in the case of Santa Clarita  
21 Valley, that would be the avocado and strawberry farmers  
22 as well as nursery plants.

23           The City of Thousand Oaks, which is also under  
24 the authority of this same body and has the same  
25 downstream users, avocado and strawberry farmers and

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1 nursery plant farmers, have a setting of 150 parts per  
2 million for their chloride. If Santa Clarita Valley was  
3 held to the same standard as Thousand Oaks, we would not  
4 be here today, because our community would be in  
5 compliance.

6 And then finally, requiring 265,000 residents  
7 to carry the burden of \$130 million capital costs, as  
8 well as \$4.1 million in ongoing annual operating costs  
9 to discharge water in a better condition than they  
10 received it from the State Water Project, and not to even  
11 benefit themselves, just defies logic.

12 I believe that this unfunded mandate, if it's  
13 not mitigated, is going to choke economic growth in one  
14 of the few areas of the state that actually has a vibrant  
15 economy. We have a biotech hub, a growing biotech hub,  
16 established manufacturing center, a cutting-edge  
17 aerospace research and development sector, and we're a  
18 favored location for the film and television industry.

19 I understand you have a very small bandwidth  
20 today, but I hope you'll take our testimony seriously and  
21 render a just decision. And I really thank you for your  
22 time.

23 MS. WESTE: My name is Laurene Weste. I'm the  
24 mayor of the City of Santa Clarita.

25 As the mayor, in conformance with state law,

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1 I'm also director on the Santa Clarita Valley Sanitation  
2 District. And to be clear, I'm just speaking here to you  
3 today as mayor of the City of Santa Clarita.

4 I'd like to thank you for the opportunity to  
5 make public comment on the state mandate test claim for  
6 the Upper Santa Clara River TMDL Chloride Requirement.

7 The City of Santa Clarita has taken great pride  
8 in our community and places a premium on the protection  
9 of our environment.

10 Just one example of that commitment is our  
11 open space, in which we have placed over 8,000 acres that  
12 can never be developed and that will be enjoyed for  
13 generations to come.

14 This issue before you today is about fairness.  
15 We understand the importance of water-quality laws and  
16 the implementation requirements by State agencies. These  
17 requirements, however, can create a substantial monetary  
18 burden on local government.

19 The cost of compliance with the Upper  
20 Santa Clara River chloride total maximum daily load is  
21 in the range, as you have heard, \$130 billion in capital  
22 costs with operation and maintenance at \$4.1 million per  
23 year. This cost is due to the unfunded mandate as a  
24 new requirement related to the claim, of the results of  
25 decisions by the State Water Resources Control Board and

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1 Los Angeles Regional Water Quality Control Board.

2 The residents of Santa Clarita and the  
3 surrounding unincorporated area within the Santa Clarita  
4 Valley Sanitation District will be paying 100 percent of  
5 the costs for this new treatment facility. Even though  
6 my city residents are not the majority contributor to the  
7 chloride level in the water which comes to the community  
8 high in salt from the State Water Project and will be  
9 receiving none of the benefits from the treatment plant  
10 they are paying for, Santa Clarita's residents will bear  
11 the entire financial burden.

12 In 2006, the City of Santa Clarita  
13 co-sponsored Senate Bill 475 with the sanitation  
14 districts of L.A. County, which created the first of  
15 its kind authority in California for local agencies to  
16 require removal of self-regenerating water softeners.  
17 It was a landmark in America.

18 After the sanitation district board enacted an  
19 ordinance requiring the removal of all self-regenerating  
20 water softeners, and the local electorate voted to  
21 support the ordinance through a referendum that was  
22 required under SB 475. My community voted to do that.

23 Our community has done its fair share by  
24 removing approximately 7,900 self-regenerating water  
25 softeners, lowering the chloride level by 30 percent.

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1 Government allows consumers to use salt  
2 products that are detrimental to the environment, and  
3 then turns around and taxes its citizens to fix the  
4 problems created by the very products that are legal.  
5 Government at all levels needs to look at the source  
6 control as a strategy for addressing environmental  
7 concerns.

8 My community, like others throughout  
9 California, is continually faced with new regulations to  
10 grapple with.

11 The economic well-being of Santa Clarita and  
12 communities throughout California is essential to  
13 sustaining an excellent quality of life and our ability  
14 to continue to protect the environment. That is why it's  
15 critical that compliance with these regulations be  
16 financially supported by our state.

17 I urge you to carefully consider the arguments  
18 made by the District. This unfunded mandate must be  
19 addressed by the State to maintain a fairness and create  
20 the incentive to protect the financial stability of local  
21 government.

22 My community is working hard to protect the  
23 Santa Clara River, to protect our downstream neighbors  
24 and the overall environment.

25 I want to thank you for allowing us to

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1 participate and for hearing us, and for consideration of  
2 our comments, and for the residents of Santa Clarita to  
3 be heard.

4 Ladies and gentlemen, what you're doing here  
5 is one of the most cruel things I've ever seen. And I am  
6 a born native Californian. I can't believe this is going  
7 on. We have tried and tried. You're putting something  
8 on us that does not belong.

9 I thank you for listening, and I appreciate  
10 your decision.

11 MR. BOYDSTON: Thank you, Chair and Members of  
12 this august body.

13 Please forgive me, I will be a little nervous,  
14 having never spoken to any group of people inside of our  
15 Capitol. And although I am a councilman, recently  
16 elected for the City of Santa Clarita, I'm just an  
17 ordinary guy who, for five years, has been trying to find  
18 the common sense of how this all came about. And, I  
19 don't know, maybe you will all help enlighten me to this.

20 Because every time that I've gone forward and  
21 said, "This doesn't make any sense. You say you have  
22 this range of chloride, but you won't give us any time to  
23 do the studies." And when I say that, I said that to  
24 the -- you know, the sanitation district; and they said,  
25 "Well, the Regional Board is telling us that we have to

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1 do this.” And then the Regional Board says, “Well, you  
2 know, the State Board, it says we have to do this.”

3 So here we are, this is the State. And I know  
4 you’re not the State Board, but I guess you’re the board  
5 that’s put in place to see who is going to pay for it,  
6 who is going to pay over a hundred, maybe hundreds of  
7 millions of dollars.

8 And quite honestly, I was at the Regional Board  
9 just a little while back, and, Madam, one of the ladies  
10 on the board there was comparing the \$200,000 fine that  
11 they gave my community as parking tickets. She said,  
12 “This is just parking tickets.” But \$200,000 is a lot of  
13 money.

14 As a councilman, one of the only things that  
15 was not in budget that we voted on last year was  
16 \$200,000: \$100,000 to feed seniors and \$100,000 to keep  
17 at-risk kids off the street.

18 So the money means a real thing to us. And  
19 I know you deal with hundreds of millions of dollars.  
20 But with this, there is no science; and they won’t give  
21 us the time. They say the State will not give us the  
22 time to do actual studies. Put the avocados trees, go  
23 into the lab, make avocado trees and grow it, and find  
24 out what the actual damaging thing is because the range  
25 right now that has come up with the six scientists --

1 three of them who work for the agricultural interests  
2 downstream who want this chloride-free water to put it  
3 on their crops and put it on their land that is ruined  
4 because they overpumped their aquifer and brought in  
5 34,000 milligrams of salt out of the ocean and put it in  
6 there, they need that low-chloride water. They need it  
7 to refill their aquifer and they need it to leach out the  
8 salt.

9 And we're supposed to supply that?

10 We haven't put any damaging level in there, and  
11 they say, "Oh, this is what it is. This range of safety  
12 is between 100 and 270 milligrams."

13 When it takes hundreds of millions of dollars  
14 to take out 20 or 30 or 40 milligrams of salt, out of  
15 20 million gallons each day that goes out of the sewer  
16 plant, okay, that's a huge difference. And they can't  
17 specify it, they can't bring it down?

18 Well, how do you bring it down? You allow the  
19 people to do the test. You allow the people to grow the  
20 avocado trees and then see, is there damage?

21 I mean, I think that's what they're trying to  
22 do in Washington, when they passed the Federal Clean  
23 Water Act, they were just trying to protect people that  
24 were using the water.

25 And I get all of the legal ramifications, but

1 we have lost sight of the trees because the lawyers are  
2 busy planting the forests.

3 And I admire the skill-set and the skill level  
4 so the people that will tell you: No, you don't have to  
5 pay for it. No, here's the reason, no, no, no, no, no.  
6 Put it back on the little people down there. They'll pay  
7 for it.

8 And it's a tragedy. And I think it's a  
9 travesty.

10 And I pray, if there's any way you have any  
11 tools at your disposal to allow us the time to actually  
12 figure out what would damage avocado trees before we  
13 spend \$130 million that could be better spent on feeding  
14 hungry people and educating our children.

15 I thank you so much for your time.

16 CHAIR ORTEGA: Thank you. Before you leave,  
17 I might have missed it, but if you would identify  
18 yourself for the --

19 MR. BOYDSTON: I am so sorry. My name is  
20 TimBen Boydston, and I'm speaking as an individual, and  
21 for a lot of people back home that are super frustrated  
22 because they said: "The people at the state level are  
23 making the rules. There's nothing we can do about it.  
24 It's too far away, they're too big, they have too much  
25 money."

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1 CHAIR ORTEGA: Thank you.

