



State Water Resources Control Board

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ORDER NO. R4-2021-0105, 22-TC-01: COMMENTS OF STATE WATER RESOURCES CONTROL BOARD AND LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD ON TEST CLAIM

Dear Ms. Gmur:

The State Water Resources Control Board (State Water Board) and the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) (collectively, Water Boards) jointly file this opposition to Test Claim 22-TC-01 (2022 Test Claim) filed by the County of Los Angeles and the Los Angeles County Flood Control District (collectively, Claimants). The 2022 Test Claim arises from a federal permit issued by the Los Angeles Water Board in 2021 as Order No. R4-2021-0105, *Waste Discharge Requirements and National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles and Ventura Counties* (NPDES Permit No. CAS004004) (hereinafter the 2021 Permit).¹ Through the 2022 Test Claim filed with the Commission on State Mandates (Commission), Claimants allege that multiple requirements of the 2021 Permit are unfunded state mandates and seek reimbursement of actual and/or estimated costs of implementing or complying with those requirements.

¹ The 2021 Permit is included as Exhibit A to Claimants' 2022 Test Claim. Throughout these comments, the Water Boards use the page numbers of the permit and not Claimants' Bates numbering. For ease of reference, the 2021 Permit is also available on the Los Angeles Water Boards' website at https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/regional_permit.html (last accessed Jan. 16, 2026).

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

On December 5, 2025, the Commission adopted a decision (2025 Commission Decision)² largely denying Claimants' test claims on Los Angeles Water Board Order No. R4-2012-0175 (2012 Permit).³ The 2021 Permit superseded the 2012 Permit, except for enforcement purposes.⁴ The Water Boards agree with the Commission's decision to deny most of the challenged requirements of the 2012 Permit, though it did not always agree with the Commission's stated rationale.⁵ Most, if not all, of the challenged requirements from the 2021 Permit were carried over from the 2012 Permit and were previously addressed by the Commission in its 2025 Commission Decision. As such, the Commission's prior analysis and decision should result in the Commission denying the 2022 Test Claim in its entirety.

I. Claimants Are Not Entitled To Reimbursement For Any Of The Requirements At Issue In The 2022 Test Claim Because They Have Fee Authority.

To prevail in a test claim, Claimants must establish that they are required to use tax monies to pay for the implementation of the contested provisions.⁶ Subvention is not required if the costs can be reallocated or funded through service charges, fees, assessments, or other means.⁷ The issue is a question of law, not fact.⁸ Claimants wholly deny that they have fee authority to offset costs to comply with the 2021 Permit. However, nowhere in the Test Claim is there any attempt to demonstrate that Claimants are precluded as a matter of law from establishing or raising fees to comply with the

² Com. on State Mandates, Decision on California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, 13-TC-01 and 13-TC-02.

³ The 2012 Permit is included as Exhibit B to Claimants' 2022 Test Claim. Throughout these comments, the Water Boards use the page numbers of the permit and not Claimants' Bates numbering. For ease of reference, the 2012 Permit is also available on the Los Angeles Water Boards' website at https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/los_angeles_ms4/2016/6948_R4-2012-0175_WDR_PKG_amd2.pdf (last accessed Jan. 16, 2026).

⁴ 2021 Permit, p. 11.

⁵ As noted in the Water Boards' comments on the 2012 Test Claim that were filed with the Commission on June 1, 2018 (2018 Comments) and the Water Boards' comments on the Commission's Draft Proposed Decision filed on October 17, 2025 (2025 Comments), the Water Boards did not agree that the 2012 Permit imposed any reimbursable mandates. The Water Boards renew its arguments in the 2018 Comments and 2025 Comments and incorporate them both by reference in our comments filed herein. The 2018 Comments are available at <https://csm.ca.gov/matters/documents/SWRCBsandLARWQCBsCommentsonthTestClaim060118.pdf> (last accessed on Jan. 16, 2026) and the 2025 Comments are available at <https://www.csm.ca.gov/matters/13-TC-01/doc53.pdf> (last accessed on Jan. 16, 2026).

⁶ Gov. Code, § 17553, subd. (b)(1)(F) (test claim must identify funding sources, including general purpose funds available for this purpose, special funds and fee authority); *Id.*, subd. (d).

⁷ Gov. Code, § 17556, subd. (d) (costs not mandated by the state when the local agency has "authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service").

