

State Water Resources Control Board

July 13, 2026

VIA DROP BOX

Juliana F. Gmur
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COMMENTS OF THE STATE WATER RESOURCES CONTROL BOARD AND CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION ON THE DRAFT PROPOSED DECISION

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2015-0049, Provisions C.3.j, C.10.a, C.10.b, C.11.a, C.11.b, C.11.c, C.12.a, C.12.d, and C.12.e, Adopted November 19, 2015, and Effective on January 1, 2016, City of Union City, Claimant, 16-TC-03

Dear Ms. Gmur:

The State Water Resources Control Board (State Water Board) and California Regional Water Quality Control Board, San Francisco Bay Region (San Francisco Bay Water Board) (together, Water Boards) have reviewed the Draft Proposed Decision for Test Claim 16-TC-03 issued by the Commission on State Mandates (Commission) on December 23, 2025. The Water Boards appreciate the thorough analysis of Commission staff. We generally concur with the conclusions that would deny reimbursement for challenged provisions in San Francisco Bay Water Board Order R2-2015-0049 but do not agree with the conclusions that some of the challenged provisions constitute reimbursable state-mandated new programs or higher levels of service. We maintain the arguments in our comments on the test claim with respect to the latter.¹ The Water Boards submit the following comments on permittees' fee authority.

The Draft Proposed Decision discusses local agency constitutional and statutory authorities to raise fees, including what courts have found to constitute sufficient fee authority as a legal matter within the meaning of Government Code section 17556, subdivision (d).² The Water Boards agree with the Draft Proposed Decision's conclusion

¹ See San Francisco Bay Water Board Response to Union City Test Claim 16-TC-03 (Order R2-2015-0049), Jan. 31, 2018.

² Draft Proposed Decision, pp. 170–206.

that permittees have sufficient regulatory fee authority related to the Green Infrastructure Plan requirements and sufficient fee authority based on *Paradise Irrigation District* (2019) 33 Cal.App.5th 174 and the Legislature's enactment of Government Code sections 57350 and 57351 for costs incurred beginning January 1, 2018. Notwithstanding *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 (2022 *Department of Finance*), the Water Boards maintain that the rationale in *Paradise Irrigation District* applies to voter approval requirements and permittees have sufficient fee authority for all costs.

The Water Boards disagree with the holding in the 2022 *Department of Finance* decision and the conclusion in the Draft Proposed Decision that permittees lack fee authority for costs incurred *prior* to 2018 due to Proposition 218's voter approval provisions.³ The Water Boards maintain that permittees had sufficient fee authority as a legal matter under Government Code section 17556(d) for the entire test claim period and are not entitled to reimbursement for any costs. California courts have consistently held that fee authority is purely a question of legal authorization.⁴ “[F]actual considerations of practicality” do not defeat a local agency’s fee authority.⁵ Even where Proposition 218 requires voter approval for fees to pay for specific state mandates, the permittees still have fee authority, and expenditures for mandates are not reimbursable.

In *Paradise Irrigation, supra*, the court of appeal considered whether the majority protest procedure added by Proposition 218 deprived local agencies of authority to impose fees for water service.⁶ California Constitution, Article XIII D, section 6(a), requires a local agency to identify parcels subject to a new fee, calculate the fee amount, and provide notice to affected property owners.⁷ If a majority of the property owners submit written protests against the fee, the fee may not be imposed.⁸

The *Paradise Irrigation* court held that the “majority protest procedures are properly construed as a power-sharing arrangement between the districts and their customers, rather than a deprivation of fee authority.”⁹ The court explained that, when considering how voter powers affect the ability of local governments to impose fees, courts “presume local voters will give appropriate consideration and deference to state mandated requirements”¹⁰ “Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good

³ Draft Proposed Decision, pp. 201–206.

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

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

⁶ *Id.* at p. 182.

⁷ Cal. Const., art. XIII D, § 6, subd. (a), par. (1).

⁸ Cal. Const., art. XIII D, § 6, subd. (a), par. (2).

⁹ *Paradise Irrigation, supra*, 33 Cal.App.5th at p. 182.

¹⁰ *Id.* at p. 194, citing *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220.

faith.”¹¹ Further, the fact that, “as a matter of practical reality, the majority protest procedure allows water customers to defeat the District’s authority to levy fees” was not dispositive; “the inquiry into fee authority constitutes an issue of law rather than a question of fact.”¹²

The *Paradise Irrigation* court did not consider whether a local agency has fee authority as a legal matter where fees or assessments are subject to voter approval requirements. However, the court’s reasoning should apply with equal force where Proposition 218 requires pre-approval by a majority vote of the affected property owners (or, alternatively, by a two-thirds vote of the electorate). That the governing body of a municipality (e.g., County Board of Supervisors or City Council) and the affected property owners who elected that body share power to impose fees does not mean claimants are deprived of fee authority under Government Code section 17556. And the fact that property owners in claimants’ local jurisdictions could theoretically withhold approval—just as a majority of the governing body could theoretically withhold approval to impose a fee—does not undermine claimants’ police power; that power exists regardless of what the property owners, or the governing body, might decide about any given fee.

In *2022 Department of Finance*, the State Water Board and the San Diego Water Board argued that the court should extend the reasoning in *Paradise Irrigation* to Proposition 218 pre-approval requirements. The Third District Court of Appeal did not agree.¹³ Other districts are not bound by the Third District Court of Appeal’s decision and could decide differently,¹⁴ as could the California Supreme Court. As such, the Water Boards maintain their arguments on this issue.

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

Sincerely,



Teresita J. Sablan
Attorney IV

cc: Service List [via Commission Drop Box]

¹¹ *Id.* at p. 192.

¹² *Id.*, at p. 195, citing *Connell*, *supra*, 59 Cal.App.4th at p. 401.

¹³ See *2022 Department of Finance*, 85 Cal.App.5th at pp. 577–81.

¹⁴ See, e.g., *People v. Kisling* (2014) 223 Cal.App.4th 544, 547–48, quoting *Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1489, fn. 10 (“ “[T]here is no “horizontal stare decisis” within the Court of Appeal.” ’ ”).

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 July 14, 2026, I served the:

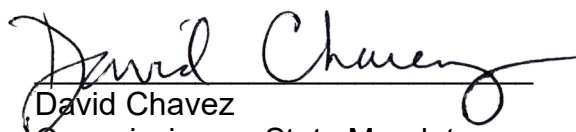
- **Current Mailing List dated July 13, 2026**
- **Claimant's Comments on the Draft Proposed Decision filed July 13, 2026**
- **Finance's Comments on the Draft Proposed Decision filed July 13, 2026**
- **Water Boards' Comments on the Draft Proposed Decision filed July 13, 2026**

*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049, 16-TC-03*

California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049, Provisions C.3.j, C.8., C.10.a., C.10.b., C.11.a.,
C.11.b., C.11.c., C.12.a., C.12.c., C.12.d., and C.12.e, Adopted on
November 19, 2015 and Effective on January 1, 2016
City of Union City, 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 July 14, 2026 at Sacramento, California.


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COMMISSION ON STATE MANDATES

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Last Updated: 7/13/26

Claim Number: 16-TC-03

Matter: California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049

Claimant: City of Union City

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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