2 MR. BOYDSTON: Thank you.

3 CHAIR ORTEGA: Ms. Olsen.

4 MEMBER OLSEN: So I'm somewhat affected by  
5 everybody's passion here this morning. And I would like  
6 to go back to the representative from the Regional Water  
7 Board. And I'd like you to address Assemblyman Wilk's  
8 comment that if this were happening downstream at  
9 Thousand Oaks, there would be a different standard that  
10 they would have to meet.

11 Why are there two standards?

12 You're the Water Board for both areas, correct?

13 MS. FORDYCE: I'm the attorney for the  
14 Los Angeles Regional Water Quality Control Board.

15 MEMBER OLSEN: And that would be for both of  
16 those areas?

17 MS. FORDYCE: And Santa Clarita and Thousand  
18 Oaks are both in the Los Angeles region, yes.

19 MEMBER OLSEN: Okay.

20 MS. FORDYCE: I mean, I can't answer the  
21 question about whether the limit would be different.  
22 And, I'm sorry, I can't answer whether its limit --  
23 whether the limit is different right now.

24 But why it could be different is because water  
25 bodies are different. The characteristics are different

1 water-body by water-body.

2 And so when the Water Board establishes  
3 water-quality objectives, they have to look at what is  
4 the natural concentration and what's the background, and  
5 what's the -- you know, what kind of point sources and  
6 non-point sources are being discharged to that water.  
7 They're just -- they're different, that's really the  
8 simple answer. So there's just not one uniform number  
9 that applies statewide.

10 MS. COLLINS: Sorry, Madam Chair?

11 CHAIR ORTEGA: Yes?

12 MS. COLLINS: Phillip Friess is the head of the  
13 technical services department of the Santa Clarita Valley  
14 Sanitation District. And I was hoping you would give him  
15 a couple of minutes.

16 CHAIR ORTEGA: Yes, I think this side has about  
17 seven, eight more minutes left, including your rebuttal  
18 time. So just keep that in mind.

19 MS. COLLINS: Thank you.

20 MR. FRIESS: Madam Chair, I'd like to just make  
21 a couple of comments with regard to the prior-law issue,  
22 the 2006 TMDL representing the prior law, to the 2008  
23 TMDL.

24 From the Sanitation District's perspective,  
25 we've been engaged in relatively continuous, intense

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1 negotiations with the Regional Board since about 1998 on  
2 the chloride issue, when the Santa Clara River was listed  
3 as being impaired for chloride.

4 We challenged the listing in the 1998-1999 time  
5 frame. We sought to have the water-quality objective  
6 that Ms. Fordyce referred to as having been established  
7 in 1975. We sought to have that changed in the 1998-to-  
8 2000 time frame unsuccessfully.

9 And then when the TMDL was adopted in 2002, we  
10 challenged that it was remanded by the State Board back  
11 to the Regional Board. And the implementation schedule  
12 for the TMDL was extended to give us time to do special  
13 studies which we performed. The remanded TMDL was  
14 readopted by the Regional Board in 2004, and certified by  
15 the State Board and EPA in the 2005 time frame.

16 That gave us time to do scientific studies that  
17 we hoped would allow substantial modification of the  
18 requirements of the TMDL. We did a threatened-and-  
19 endangered species study, a groundwater/surface-water  
20 interaction modeling study, an agricultural literature  
21 review, evaluation study, all in hopes of substantially  
22 modifying the requirements of the TMDL.

23 The 2006 TMDL was just a shortening of the  
24 implementation schedule of the TMDL, as we had completed  
25 some of those studies.

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1           The 2008 TMDL was the TMDL that was adopted  
2           after the culmination of our having completed all those  
3           studies, which informed the ability to modify somewhat  
4           the requirements of the TMDL in the end. But it was  
5           all in our mind, a continuous process conducted over an  
6           extended period of time. I just wanted to make that  
7           point.

8           CHAIR ORTEGA: Okay, thank you.

9           Assembly Member Wilk, did you --

10          MR. WILK: Yes, I'd love to make a comment  
11          because I think that question was an excellent question.

12          CHAIR ORTEGA: Please.

13          MR. WILK: This is why it's all arbitrary. So  
14          in 1978, they did the study. Santa Clarita came out at  
15          100, so they set it at 100. Thousand Oaks came out at  
16          150, so it was set at 150. They did a prior study in  
17          1975 where Santa Clarita Valley came out at 80, and then  
18          Thousand Oaks came out at 50.

19                 So in three years, Thousand Oaks went from  
20          50 to 150. We went from 80 to 100. And they just  
21          arbitrarily said that's now the level.

22                 So it's not based upon water, it's not -- they  
23          have this -- we have the same downstream beneficial  
24          users: avocado, strawberry, and nursery plants. That is  
25          what's so frustrating about this is that it's completely

1 arbitrary.

2 If we were at 150, we would not be in front  
3 of you today because we had done all the steps that was  
4 laid out by the mayor to show that we in good faith have  
5 done everything we can to clean the water to benefit  
6 downstream users. So I really appreciate that question.

7 Thank you.

8 CHAIR ORTEGA: Yes. And thank you so much  
9 for -- you know, we certainly respect your point of view  
10 on that. But, again, of course, the issue before the  
11 Commission is certainly not the levels, so..

12 MR. WILK: I understand.

13 CHAIR ORTEGA: Thank you.

14 I think I'm going to close the presentation  
15 period now.

16 If there are any more comments or questions  
17 from the commissioners, please.

18 Ms. Ramirez?

19 MEMBER RAMIREZ: I did want to hear from  
20 Mr. Jones, the staff response.

21 Can we do that? Thank you.

22 MR. JONES: Member Ramirez, is there any  
23 particular point you'd like me to address? Because that  
24 was quite a lot.

25 MEMBER RAMIREZ: Just in terms of the mandate

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1 and what earlier, in another matter, Commissioner Alex  
2 mentioned equity.

3 MR. JONES: Right.

4 MEMBER RAMIREZ: And what our charter is in  
5 regards to equity.

6 MR. JONES: Sure, well, as the members know,  
7 but maybe we'll state it again for the benefit of the  
8 public and the parties.

9 Certainly the Commission's jurisdiction and  
10 charter does not include consideration of what's fair.  
11 And as the members all have made clear, neither does it  
12 include considering what the Water Board has done, what  
13 the Regional Board has done, and whether there is any  
14 science to back it up.

15 But more importantly here, the mandate finding  
16 in the proposed statement of decision that you have  
17 before you really just turns on two issues. Chiefly,  
18 that only the 2008 order was pled. The 2002, 2004, 2006  
19 orders, the remand orders in between, none of those  
20 orders are before you today. And all of those orders  
21 were effective prior to the 2008 order. All of those  
22 orders having been signed off on by the State Water  
23 Board, the director of -- or excuse me, the OAL and the  
24 Administrator of the US EPA. So all of those orders were  
25 effective.

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1           And we don't generally engage in sort of a  
2    *"but for"* analysis when we're writing these analyses for  
3    you and when we're writing these proposed decisions.  
4    But here, it's appropriate to just realize that if the  
5    2008 order had not come about, but for that order, the  
6    District would still be required to meet the 100-  
7    milligram-per-liter chloride standard and would  
8    presumably incur all of the costs that they're alleging  
9    before you today as arising from the 2008 order.

10           So clearly, those orders that would require  
11    that same thing have to be analyzed as prior law.

12           You know, there are a lot of machinations and  
13    claims about costs. And I apologize if that sounds like  
14    we're minimizing it; but we just -- the Commission is not  
15    empowered to consider costs to the local government. The  
16    Commission is only empowered to consider mandates.

17           And I don't know if you have any other specific  
18    questions on the record, but the staff recommends the  
19    proposed decision in front of you.

20           CHAIR ORTEGA: Anyone else?

21           Mr. Alex?

22           MEMBER ALEX: I have a question either for Matt  
23    or Camille, just for my own edification.

24           Obviously, the TMDL requirements are from  
25    federal law, and then the State Water Board is -- or the

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1 Regional Board, and followed by the State Board, set the  
2 TMDL levels for a particular basin.

3 Is the mandate derivative of the federal law,  
4 and does the federal law impact the concept of a mandate?

5 MR. JONES: That issue is still --

6 MEMBER ALEX: Still being litigated?

7 MR. JONES: -- perhaps up in the air.

8 MEMBER ALEX: Okay.

9 MS. HALSEY: If I could answer, we did not  
10 address that issue in this test claim because it wasn't  
11 necessary, because prior law already required this. We  
12 did not delve into the federal issue.

13 MEMBER ALEX: I understand that you didn't --  
14 hadn't read it --

15 MS. HALSEY: Right.

16 MEMBER ALEX: -- but I'm asking --

17 MS. HALSEY: And we did that because it wasn't  
18 necessary; and it would have been a much bigger analysis,  
19 yes.

20 But, yes, you're right. It does come -- and we  
21 do have it, though, in the background. And, of course,  
22 it does come from the Clean Water Act. And it's just, we  
23 didn't do a full analysis of whether the whole thing is a  
24 federal mandate.

25 MEMBER ALEX: Okay.

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1 MS. SHELTON: Can I just clarify, for mandates  
2 reasons, you have to satisfy each element. And in order  
3 to be approved as a reimbursable state-mandated program,  
4 every element has to be proved. So if you have a failure  
5 of one of those elements, then it automatically is not a  
6 reimbursable state-mandated program.