⁸ *Dept. of Finance v. Com. on State Mandates* (2021) 59 Cal.App.5th 546, 564 ("2021 Department of Finance") ("the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so.").

2021 Permit.⁹ In fact, Claimants actually admit that they receive funds that can be used to pay for contested provisions.¹⁰ Claimants refusal to admit it has fee authority does not make it so. The law is clear. If Claimants have fee authority sufficient as a matter of law to cover the costs of the test claim permit activities pursuant to Government Code section 17556(d), there are no costs mandated by the state.¹¹ Here, Claimants have fee authority for the entire Test Claim period and are not entitled to subvention for the reasons below. The Commission should deny the test claim in its entirety on this basis alone.

A. Claimants have sufficient legal authority to impose property-related stormwater fees.

Claimants are not entitled to subvention because compliance costs with the Test Claim requirements can be covered through the imposition of a property-related fee or charge. Pursuant to Government Code section 17556(d), the Commission “shall not find costs mandated by the state … in any claim submitted by a local agency … if … 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.”¹² Whether a local agency has the ability to levy a property-related fee or charge is governed in part by Proposition 218, a voter-adopted initiative which added articles XIII C and XIII D to the California Constitution imposing substantive and procedural requirements for the adoption of certain taxes, fees, assessment, and charges.¹³ Some courts have held Government Code section 17556(d) does not apply to deny a claim when *voter approval* is required under article XIII D.¹⁴ By contrast, Government Code section 17556(d) can be used to deny a claim when the *voter protest provisions* of article XIII D apply.¹⁵

Claimants argue that Proposition 218 restricts their authority to adopt certain property-related stormwater fees.¹⁶ However, to the extent Claimants’ argument continues to rely on *Howard Jarvis Taxpayers Ass’n v. City of Salinas* (2002) 98 Cal.App.4th 1351, that

⁹ Claimants must also demonstrate that the fees are more than *de minimis*. (*San Diego Unified School Dist. v. Com. on State Mandates* (2004) 33 Cal.4th 859, 889 [“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)”).

¹⁰ See e.g., Test Claim 22-TC-01, Test Claim Form Sections 4-7 Worksheet pp. 1, 2, 8-9 (noting Claimants receive funds from the Safe, Clean Water Program).

¹¹ Gov. Code, § 17556, subd. (d).

¹² Gov. Code, § 17556, subd. (d).

¹³ Cal. Const., art. XIII D, § 6, subd. (c) (requiring voter approval to adopt any property-related fees and charges “[e]xcept for fees or charges for sewer, water, and refuse collection services”).

¹⁴ *Dept. of Finance v. Com. on State Mandates* (2022) 85 Cal.App.5th 535, 580 (“2022 Department of Finance”).

¹⁵ *Paradise Irrigation Dist. v. Com. on State Mandates* (2019) 33 Cal.App.5th 174.

¹⁶ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 29. Note, these comments cite to the page numbering exclusively used for the Narrative Statement in section 5 rather than Claimants’ Bates numbering.

decision is not controlling. In 2017, the California Legislature enacted Senate Bill 231, which amended Government Code sections 53750 and 53751 to affirm that the definition of “sewer” for the purposes of Proposition 218 includes storm sewers.¹⁷ The enactment of Senate Bill 231 also expressly overturned *City of Salinas*.¹⁸ Thus, as of at least January 1, 2018,¹⁹ voter approval is not required for stormwater property-related fees and are only subject to the voter protest provisions.

The California Constitution requires the Commission to abide by later-enacted statutory requirements unless and until a court of appeal finds them unconstitutional.²⁰ No court has made any such determination. As such, the Commission must reject any test claim where the cost of compliance with a contested provision can be covered through the imposition of a property-related fee or charge, as it did in the 2025 Commission Decision for activities after January 1, 2018.²¹

B. Claimants also have the legal authority to raise a regulatory fee.

Claimants are also not entitled to subvention because many of the compliance costs can be covered through the imposition of a regulatory fee. The ability to impose a valid regulatory fee is independent of Claimants’ taxing power. Article XI, section 7 of the California Constitution provides: “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”²² These powers, known generally as “police powers,” include “the authority to impose a regulatory fee to further the purpose of a valid exercise of that

¹⁷ Gov. Code, §§ 53750; 53751 (amended, Stats. 2017, ch. 536).

¹⁸ Gov. Code, § 53751.

