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July 13, 2026

Via Drop Box

Juliana Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Commission on
State Mandates

Filed Date

07/13/2026

Re: Comments on Draft Proposed Decision, Test Claim 16-TC-03
(Municipal Regional Stormwater Permit, Order No. R2-2015-0049)

Dear Ms. Gmur:

Our office represents the Alameda Countywide Clean Water Program and its members as well as claimant Union City, who have incurred costs related to the San Francisco Bay Regional Water Quality Control Board's municipal regional stormwater permit, Order No. R2-2015-0049, which is the second municipal regional permit ("MRP 2") that regulates the discharge of stormwater runoff from the municipal separate storm sewer systems ("MS4s") within the jurisdiction of Bay Area regional stormwater programs.

We submit this letter in response to the Draft Proposed Decision ("DPD") issued by Commission staff on December 23, 2025, in connection with Test Claim 16-TC-03. Union City submitted this test claim with the Commission on State Mandates asserting that the Second Municipal Regional Stormwater Permit ("MRP 2"), Order No. R2-2015-0049, imposed new state-mandated programs and higher levels of service triggering the constitutional duty of reimbursement under Article XIII B, Section 6 of the California Constitution. Commission staff recommended denial of most of Union City's claims in the DPD. Union City respectfully objects to that recommendation and submits the following comments.

The Municipal Claimants object to and disagree with the portions of the Proposed Decision that improperly seek to address an issue that is not currently before the

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Commission—the possible impact of Senate Bill 231 (“SB 231”). The Municipal Claimants contend that the Commission’s analysis regarding SB 231 is inconsistent with *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 and *City of Salinas* (2002) 98 Cal.App.4th 1351. Although it is irrelevant to this proceeding and should not be addressed at all by the Commission here, the Municipal Claimants reserve all rights regarding the applicability of SB 231 and its constitutionality. The Municipal Claimants believe that even if SB 231 were applicable, which it is not, the appropriate approach for the Commission to take regarding SB 231 would be to wait until a court of competent jurisdiction resolves the constitutionality of SB 231 in the context of an actual fee enacted under its provisions. Since SB 231 is irrelevant here, the Commission should just delete all references to it in the Proposed Decision.

We also object to and disagree with the following:

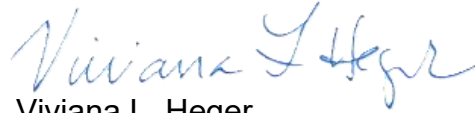
- The DPD concluded that implementation of the Green Infrastructure Plan (MRP 2 § C.3.j) through early public projects was not a mandate imposed by the state through legal or practical compulsion. (DPD at pp. 104–105.) We disagree. The public projects required under § 3.j were not voluntary; the permit’s regulatory framework rendered compliance legally and practically compulsory, leaving permittees no genuine choice but to undertake these projects.
- The DPD held that the green infrastructure requirements to achieve TMDLs (§§ C.11.c and C.12.c) are not new because similar provisions existed in the prior permit, including as part of the receiving water limitations. (DPD at p. 115.) However, the U.S. Supreme Court has since invalidated the use of receiving water limitations under federal law in *San Francisco v. EPA*, 145 S. Ct. 704 (2025), undermining the Commission’s rationale. Similarly, the trash provisions (§§ C.10.a and C.10.b) are also new contrary to the DPD characterization of them as continuations of prior permit obligations (DPD at pp. 69–77).
- The Commission incorrectly determined that the green infrastructure and trash requirements are federally mandated. Under *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, when federal law leaves states discretion in determining specific implementing requirements, as here, the state’s exercise of that discretion creates a reimbursable state mandate.

In addition to the foregoing, we also hereby incorporate our comments from May 29, 2018 as they relate to the denials in the DPD. Nothing in this submission shall be construed as a waiver of any argument, claim, or right available to Union City with respect to the test claim or any related proceedings

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Regards,

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cc: Service list dated May 4, 2026 (via Commission Drop Box, [CSM Dropbox](#))

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 14, 2026, I served the:

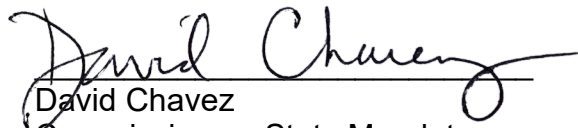
- **Current Mailing List dated July 13, 2026**
- **Claimant's Comments on the Draft Proposed Decision filed July 13, 2026**
- **Finance's Comments on the Draft Proposed Decision filed July 13, 2026**
- **Water Boards' Comments on the Draft Proposed Decision filed July 13, 2026**

*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

Mailing List

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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