7 CHAIR ORTEGA: Mr. Saylor?

8 MEMBER SAYLOR: I will support this staff  
9 recommendation in this case. I think that the issues  
10 are narrowly defined for the Commission's review; and  
11 I think the analysis that we've got before us is clear  
12 and accurate, as far as I can tell, as a dummy that comes  
13 in here every couple months.

14 But I will say that the presentations from the  
15 representatives of Santa Clarita have been very powerful;  
16 and the residents and citizens in that neighborhood truly  
17 owe their representatives a "thank you" for their active,  
18 ardent advocacy on behalf of the community.

19 And this issue will not go away with the action  
20 that happens here today. It's going to be ongoing, and  
21 your community is not the only one in the state that  
22 faces this kind of a challenge, too; and we're all going  
23 to be seeing much more of these issues in the time to  
24 come.

25 So to the Assembly Member and the Council

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1 Member and Mayor, thank you so much for being here today.  
2 And we did hear you. This is not the arena that your  
3 issues can be addressed, it appears.

4 CHAIR ORTEGA: Anything else from the  
5 commissioners?

6 *(No response)*

7 CHAIR ORTEGA: Do we have a motion?

8 MEMBER OLSEN: I'll move adoption of the staff  
9 recommendation.

10 MEMBER SAYLOR: Second.

11 CHAIR ORTEGA: Second by Mr. Saylor.

12 Roll call.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: I'm going to abstain. Thank  
23 you.

24 MS. HALSEY: Mr. Rivera?

25 MEMBER RIVERA: Aye.

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1 MS. HALSEY: Mr. Saylor?

2 MEMBER SAYLOR: Aye.

3 MS. COLLINS: Thank you.

4 CHAIR ORTEGA: The staff recommendation is  
5 adopted.

6 Thank you, everyone.

7 Item 7?

8 MS. HALSEY: Item 7, Commission Counsel Matt  
9 Jones will present a mandate redetermination on *Local*  
10 *Recreational Areas: Background Screenings*.

11 CHAIR ORTEGA: Go ahead, Matt.

12 MR. JONES: Item 7. At the first hearing on  
13 this mandate redetermination on December 6<sup>th</sup>, 2013,  
14 the Commission held that the requestor, the Department  
15 of Finance, made an adequate showing that the State's  
16 liability under the test-claim statute had been modified  
17 by a subsequent change in law as defined in the  
18 Government Code providing fee authority to cover the  
19 costs of the program.

20 At this hearing, the Commission is required  
21 to consider whether to adopt a new test-claim decision to  
22 supersede the previously adopted test-claim decision and  
23 to reflect the State's modified liability under the  
24 test-claim statute.

25 Staff recommends that the Commission adopt the

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1 proposed statement of decision as its new test-claim  
2 decision, ending reimbursement for the activities under  
3 the test-claim statute, beginning July 1, 2011.

4 If the Commission adopts the proposed statement  
5 of decision, staff will present the next agenda item,  
6 Item 8, proposed parameters and guidelines, reflecting  
7 the end of reimbursement for the test-claim statutes.

8 Will the parties and witnesses please state  
9 your name for the record?

10 MR. SCOTT: Department of Finance, Lee Scott.

11 MR. BYRNE: Michael Byrne, Department of  
12 Finance.

13 MS. GEANACOU: Susan Geanacou, Department of  
14 Finance.

15 CHAIR ORTEGA: Okay. Mr. Scott?

16 MR. SCOTT: The Department of Finance concurs  
17 with staff.

18 CHAIR ORTEGA: Is there any public comment on  
19 this item?

20 *(No response)*

21 CHAIR ORTEGA: Anything from the Commissioners?

22 *(No response)*

23 CHAIR ORTEGA: Do we have a motion?

24 MEMBER ALEX: Move staff recommendation.

25 CHAIR ORTEGA: Moved by Mr. Alex.

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1 MEMBER CHIVARO: Second.  
2 MEMBER RIVERA: Second.  
3 CHAIR ORTEGA: Second by Mr. Chivaro.  
4 Call the roll.  
5 MS. HALSEY: Mr. Alex?  
6 MEMBER ALEX: Aye.  
7 MS. HALSEY: Mr. Chivaro?  
8 MEMBER CHIVARO: Aye.  
9 MS. HALSEY: Ms. Olsen?  
10 MEMBER OLSEN: Aye.  
11 MS. HALSEY: Ms. Ramirez?  
12 MEMBER RAMIREZ: Aye.  
13 MS. HALSEY: Mr. Rivera?  
14 MEMBER RIVERA: Aye.  
15 MS. HALSEY: Mr. Saylor?  
16 MEMBER SAYLOR: Aye.  
17 CHAIR ORTEGA: I think you missed me.  
18 Aye.  
19 MS. HALSEY: Did I miss you?  
20 CHAIR ORTEGA: Yes.  
21 MS. HALSEY: Sorry.  
22 CHAIR ORTEGA: That's okay.  
23 MS. HALSEY: Commission Counsel Matt Jones will  
24 now present parameters and guidelines amendment on *Local*  
25 *Recreational Areas: Background Screenings.*

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1 MR. JONES: Item 8. These parameters and  
2 guidelines pertain to the new test-claim decision adopted  
3 for the *Local Recreational Areas: Background Screenings*  
4 mandate, reflecting the end of reimbursement for the  
5 program.

6 The proposed parameters and guidelines provide  
7 that reimbursement for the program is ended July 1, 2011,  
8 pursuant to the filing date of the redetermination  
9 request.

10 Staff recommends that the Commission adopt the  
11 proposed parameters and guidelines reflecting the end of  
12 reimbursement based on fee authority provided to local  
13 government in the amended statutes.

14 Will the parties and witnesses please state  
15 your names for the record?

16 MR. SCOTT: Department of Finance, Lee Scott.

17 MR. BYRNE: Michael Byrne, Department of  
18 Finance.

19 MS. GEANACOU: Susan Geanacou, Department of  
20 Finance.

21 CHAIR ORTEGA: Mr. Scott?

22 MR. SCOTT: The Department of Finance concurs  
23 with staff.

24 CHAIR ORTEGA: Is there any public comment on  
25 this item?

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1                   *(No response)*

2                   CHAIR ORTEGA: Any questions or comments from  
3 the Commission?

4                   *(No response)*

5                   CHAIR ORTEGA: Okay, do we have a motion?

6                   MEMBER OLSEN: I'll move the adoption.

7                   CHAIR ORTEGA: Moved by Ms. Olsen.

8                   MEMBER RIVERA: I'll second.

9                   MEMBER RAMIREZ: Second.

10                  CHAIR ORTEGA: Second by Mr. Rivera.

11                  Please call the roll.

12                  MS. HALSEY: Mr. Alex?

13                  MEMBER ALEX: Aye.

14                  MS. HALSEY: Mr. Chivaro?

15                  MEMBER CHIVARO: Aye.

16                  MS. HALSEY: Ms. Olsen?

17                  MEMBER OLSEN: Aye.

18                  MS. HALSEY: Ms. Ortega?

19                  CHAIR ORTEGA: Aye.

20                  MS. HALSEY: Ms. Ramirez?

21                  MEMBER RAMIREZ: Aye.

22                  MS. HALSEY: Mr. Rivera?

23                  MEMBER RIVERA: Aye.

24                  MS. HALSEY: Mr. Saylor?

25                  MEMBER SAYLOR: Aye.

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1 MS. HALSEY: Thank you.

2 Items 9 through 15 are all on the Consent  
3 Calendar. So we're moving on to Item 16.

4 Item 16 is reserved for county applications for  
5 finding of significant financial distress or SB-1033  
6 applications. No SB-1033 applications have been filed.

7 Item 17 is the legislative update, which will  
8 be presented by Commission Staff Member Kerry Ortman.

9 MS. ORTMAN: Commission staff continues to  
10 monitor legislation for bills that might affect the  
11 mandate process. There are no new bills to report on at  
12 this time, but it's still early in the session.

13 On December 10<sup>th</sup>, 2013, the Assembly Local  
14 Government Committee held an informational hearing on  
15 state mandates with the participation of the LAO,  
16 Department of Finance, California League of Cities,  
17 California Special District Associations, CSAC, the State  
18 Controller's Office, and Commission staff.

19 The presentations included an overview and  
20 history of mandates, a review of the mandates process,  
21 and an update on the Commission's backlog reduction plan,  
22 the local-government perspective on mandates, and an  
23 overview of the State Controller's role in the mandate  
24 redetermination process.

25 CHAIR ORTEGA: Thank you.

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1 Any questions?

2 *(No response)*

3 CHAIR ORTEGA: Okay.

4 MS. HALSEY: Item 18 is the Chief Legal  
5 Counsel's report which will be presented by Chief Legal  
6 Counsel Camille Shelton.

7 MS. SHELTON: As indicated in the report, the  
8 County of Los Angeles and the surrounding cities have  
9 filed a petition for review with the California Supreme  
10 Court in the *Municipal Stormwater and Urban Runoff*  
11 *Discharge* claim.

12 I did receive notice this week that the Supreme  
13 Court is giving themselves an extra month to decide  
14 whether to accept jurisdiction on that petition. So we  
15 should know something on or before February 24<sup>th</sup>.

16 CHAIR ORTEGA: Thank you.

17 Any questions from Members?

18 *(No response)*

19 CHAIR ORTEGA: Okay, Heather?

20 MS. HALSEY: Item 19, it's the Executive  
21 Director's report. And today, I'm giving the mid-year  
22 workload update.