¹⁹ 2025 Commission Decision, p. 260. Note, the Water Boards continue to disagree with the conclusion in *2022 Department of Finance* that the voter protest provisions in article XIII D of the California Constitution are materially distinct from the voter approval provisions in article XIII D, section 6(c) for the purposes of Government Code section 17556(d). As discussed in more detail in our comments on the 2012 Test Claim draft proposed decision dated October 17, 2025, the court’s reasoning in *Paradise Irrigation District* 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). The Water Boards also continue to disagree with the holding in *2022 Department of Finance* finding that Senate Bill 231 did not apply retroactively. However, even if Senate Bill 231 is not retroactive, Claimants have fee authority as of at least January 1, 2018, which predates the adoption of the 2021 Permit.

²⁰ Cal. Const., art. III, § 3.5; see also 2025 Commission Decision, pp. 258-259.

²¹ 2025 Commission Decision, p. 30 (holding “[b]eginning January 1, 2018, and based on *Paradise Irrigation District* case and Government Code sections 57350 and 57351 (SB 231, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351), there are no costs mandated by the state to comply with the requirements imposed by the test claim permit ...because claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover the costs of the mandated activities within the meaning of Government Code section 17556(d).”).

²² Cal. Const., art. XI, § 7.

power.”²³ Water pollution prevention is a valid exercise of the government police power.²⁴ Article XIII C, section 1(e) expressly excludes regulatory fees from the definition of “tax” and therefore regulatory fees are not subject to the heightened voter approval requirements established by Proposition 218 and Proposition 26.²⁵ Additionally, a number of statutory provisions provide express fee authority.²⁶

Claimants’ police power is “broad enough to include mandatory remedial measures to mitigate the *past, present or future* adverse impact of the fee payer’s operations” in situations, like those present here, where there is a causal connection or nexus between the adverse effects and the fee payer’s activities.²⁷ Despite this clear legal authority, Claimants cite a laundry list of reasons as to why imposition of a regulatory fee would be difficult.²⁸ However, “the sole issue … is whether permittees have the authority, i.e., ‘the right or power, to levy fees sufficient to cover the costs.’”²⁹ Claimants lack of imagination to conceive of a compliant fee is irrelevant. Moreover, the Commission has already held that some MS4 compliance costs associated with the Claimants’ land and development programs can be covered through a regulatory fee.³⁰ Therefore, the Commission must deny reimbursement for any claim—such as the land

²³ 2021 *Department of Finance*, 59 Cal.App.5th at p. 562; See also Los Angeles County Flood Control Act, § 2, subd. (8a) (authorizing the Los Angeles County Flood Control District to levy taxes in compliance with Article XII C or impose a fee or charge in compliance with Article XIII D.)

²⁴ 2025 Commission Decision, p. 203 (citing *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.)

²⁵ Cal. Const.,art. XIII C, §1, subd. (e), par. (3).

²⁶ See, e.g., Gov. Code, § 37101 (authorizing a legislative body to “license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city.”), Gov. Code, § 66001 (providing for development fees under the “Mitigation Fee Act,” requiring local entity to identify the purpose of the fee and the uses to which revenues will be put, to determine a reasonable relationship between the fee’s use and the type of project or projects on which the fee is imposed). Health & Saf. Code, § 5471, subd. (a) (requiring two-thirds vote of the members of the legislative body to adopt fees for storm drainage maintenance and operation).

²⁷ *Sinclair Paint Co. v. State Bd. Of Equalization* (1997) 15 Cal.4th 866, pp. 877-878. Examples of non-tax fees within the police power of municipalities to impose include: single-use carryout bag ordinances charging fee for use of plastic or paper bags; fines for violations of prohibitions on use of foam/polystyrene food containers; hazardous waste disposal fees for businesses; and vehicle registration fees used to fund combined road safety/green infrastructure projects.

²⁸ See e.g., Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 28. (claiming the requirements at issue “are not the types of programs for which Claimants can assess a fee;” “[i]t is not possible to identify benefits that any individual resident, business or property owner within the jurisdiction is receiving that is distinct from benefits that all other persons within the jurisdiction are receiving;” and “there is no way to determine a fee that bears a fair and reasonable relationship to the payor’s burdens or benefits received.”).

²⁹ 2022 *Department of Finance*, 85 Cal.App.5th at p. 585 quoting “(*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401)

³⁰ 2025 Commission Decision, pp. 260-272

and development program costs—where the cost of compliance can be covered through the imposition of a regulatory fee.