23 After today's hearing, the Commission has  
24 completed ten test claims, six parameters and guidelines,  
25 seven parameters-and-guidelines amendments, 13 incorrect

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1 reduction claims, ten statewide cost estimates, and two  
2 mandate redeterminations in this fiscal year.

3 This represents a major accomplishment for  
4 Commission staff and is a significant increase in matters  
5 completed over the first half of the last several fiscal  
6 years for each type of matter, except for the IRCs.

7 And with regard to the IRCs, most of the  
8 low-hanging fruit has been eliminated, and the Commission  
9 will be hearing and deciding on some of the more  
10 contentious issues pending over the next several  
11 hearings.

12 And it is hoped that the resolution of some of  
13 those contentious issues will then spur additional  
14 informal resolution of pending IRCs between the parties.  
15 And Commission staff will take steps to facilitate that  
16 type of informal resolution as well.

17 And regarding remaining caseload, we have  
18 18 test claims, four parameters and guidelines,  
19 five parameters-and-guidelines amendments, five statewide  
20 cost estimates, 76 incorrect-reduction claims, and two  
21 mandate redetermination claims remaining to be heard.

22 Commission staff expects to present all of the  
23 remaining test claims, with the exception of the *NPDES*  
24 *Permit* claims which are pending in court, to the  
25 Commission by the May hearing. And we also expect to

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1 present all the currently pending parameters and  
2 guidelines, parameters-and-guidelines amendments, and  
3 mandate-redetermination claims within this calendar year.

4 On the proposed budget, the Governor's proposed  
5 budget includes essentially no change from current year  
6 for the Commission's operations budget.

7 With regard to mandate funding, the Governor  
8 proposes \$36,204,000 different local agency mandates, and  
9 \$293,452,000 to fund the cost of K-12 and community  
10 college mandates.

11 The administration proposes the following  
12 changes from the current fiscal year, in the 2014-15  
13 budget. For local agencies, there is a reduction in the  
14 current-year appropriation for the *Sexually Violent*  
15 *Predators* program, in the wake of the recently adopted  
16 new test-claim decision that reduced the number of  
17 reimbursable activities.

18 The proposed budget also includes suspension  
19 of two programs with recently adopted statewide cost  
20 estimates; and those programs are *Local Agency Ethics* and  
21 *Tuberculosis Control*.

22 For the K-12 budget, it is primarily block  
23 grant funding. And the budget also proposes to fund  
24 additional mandate programs with recently adopted  
25 statewide cost estimates by adding them to the list of

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1 mandated programs subject to block grant funding. And  
2 those new programs include: *Charter Schools IV, Public*  
3 *Contracts, and Uniform Complaint Procedures.*

4 And for the community-college budget, the  
5 proposed changes include the following: Elimination of  
6 the *Community College Construction* mandate, funding of  
7 the *Public Contracts* mandate by adding the -- and adding  
8 the program to the block grant, and then reducing the  
9 block grant funding by \$512,000 as an adjustment.

10 For more detailed information on the budget,  
11 I do have attached appendices to the Executive Director's  
12 report.

13 And then finally, tentative agenda items.

14 For all the parties, if you check the Executive  
15 Director's report to see if your item is coming up in the  
16 next couple of hearings, if you do have any test claims  
17 that you're staffing, they should be scheduled for either  
18 March or May. So expect those draft staff's analyses to  
19 be coming out shortly.

20 And that's all I have, unless you have  
21 questions.

22 CHAIR ORTEGA: Thank you.

23 Questions?

24 MEMBER ALEX: I just wanted to thank you and  
25 staff for dealing with a huge amount of backlog and for

1 continuing very professional work on all of the test  
2 claims.

3 MS. HALSEY: Thank you.

4 CHAIR ORTEGA: Go ahead.

5 MEMBER RAMIREZ: I'd like to echo those  
6 comments. But also, I'd like to congratulate staff on  
7 their achievements. But I also think that from -- you  
8 know, I still consider myself relatively a newcomer here,  
9 but continue to feel that some of our claimants and  
10 members of the public, even, are not quite clear in the  
11 concept of what we're doing here. And I'm concerned  
12 about it, that the interest and energy that is displayed  
13 here seems misplaced; and that perhaps some of it should  
14 be more directed at getting programs properly funded and  
15 authorized, so that we sometimes feel like a villain, and  
16 I don't think it's really fair to staff, especially.

17 And I don't know what the appropriate way to  
18 proceed would be; but I actually feel that it would take  
19 some sort of discussion with our legislators about the  
20 whole process. Because I do sense a frustration, I'm  
21 sure, that folks go back home and say, "They wouldn't  
22 listen to us." And I sense their frustration. I feel  
23 it, too; but I know we have to follow the law.

24 It seems that people don't quite catch the  
25 subtleties here.

**Commission on State Mandates – January 24, 2014**

1           So just a comment for the record.

2           CHAIR ORTEGA: Thank you.

3           MEMBER SAYLOR: I second both comments, of both  
4 Commissioner Alex and Commissioner Ramirez.

5           You guys, this staff have done an incredible  
6 job here. There's a massive amount of workload, and it's  
7 really good to see it all come through.

8           I continue to wonder on some of the claims  
9 that come before us, where the issue from a mandates'  
10 perspective seems pretty clear -- it's a fee or it's a  
11 court ruling or -- it's just clear on the face that it's  
12 not a mandate; and yet such investment has gone into the  
13 preparation of the claim, and the response and the  
14 expense involved following that for all parties seems  
15 extreme.

16           And it does seem that some clarity of what can  
17 be done and what the rules are would help all parties.

18           And some of these issues, it seems like we  
19 ought to be able to figure out early resolution on the  
20 ones where it's really just -- it's not a question of the  
21 substance or the facts -- or of the policy topic or  
22 whatever; it's just it isn't a mandate that can be  
23 reimbursed through this process. So can't we just move  
24 on to the ones that are really at issue and find a way --  
25 we can't solve all the problems that I'd like to have us

**Commission on State Mandates – January 24, 2014**

1 be dealing with, frankly. But the ones we can, that are  
2 relevant to us, I wish we could have greater clarity for  
3 the claimants as well as for the process.

4 MS. HALSEY: Commission staff -- what I didn't  
5 report on is Commission staff did participate in the  
6 statewide county conference that the State Controller  
7 puts on this year. And that was really good, where we  
8 were able to present our mandates and how our process  
9 works, and what the Commission can and cannot do, and how  
10 we go through our legal analyses. And I do think things  
11 like that are helpful.

12 I don't think anyone was thrilled with our  
13 presentation, but they did understand -- well, that's not  
14 what they wanted to hear. But they did understand it,  
15 and we did give them handouts and showed them literally,  
16 how do we do the analysis and how do we determine whether  
17 this is a mandate. And I think it would be good to  
18 continue to do that with more groups of parties,  
19 including cities, special districts, schools.

20 MEMBER SAYLOR: I guess -- one last comment on  
21 this. I attended the annual conference of the California  
22 State Association of Counties. And they have a committee  
23 that is a -- I think it's called something like  
24 Government Operations or General Government, or something  
25 like that. And there was quite a bit of discussion about

**Commission on State Mandates – January 24, 2014**

1 the mandates process at that meeting, and that led up to  
2 the hearing that happened in December. So there's a  
3 growing dismay and concern in "Local Government Land"  
4 around "Does this work?" and "What can be done?"

5 CHAIR ORTEGA: Anything else?

6 *(No response)*

7 CHAIR ORTEGA: Okay, I think with that, we will  
8 recess into closed session.

9 The Commission will meet in closed executive  
10 session pursuant to Government Code section 11126(e) to  
11 confer with and receive advice from legal counsel for  
12 consideration and action, as necessary and appropriate,  
13 upon the pending litigation listed on the published  
14 notice and agenda; and to confer with and receive advice  
15 from legal counsel regarding potential litigation.

16 The Commission will also confer on personnel  
17 matters pursuant to Government Code section 11126(a)(1).

18 We will reconvene in open session in  
19 approximately 15 minutes.

20 Thank you, everyone, for vacating the room.

21 *(The Commission met in closed executive  
22 session from 11:45 a.m. to 12:05 p.m.)*

23 CHAIR ORTEGA: So we're going to reconvene the  
24 open session. No action was taken in the closed session.  
25 And we have two items to take up now.

**Commission on State Mandates – January 24, 2014**

1           The first item will be consideration of the  
2 Chief Counsel's compensation.

3           MEMBER OLSEN: So consistent with prior  
4 conversations, I'd like to make a motion that consistent  
5 with treatment of state employees, generally, the chief  
6 counsel's salary be adjusted for merit by 5 percent as  
7 soon as allowed by Cal HR rules.

8           CHAIR ORTEGA: Is there a second?

9           MEMBER RAMIREZ: Second.

10          CHAIR ORTEGA: All those in favor?

11          *(A chorus of "ayes" was heard.)*

12          CHAIR ORTEGA: Any opposed or abstentions?

13          *(No response)*

14          CHAIR ORTEGA: Seeing none, that motion is  
15 approved.

16          And the second item will be consideration of  
17 compensation of the Executive Director.

18          Heather, do you want to..?

19          MR. HONE: Item 21 is the salary adjustment for  
20 the Executive Director to the Commission. This exempt  
21 position is pursuant to Government Code section 17530.

22          MEMBER OLSEN: And I'd like to make motion that  
23 the Executive Director's salary be adjusted by 5 percent  
24 on the anniversary date of her appointment.

25          CHAIR ORTEGA: Is there a second?

**Commission on State Mandates – January 24, 2014**

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MEMBER RIVERA: Second.

CHAIR ORTEGA: Okay, all those in favor?

*(A chorus of "ayes" was heard.)*

CHAIR ORTEGA: Any opposition or abstentions?

*(No response)*

CHAIR ORTEGA: That motion is approved.

I think, with nothing further before the  
Commission, we will stand adjourned.

*(The meeting concluded at 12:06 p.m.)*

--oOo--

**REPORTER'S CERTIFICATE**

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

*In witness whereof*, I have hereunto set my hand on the 7<sup>th</sup> of February 2014.



Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomate Reporter  
Certified Realtime Reporter

## COMMISSION ON STATE MANDATES

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April 14, 2011

Mr. Daniele V. Hyde, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
221 N. Figueroa Street, Suite 1200  
Los Angeles, CA 90012

*And Affected State Agencies and Interested Parties (See Mailing List)*

Re: **Notice of Complete Test Claim Filing and Schedule for Comments**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

Dear Mr. Hyde:

On March 30, 2011, the Santa Clarita Valley Sanitation District of Los Angeles County filed a test claim entitled *Upper Santa Clara River Chloride Total Maximum Daily Load Requirements Imposed by the Los Angeles Regional Water Quality Control Board in Resolution R4-2008-0012*. Upon initial review, Commission staff found the test claim to be complete. The Commission is now requesting state agencies and interested parties to comment on the test claim as specified below. Please note that for technical purposes, we have shortened the title of the test claim to *Upper Santa Clara River Chloride Requirements*.

#### **State Agency Review of Test Claim**

State agencies receiving this letter are requested to analyze the merits of the test claim and to file written comments on or before Monday, **May 16, 2011**. Alternatively, if a state agency chooses not to respond to this request, please submit a written statement of non-response to the Commission. Requests for extensions of time may be filed in accordance with sections 1183.01 (c) and 1181.1 (g) of the Commission's regulations.

#### **Claimant Rebuttal**

The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.02 of the regulations. The rebuttal is due 30 days from the service date of written comments.

#### **Process for Filing Comments**

The Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy.

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) However, this requirement may also be satisfied by

Mr. Daniel V. Hyde

April 14, 2011

Page 2

electronically filing your documents on the Commission's website. Please see the Commission's website at [http://www.csm.ca.gov/dropbox\\_procedures.shtml](http://www.csm.ca.gov/dropbox_procedures.shtml) for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2) The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2, subdivision (c).

Please contact Heidi Palchik at (916) 323-8218 if you have any questions.

Sincerely,



Drew Bohan  
Executive Director

**From:** Heidi Palchik  
**Sent:** Thursday, April 14, 2011 4:49 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberley Nguyen; Leonard Kaye; Michael Lauffer; Socorro Aquino; Stephen R. Maguin; Susan Geanacou; Wayne Shimabukuro  
**Subject:** Commission on State Mandates: New Documents to Website - 10-TC-09

Good Afternoon:

The Commission on State Mandates has uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated April 14, 2011
- Mailing List and Proof of Service dated April 14, 2011
- Notice of Complete Test Claim Filing and Schedule for Comments
- New Test Claim File by Santa Clarita Valley Sanitation District of Los Angeles County dated March 30 ,2011

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usccr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst

Commission on State Mandates

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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 4/13/2011  
List Print Date: 04/14/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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## COMMISSION ON STATE MANDATES

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E-mail: csminfo@csm.ca.gov

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 14, 2011, I served the:

**Notice of Complete Test Claim Filing and Schedule for Comments**

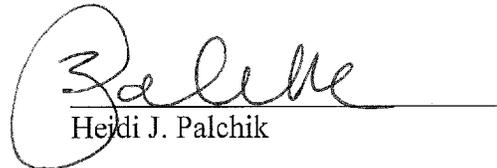
*Upper Santa Clara River Chloride Requirements*, 10-TC-09

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2011 at Sacramento, California.

  
Heidi J. Palchik

**From:** Heidi Palchik  
**Sent:** Wednesday, May 04, 2011 3:29 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberley Nguyen; Leonard Kaye; Michael Lauffer; Socorro Aquino; Stephen R. Maguin; Susan Geanacou; Wayne Shimabukuro  
**Subject:** Commission on State Mandates - New Documents to Website: 10-TC-09

Good Afternoon:

The Commission on State Mandates will upload new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated May 4, 2011
- Mailing List and Proof of Service dated May 4, 2011
- Notice of Approval of Request for Extension of Time dated May 4, 2011
- California Regional Water Quality Control Board Request for Extension of Time dated May 2, 2011

Once uploaded, you may access these documents at <http://www.csm.ca.gov/pendingclaims/usrcr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst

Commission on State Mandates

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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 4/13/2011  
List Print Date: 05/04/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

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Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Email harmeet@calsdrc.com Fax: (916) 727-1734
Ms. Kimberley Nguyen MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5516 Email kimberleynguyen@maximus.com Fax: (916) 366-4838
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-5849 Email jspano@sco.ca.gov Fax: (916) 327-0832
Mr. Michael Lauffer State Water Resources Control Board 1001 I Street, 22nd Floor Sacramento, CA 95814-2828	Tel: (916) 341-5183 Email mlauffer@waterboards.ca.gov Fax: (916) 641-5199
Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 893-0792 Email hyaghobyan@auditor.lacounty.gov Fax: (213) 617-8106
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603	Tel: (213) 974-9791 Email lkaye@auditor.lacounty.gov Fax: (213) 617-8106



**COMMISSION ON STATE MANDATES**

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SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 4, 2011, I served the:

**Request for Extension of Time*****Upper Santa Clara River Chloride Requirements, 10-TC-09*****Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,****Effective December 11, 2008****Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

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 4, 2011 at Sacramento, California.



Heidi J. Palchik

**From:** Heidi Palchik  
**Sent:** Friday, June 24, 2011 12:14 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberley Nguyen; Leonard Kaye; Michael Lauffer; Socorro Aquino; Stephen R. Maguin; Susan Geanacou; Wayne Shimabukuro  
**Subject:** Commission on State Mandates - New Documents to Website: 10-TC-09

Good Afternoon:

The Commission on State Mandates had uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated June 24, 2011
- Mailing List and Proof of Service dated June 24, 2011
- Notice of Approval of Request for Extension of Time dated June 24, 2011
- California Regional Water Quality Control Board Request for Extension of Time dated June 23, 2011

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usrcrcr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst

Commission on State Mandates

980 9<sup>th</sup> Street, Suite 300

Sacramento, CA 95814

(916) 323-8218

(916) 445-0278 fax

[heidi.palchik@csm.ca.gov](mailto:heidi.palchik@csm.ca.gov)

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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 4/13/2011  
List Print Date: 06/24/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Mr. J. Bradley Burgess MGT of America 895 La Sierra Drive Sacramento, CA 95864	Tel: (916)595-2646 Email Bburgess@mgtamer.com Fax:
Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819	Tel: (916) 455-3939 Email andy@nichols-consulting.com Fax: (916) 739-8712
Ms. Anita Worlow AK & Company 3531 Kersey Lane Sacramento, CA 95864	Tel: (916)972-1666 Email akcompany@um.att.com Fax:
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: (916)471-5513 Email julianagmur@msn.com Fax: (916)366-4838
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Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916)368-9244 Email dwa-david@surewest.net Fax: (916)368-5723

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Mr. Daniel V. Hyde, Esq. Lewis Brisbois Bisgaard & Smith LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012	Tel: (213) 580-5103 Email hyde@lbbslaw.com Fax: (213) 250-7900
Ms. Evelyn Tseng City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Email etseng@newportbeachca.gov Fax: (949) 644-3339
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Mr. Stephen R. Maguin Santa Clarita Valley Sanitation District of Los Angeles 1955 Workman Mill Road	Tel: (562) 699-7411 Email smaguin@lacsdsd.org Fax:

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## COMMISSION ON STATE MANDATES

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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 June 24, 2011, I served the:

**Request for Extension of Time*****Upper Santa Clara River Chloride Requirements, 10-TC-09*****Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,****Effective December 11, 2008****Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

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 June 24, 2011 at Sacramento, California.



Heidi J. Palchik

**From:** Heidi Palchik  
**Sent:** Monday, August 01, 2011 3:10 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Christien Brunette; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberly Huangfu; Leonard Kaye; Mark Rewolinski; Michael Lauffer; Sarah Olinger; Socorro Aquino; Stephen R. Maguin; Susan Geanacou; Wayne Shimabukuro  
**Subject:** Commission on State Mandates - New Documents to Website: 10-TC-09

The Commission on State Mandates will upload new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**. For your convenience, these documents are linked below:

- [Current Mailing List dated August 1, 2011](#)
- [Mailing List and Proof of Service dated August 1, 2011](#)
- [Department of Finance Comments dated August 1, 2011](#)
- [Los Angeles Regional Water Quality Control Board \(LARWQCB\) Comments dated July 29, 2011](#)

Once uploaded, you will be able to access this matter at <http://www.csm.ca.gov/pendingclaims/usccr.html>.

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Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst

Commission on State Mandates

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Sacramento, CA 95814

(916) 323-8218

(916) 445-0278 fax

[heidi.palchik@csm.ca.gov](mailto:heidi.palchik@csm.ca.gov)

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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 8/1/2011  
List Print Date: 08/01/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Mr. Daniel V. Hyde, Esq. Lewis Brisbois Bisgaard & Smith LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012	Tel: (213) 580-5103 Email hyde@lbbslaw.com Fax: (213) 250-7900
Ms. Evelyn Tseng City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Email etseng@newportbeachca.gov Fax: (949) 644-3339
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Mr. Stephen R. Maguin Santa Clarita Valley Sanitation District of Los Angeles 1955 Workman Mill Road Whittier, CA 90601	Tel: (562) 699-7411 Email: smaguin@lacsdsd.org Fax:
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Mr. Michael Lauffer  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
Sacramento, CA 95814-2828

Tel: (916) 341-5183  
Email: mlauffer@waterboards.ca.gov  
Fax: (916) 641-5199

---

Ms. Hasmik Yaghobyan  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Tel: (213) 893-0792  
Email: hyaghobyan@auditor.lacounty.gov  
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500 W. Temple Street, Room 603  
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Tel: (213) 974-9791  
Email: lkaye@auditor.lacounty.gov  
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## COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814  
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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 August 1, 2011, I served the:

**LARWQCB and DOF Comments**

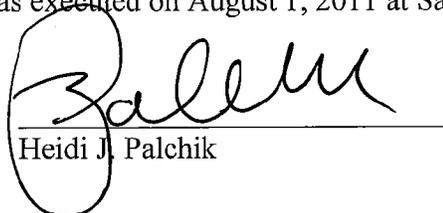
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

**Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008**

**Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

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 August 1, 2011 at Sacramento, California.

  
Heidi J. Palchik

**From:** Heidi Palchik  
**Sent:** Monday, August 22, 2011 12:43 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Christien Brunette; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberly Huangfu; Leonard Kaye; Mark Rewolinski; Michael Lauffer; Miranda Jackson; Sarah Olinger; Socorro Aquino; Stephen R. Maguin; Susan Geanacou; Wayne Shimabukuro  
**Subject:** New Documents to Website: 10-TC-09

Good Afternoon:

The Commission on State Mandates has uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated August 22, 2011
- Mailing List and Proof of Service dated August 22, 2011
- Notice of Approval of Request for Extension of Time dated August 22, 2011
- Claimant Request for Extension of Time dated August 19, 2011

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usrcr.shtml>.

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Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst  
Commission on State Mandates

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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 8/22/2011  
List Print Date: 08/22/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

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Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: (916)471-5513 Email julianagmur@msn.com Fax: (916) 366-4838
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916)445-8913 Email jeff.carosone@dof.ca.gov Fax:
Ms. Jennifer L. Fordyce State Water Resources Control Board 1001 I Street, 22nd floor Sacramento, CA 95814	Tel: (916) 324-6682 Email jfordyce@waterboards.ca.gov Fax: (916) 341-5199
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Email dwa-david@surewest.net Fax: (916) 368-5723

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Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 324-0256 Email: JLal@sco.ca.gov Fax: (916) 323-6527
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Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Email: susan.geanacou@dof.ca.gov Fax: (916) 449-5252
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Email: harmeet@calsdrc.com Fax: (916) 727-1734
Mr. Mark Rewolinski MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5516 Email: markrewolinski@maximus.com Fax: (916) 366-4838

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---

Ms. Hasmik Yaghobyan  
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## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

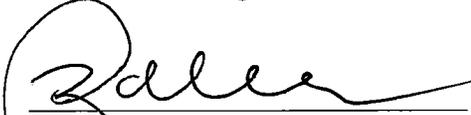
I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 22, 2011, I served the:

**Claimant Extension Request*****Upper Santa Clara River Chloride Requirements, 10-TC-09*****Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,****Effective December 11, 2008****Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

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 August 22, 2011 at Sacramento, California.



Heidi J. Palchik

**From:** Heidi Palchik  
**Sent:** Thursday, September 29, 2011 3:26 PM  
**To:** Allan Burdick; Andy Nichols; Anita Worlow; Annette Chinn; Carla Shelton; Christien Brunette; Daniel V. Hyde; David Wellhouse; Donna Ferebee; Edward Jewik; Evelyn Tseng ; Harmeet Barkschat; Hasmik Yaghobyan; J. Bradley Burgess; Jai Prasad; Jay Lal; Jeff Carosone; Jennifer L. Fordyce; Jill Kanemasu; Jim Spano; Jolene Tollenaar; Juliana F. Gmur; Kimberly Huangfu; Leonard Kaye; Mark Rewolinski; Melissa Mendonca; Michael Lauffer; Miranda Jackson; Sarah Olinger; Socorro Aquino; Stephen R. Maguin; Susan Geanacou  
**Subject:** New Documents to Website: 10-TC-09

Good Afternoon:

The Commission on State Mandates has uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated September 29, 2011
- Proof of Service dated September 29, 2011
- Claimant Rebuttal Comments dated September 28, 2011

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usccr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,

**Heidi J. Palchik**

Program Analyst

Commission on State Mandates

980 9<sup>th</sup> Street, Suite 300

Sacramento, CA 95814

(916) 323-8218

(916) 445-0278 fax

[heidi.palchik@csm.ca.gov](mailto:heidi.palchik@csm.ca.gov)

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**COMMISSION ON STATE MANDATES**

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FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

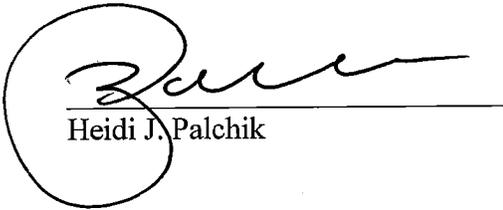
I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 29, 2011, I served the:

**Claimant Rebuttal Comments*****Upper Santa Clara River Chloride Requirements, 10-TC-09*****Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008****Santa Clarita Valley Sanitation District of Los Angeles County, Claimant**

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2011 at Sacramento, California.



Heidi J. Palchik

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 9/29/2011  
List Print Date: 09/29/2011  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Mr. J. Bradley Burgess MGT of America 895 La Sierra Drive Sacramento, CA 95864	Tel: (916)595-2646 Email Bburgess@mgtamer.com Fax:
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Ms. Jennifer L. Fordyce State Water Resources Control Board 1001 I Street, 22nd floor Sacramento, CA 95814	Tel: (916)324-6682 Email jfordyce@waterboards.ca.gov Fax: (916)341-5199
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Ms. Kimberly Huangfu Lewis Brisbois Bisgaard & Smith LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012	Tel: (213) 580-3907 Email: huangfu@lbbslaw.com Fax: (213) 250-7900
Mr. Stephen R. Maguin Santa Clarita Valley Sanitation District of Los Angeles 1955 Workman Mill Road Whittier, CA 90601	Tel: (562) 699-7411 Email: smaguin@lacsdsd.org Fax:
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Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916) 443-9136 Email: jolene_tollenaar@mgtamer.com Fax: (916) 443-1766
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Email: susan.geanacou@dof.ca.gov Fax: (916) 449-5252
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Email: harmeet@calsdrc.com Fax: (916) 727-1734

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Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-5849 Email jspano@sco.ca.gov Fax: (916) 327-0832
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Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 893-0792 Email hyaghobyan@auditor.lacounty.gov Fax: (213) 617-8106
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-9791 Email lkaye@auditor.lacounty.gov Fax: (213) 617-8106

## COMMISSION ON STATE MANDATES

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E-mail: csminfo@csm.ca.gov



September 20, 2013

Mr. Daniel V. Hyde, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
221 N. Figueroa Street, Suite 1200  
Los Angeles, CA 90012

*And Interested Parties and Affected State Agencies (See Mailing List)*

Re: **Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

Dear Mr. Hyde:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

#### Written Comments

Any party or interested person may file written comments on the draft staff analysis by **October 11, 2013**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

#### Hearing

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 22, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Matt Jones at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**From:** Jason Hone  
**To:** ["Allan Burdick"](#); ["Andy Nichols"](#); ["Anita Worlow"](#); ["Annette Chinn"](#); ["Brian Uhler"](#); ["Christien Brunette"](#); ["Daniel V. Hyde"](#); ["David Wellhouse"](#); ["Dean Walltraff"](#); ["Dennis Speciale"](#); ["Edward Jewik"](#); ["Evelyn Tseng"](#); ["Ferlyn Junio"](#); ["Frank Murphy"](#); ["Geoffrey Neill"](#); ["Gwendolyn Carlos"](#); ["Harmeet Barkschat"](#); ["Hasmik Yaghobyan"](#); ["Hortencia Mato"](#); ["J. Bradley Burgess"](#); ["Jai Prasad"](#); ["Jay Lal"](#); ["Jeff Goldstein"](#); ["Jill Kanemasu"](#); ["Jim Spano"](#); ["Jolene Tollenaar"](#); ["Kathy Rios"](#); ["Kimberly Huangfu"](#); ["Lacey Baysinger"](#); ["Leonard Kaye"](#); ["Marieta Delfin"](#); ["Mark Ibele"](#); ["Mark Rewolinski"](#); ["Matt Jones"](#); ["Michael Byrne"](#); ["Michael Lauffer"](#); ["Michelle Mendoza"](#); ["Sarah Olinger"](#); ["Socorro Aquino"](#); ["Stephen R. Maquin"](#); ["Susan Geanacou"](#); ["Tom Dyer"](#)  
**Bcc:** [Jason Rogers](#)  
**Subject:** New Documents to Website: Upper Santa Clara River Chloride Requirements (10-TC-09)  
**Date:** Friday, September 20, 2013 4:53:00 PM

---

Good Afternoon:

The Commission on State Mandates (Commission) has issued the draft staff analysis and proposed statement of decision for the **Upper Santa Clara River Chloride Requirements** program, **10-TC-09**.

You may access these documents under the **December 6, 2013 Hearing** on the **For Public Comment** tab on the Commission's website at [http://csm.ca.gov/pub\\_comment.shtml](http://csm.ca.gov/pub_comment.shtml).

The direct link to these documents is <http://csm.ca.gov/pendingclaims/usrcr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary. If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

## Jason Hone

*Assistant Executive Director*

Commission on State Mandates

916.323.3562 | 916.445.0278 fax

980 9th Street, Suite 300 | Sacramento, CA 95814

[www.csm.ca.gov](http://www.csm.ca.gov)

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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 20, 2013, I served the:

**Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**  
*Upper Santa Clara River Chloride Requirements, 10-TC-09*  
Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008  
Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 20, 2013 at Sacramento, California.



---

Jason Hone  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 9/20/2013  
List Print Date: 09/20/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Geoffrey Neill California State Association of Counties 1100 K Street, Ste 101 Sacramento, CA 95814	Tel: (916) 327-7500 Email: gneill@counties.org Fax: (916) 321-5070
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Ms. Marieta Delfin State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-0706 Email: mdelfin@sco.ca.gov Fax: (916) 322-4404
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Mr. Tom Dyer Department of Finance (A-15) 915 L Street Sacramento, CA 95814	Tel: (916) 445-3274 Email tom.dyer@dof.ca.gov Fax:
Ms. Jennifer L. Fordyce State Water Resources Control Board 1001 I Street, 22nd floor Sacramento, CA 95814	Tel: (916) 324-6682 Email jfordyce@waterboards.ca.gov Fax: (916) 341-5199
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**From:** Heidi Palchik  
**To:** ["Allan Burdick"](#); ["Andy Nichols"](#); ["Anita Worlow"](#); ["Annette Chinn"](#); ["Brian Uhler"](#); ["Claire Hervey Collins"](#); ["David Wellhouse"](#); ["Dean Wallraff"](#); ["Dennis Speciale"](#); ["Edward Jewik"](#); ["Evelyn Tseng"](#); ["Ferlyn Junio"](#); ["Geoffrey Neill"](#); ["Grace R. Chan"](#); ["Gwendolyn Carlos"](#); ["Harmeet Barkschat"](#); ["Hasmik Yaghobyan"](#); ["Hortensia Mato"](#); ["J. Bradley Burgess"](#); ["Jai Prasad"](#); ["Jay Lal"](#); ["Jennifer L. Fordyce"](#); ["Jill Kanemasu"](#); ["Jim Spano"](#); ["Jolene Tollenaar"](#); ["Kathy Rios"](#); ["Kimberly Huangfu"](#); ["Lacey Baysinger"](#); ["Lee Scott"](#); ["Marieta Delfin"](#); ["Mark Ibele"](#); ["Mark Rewolinski"](#); ["Matt Jones"](#); ["Matthew Schuneman"](#); ["Meg Svoboda"](#); ["Michael Byrne"](#); ["Michael Lauffer"](#); ["Michelle Mendoza"](#); ["Sarah Olinger"](#); ["Socorro Aquino"](#); ["Susan Geanacou"](#); ["Tom Dyer"](#)  
**Cc:** [Jason Hone](#)  
**Subject:** New Documents to Website: Upper Santa Clara River Chloride Requirements, 10-TC-09  
**Date:** Tuesday, October 08, 2013 1:23:00 PM

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Good Afternoon:

The Commission on State Mandates has uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated October 8, 2013
- Proof of Service dated October 8, 2013
- Notice of Approval of Request for Extension dated October 8, 2013
- Claimant Request for Extension of Time dated October 7, 2013
- DOF Comments dated October 7, 2013

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usrcrcr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail.

However, please note that e-filing and service by e-mail is voluntary. If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,  
Heidi

**Heidi Palchik**

Program Analyst

Commission on State Mandates

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sender and destroy all copies of the communication.



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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 8, 2013, I served the:

**Department of Finance Comments;  
Claimant Request for Extension of Time; and  
Extension Approval**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 8, 2013 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/8/2013  
List Print Date: 10/08/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Claire Hervey Collins Lewis Brisbois Bisgaard & Smith LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012	Tel: (213) 580-5103 Email: claire.collins@lewisbrisbois.com Fax: (213) 250-7900
Ms. Evelyn Tseng City of Newport Beach 100 Civic Center Drive	Tel: (949) 644-3127 Email: etseng@newportbeachca.gov Fax: (949) 644-3339

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**From:** Heidi Palchik  
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**Cc:** [Jason Hone](#)  
**Subject:** New Documents to Website: Upper Santa Clara River Chloride Requirements , 10-TC-09  
**Date:** Thursday, October 10, 2013 1:26:00 PM

---

Good Afternoon:

The Commission on State Mandates has uploaded new documents on the Commission's website for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

- Current Mailing List dated October 10, 2013
- Proof of Service dated October 10, 2013
- Notice of Approval of Request for Extension and Postponement dated October 10, 2013
- CRWQCB Request for Extension and Postponement dated October 9, 2013
- Public Comments dated October 9, 2013

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usrcrcr.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail.

However, please note that e-filing and service by e-mail is voluntary. If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,  
Heidi

**Heidi Palchik**

Program Analyst

Commission on State Mandates

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sender and destroy all copies of the communication.



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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 10, 2013, I served the:

**Public Comments;**

**SWRCB Request for Extension and Postponement; and  
Extension and Postponement Approval**

*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 10, 2013 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/10/2013  
List Print Date: 10/10/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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**From:** Lorenzo Duran  
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**Cc:** [Heidi Palchik](#)  
**Subject:** New Documents to Website (10-TC-09) Upper Santa Clara River Chloride Requirements  
**Date:** Monday, October 21, 2013 12:24:00 PM

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The Commission on State Mandates has uploaded new documents on the Commission's website for **(10-TC-09) Upper Santa Clara River Chloride Requirements**.

- Current Mailing List dated October 21, 2013
- Proof of Service dated October 21, 2013
- City of Santa Clarita Comments dated October 18, 2013

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usccrcr.shtm>

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,  
Lorenzo Duran

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 21, 2013, I served the:

**City of Santa Clarita Comments**

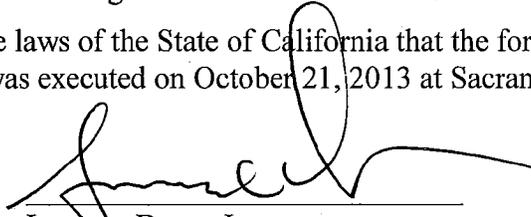
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 21, 2013 at Sacramento, California.



Lorenzo Duran Jr.  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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(916) 323-3562

## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 10/21/2013  
List Print Date: 10/21/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

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**Cc:** [Heidi Palchik](#)  
**Subject:** New Documents to Website (10-TC-09) Upper Santa Clara River Chloride Requirements  
**Date:** Monday, November 04, 2013 3:19:00 PM

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The Commission on State Mandates has uploaded new documents on the Commission's website for **(10-TC-09) Upper Santa Clara River Chloride Requirements**.

- Current Mailing List dated November 4, 2013
- Proof of Service dated November 4, 2013
- Claimant Comments dated November 1, 2013
- CRWQCB Comments dated November 1, 2013

You may access these documents at <http://www.csm.ca.gov/pendingclaims/usccr.shtml>

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." **Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary.** If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,  
Lorenzo Duran

**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 November 4, 2013, 2013, I served the:

**California Regional Water Quality Control Board Comments; and Claimant Comments**

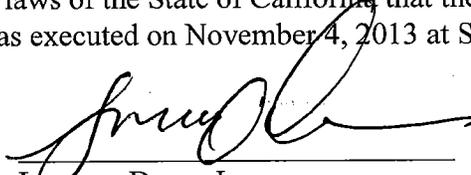
*Upper Santa Clara River Chloride Requirements, 10-TC-09*

Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012,  
Effective December 11, 2008

Santa Clarita Valley Sanitation District of Los Angeles County, Claimant

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 November 4, 2013 at Sacramento, California.



Lorenzo Duran Jr.  
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## Commission on State Mandates

Original List Date: 4/13/2011  
Last Updated: 11/4/2013  
List Print Date: 11/04/2013  
Claim Number: 10-TC-09  
Issue: Upper Santa Clara River Chloride Requirements

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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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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# COMMISSION ON STATE MANDATES

## Mailing List

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**Claim Number:** 10-TC-09

**Matter:** Upper Santa Clara River Chloride Requirements

**Claimant:** Santa Clarita Valley Sanitation District of Los Angeles

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**To:** ["Socorro Aquino"; "Harmeet Barkschat"; "Lacey Baysinger"; "Allan Burdick"; "J. Bradley Burgess"; "Michael Byrne"; "Gwendolyn Carlos"; "Grace R. Chan"; "Annette Chinn"; "Marieta Delfin"; "Tom Dyer"; "Jennifer Fordyce"; "Susan Geanacou"; "Claire Hervev Collins"; "Dorothy Holzem"; "Mark Ibele"; "Edward Jewik"; "Matt Jones"; "Ferlyn Junio"; "Jill Kanemasu"; "Jean Kinney Hurst"; "Nicole Kuenzi"; "Jay Lal"; "Travis Lange"; "Michael Lauffer"; "Kathleen Lynch"; "Hortensia Mato"; "Frances McChesney"; "Michelle Mendoza"; "Geoffrey Neill"; "Jessica Newman"; "Andy Nichols"; "Marianne O'Malley"; "Lori Okun"; "Christian Osmena"; "Keith Petersen"; "Jai Prasad"; "Renee Purdy"; "Mark Rewolinski"; "Kathy Rios"; "Matthew Schuneman"; "Lee Scott"; "David Scribner"; "Deborah Smith"; "Jim Spano"; "Dennis Speciale"; "Meg Svoboda"; "Jolene Tollenaar"; "Evelyn Tseng"; "Brian Uhler"; "Samuel Unger"; "Dean Wallraff"; "David Wellhouse"; "Anita Worlow"; "Hasmik Yaghobyan"](#)  
**Cc:** [Jason Hone](#)  
**Subject:** New Documents to Website: Upper Santa Clara River Chloride Requirements, 10-TC-09  
**Date:** Thursday, January 09, 2014 2:09:00 PM

---

Good Afternoon:

The Commission on State Mandates (Commission) has issued the proposed statement of decision for the *Upper Santa Clara River Chloride Requirements* program, **10-TC-09**.

You may access this document under the *Current Hearing* tab on the Commission's website at <http://www.csm.ca.gov/agendas/012414.shtml>.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail.

However, please note that e-filing and service by e-mail is voluntary. If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,  
Heidi

**Heidi Palchik**

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**COMMISSION ON STATE MANDATES****Mailing List****Last Updated:** 1/22/14**Claim Number:** 10-TC-09**Matter:** Upper Santa Clara River Chloride Requirements**Claimant:** Santa Clarita Valley Sanitation District of Los Angeles**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, § 1181.2.)

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**From:** Jason Hone  
**To:** ["Socorro Aquino"](#); ["Harmeet Barkschat"](#); ["Lacey Baysinger"](#); ["Allan Burdick"](#); ["J. Bradley Burgess"](#); ["Michael Byrne"](#); ["Gwendolyn Carlos"](#); ["Grace R. Chan"](#); ["Annette Chinn"](#); ["Marieta Delfin"](#); ["Tom Dyer"](#); ["Jennifer Fordyce"](#); ["Susan Geanacou"](#); ["Claire Hervey Collins"](#); ["Dorothy Holzem"](#); ["Mark Ibele"](#); ["Edward Jewik"](#); ["Matt Jones"](#); ["Ferlyn Junio"](#); ["Jill Kanemasu"](#); ["Anita Kerezi"](#); ["Jean Kinney Hurst"](#); ["Nicole Kuenzi"](#); ["Jay Lal"](#); ["Travis Lange"](#); ["Michael Lauffer"](#); ["Kathleen Lynch"](#); ["Hortensia Mato"](#); ["Frances McChesney"](#); ["Michelle Mendoza"](#); ["Geoffrey Neill"](#); ["Andy Nichols"](#); ["Marianne O'Malley"](#); ["Lori Okun"](#); ["Christian Osmena"](#); ["Keith Petersen"](#); ["Jai Prasad"](#); ["Renee Purdy"](#); ["Mark Rewolinski"](#); ["Kathy Rios"](#); ["Matthew Schuneman"](#); ["Lee Scott"](#); ["David Scribner"](#); ["Deborah Smith"](#); ["Jim Spano"](#); ["Dennis Speciale"](#); ["Meg Svoboda"](#); ["Jolene Tollenaar"](#); ["Evelyn Tseng"](#); ["Brian Uhler"](#); ["Samuel Unger"](#); ["Dean Wallraff"](#); ["David Wellhouse"](#); ["Wendy Wert"](#); ["Hasmik Yaghobyan"](#)  
**Subject:** New Documents to Website: Upper Santa Clara River Chloride Requirements (10-TC-09)  
**Date:** Friday, January 31, 2014 9:08:00 AM

---

Good Morning:

The Commission on State Mandates has issued the **adopted statement of decision** for the [Upper Santa Clara River Chloride Requirements](#) test claim, [10-TC-09](#).

- Current Mailing List dated January 22, 2013
- Adopted Statement of Decision issued January 31, 2014

You may access these documents under [Commission Decisions](#) on the Commission's website.

Section 1181.2 (c)(A) of the Commission's regulations states that "by providing an electronic mail (e-mail) address for the mailing list for a matter, a person consents to e-mail service of documents for that matter." Therefore, because you have provided your e-mail address to the Commission for a mailing list you are deemed to have consented to service by e-mail. However, please note that e-filing and service by e-mail is voluntary. If you do not wish to be served by e-mail please notify the Commission and your e-mail address will be removed from the mailing list and you will be served by hard copy.

Please contact me if you have questions or are unable to access these documents.

Thank you,

## Jason Hone

*Assistant Executive Director*

Commission on State Mandates

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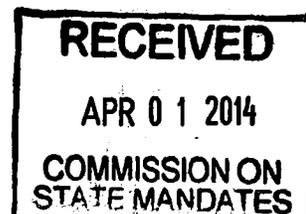
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March 27, 2014

File No.  
17.8177

Custodian of Records  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, CA 95814

Re: Public Records Act Request

Dear Sir or Madam:

This office represents the Santa Clarita Valley Sanitation District and this request is made on its behalf.

Pursuant to the California Public Records Act, Gov. Code § 6250 *et seq.*, Santa Clarita Valley Sanitation District (the "District") requests all documents making up the administrative record of Test Claim No. 10-TC-09 and all proceedings relating thereto, including transcripts of any hearings thereof.

For purposes of this request, a "public record" means any document containing information relating to the conduct of the public's business, prepared, owned, used, or retained by the Regional Board or any of its personnel. "Document" includes any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation and any record thereby created, regardless of the manner in which the record has been stored.

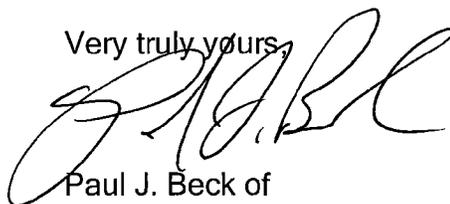
If you determine that some or all of the requested documents, or portions of documents, are exempt from disclosure, please describe the withheld documents and deleted portions of the documents in detail. Please also specify the statutory bases for any denial of this request, or portion thereof, as well as your reasons for believing that the statutory justification applies. In addition, reasonably segregable portions of documents must be made available even if other portions of the requested documents are exempt.

Custodian of Records  
March 27, 2014  
Page 2

The Public Records Act provides that you are to respond to this request within ten days. *See* Gov. Code § 6253(c). Please notify me by telephone or email when any portion of the documents are ready, and I will arrange for their pick up by courier.

For any responsive public records kept in an electronic format, the District requests that an electronic copy of the document be produced in that format. *See* Gov. Code § 6253.9. Thank you.

Very truly yours,



Paul J. Beck of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

PJB/ps

## Beck, Paul

---

**From:** Jason Hone <jason.hone@csm.ca.gov>  
**Sent:** Thursday, April 03, 2014 10:07 AM  
**To:** Beck, Paul  
**Subject:** Public Records Act Request - Santa Clarita Valley Sanitation District  
**Attachments:** 2014-02 PRA Request from Santa Clarita Valley Sanitation District (04-01-2014).pdf; 10-TC-09 emails.pdf

**RE: Upper Santa Clara River Chloride Requirements, 10-TC-09**

Dear Mr. Beck,

The Commission on State Mandates (Commission) received the attached public records act request on April 1, 2014. Your request for "all documents making up the administrative record of Test Claim No. 10-TC-09 and all proceedings relating thereto, including transcripts of any hearings thereof," may be satisfied with electronic documents available on the Commission's website and attached to this e-mail.

The majority of records responsive to this request may be downloaded from the Commission's website as follows:

- All comments, correspondence, and filings of parties, interested parties and interested persons related to this matter, as well as all Commission-issued documents and decisions, may be found on this page:  
<http://csm.ca.gov/pendingclaims/usrcr.shtml>
- The proposed decision as it was before the Commission (including exhibits) on January 24, 2014 may be found on the agenda page under Item 6 at:  
<http://www.csm.ca.gov/agendas/012414.shtml>
- The minutes and transcript of the January 24, 2014 hearing, adopted on March 28, 2014, are linked from the following page:  
<http://www.csm.ca.gov/hearing.shtml>

The only records not available on the Commission's website are the e-mails sent by staff to serve parties, interested parties and interested persons the documents posted on the Commission's website. Those e-mails are attached here in PDF format.

This constitutes the complete record for the test claim 10-TC-09.

Please contact me if you have any questions.

Thank you,

**Jason Hone**

*Assistant Executive Director*

Commission on State Mandates

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[www.csm.ca.gov](http://www.csm.ca.gov)

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