C. Claimants are not entitled to subvention because they can use Measure W and similar sources of funding to comply with the contested requirements.

Finally, Claimants have already successfully adopted several fees that can be used to offset the use of local tax proceeds. In November 2018, nearly 70% of Los Angeles County voters approved Measure W, adopting the Safe, Clean Water Program.³¹ The funds generated by the Safe, Clean Water Program are used to capture, conserve, and treat stormwater to improve water quality, increase local water supply, and enhance communities.³² When it was adopted, the Safe, Clean Water Program was expected to generate up to \$300 million per year from a special parcel tax on private property.³³ While the program has not yet generated the estimated tax revenues, the actual tax revenues are still significant. Based on documents available on the Safe, Clean Water Program website, in recent years actual local tax returns ranged from approximately \$110 million to \$112 million.³⁴ And since 2018, the Program has generated more than \$670 million.³⁵ In 2024 alone, the Los Angeles County Board of supervisors approved

³¹ 2021 Permit, Fact Sheet, p. F-201. Election results totals for Measure W are available at [https://ballotpedia.org/Los_Angeles_County_Flood_Control_District,_California,_Measure_W,_Parcel_Tax_\(November_2018\)](https://ballotpedia.org/Los_Angeles_County_Flood_Control_District,_California,_Measure_W,_Parcel_Tax_(November_2018)) (last accessed January 20, 2026).

³² Los Angeles County Code § 16.02, subd. B; 2021 Permit, Fact Sheet, p. F-201; see also Ballot pamp., General Elec. (Nov. 6, 2018), impartial analysis of Measure W, p. LA 379-031 available at <https://web.archive.org/web/20181129085917/ivote.net/WebApps/PollLocator/ballot/3861/379.pdf> (last accessed on Jan. 16, 2026).

³³ 2021 Permit, Fact Sheet, p. F-201. see also Ballot pamp., General Elec. (Nov. 6, 2018), impartial analysis of Measure W, p. LA 379-031 available at <https://web.archive.org/web/20181129085917/ivote.net/WebApps/PollLocator/ballot/3861/379.pdf> (last accessed on Jan. 16, 2026).

³⁴ In fiscal year 2021-2022, actual local tax returns were \$112,263,540. In fiscal year 2022-2023, actual local tax returns were \$111,643,586.07. In fiscal year 2023-2024, actual local tax returns were \$112,249,533.34. In fiscal year 2024-2025, actual local tax returns were \$110,905,527.62. The Actual Local Return Funds by Municipality for FY 21-22 is available at <https://safecleanwaterla.org/content/uploads/2022/10/FY-21-22-Actual-Local-Return-Funds-by-Municipality-20220906.pdf> (last accessed on Jan. 16, 2026). Actual Local Return Funds by Municipality for FY 22-23 is available at <https://safecleanwaterla.org/content/uploads/2023/09/FY-22-23-Actual-Local-Return-Funds-by-Municipality-20230907.pdf> (last accessed on Jan. 16, 2026). Actual Local Return Funds by Municipality for FY 23-24 is available at <https://safecleanwaterla.org/content/uploads/2024/10/FY-23-24-Actual-Local-Return-Funds-by-Municipality-20231001.pdf> (last accessed on Jan. 16, 2026). Actual Local Return Funds by Municipality for FY 24-25 is available at <https://safecleanwaterla.org/content/uploads/2025/10/FY2024-2025-Actual-Local-Returns-by-Municipality.pdf> (last accessed on Jan. 16, 2026).

³⁵ Safe Clean Water Program, “About Us” available at <https://safecleanwaterla.org/about-us/> (last accessed Jan. 16, 2026).

the allocation of \$147 million in Safe, Clean Water Program funds for 137 multi-benefit stormwater projects and programs across Los Angeles County.³⁶

Nevertheless, without explanation, Claimants dismiss Safe, Clean Water Program revenue as a potential funding source because “[t]he Safe Clean Water Program revenues are ... a *special parcel tax*.³⁷ It is not clear what Claimants believe the significance of this distinction is. Article XIII C, section 1(e)(7) of the California Constitution specifically excludes “assessments and property-related fees imposed in accordance with the provisions of Article XIII D” from the definition of tax.³⁸ This means that “as long as local government complies with the substantive and procedural requirements of article XIII D (added by Proposition 218), then the revenues received are not considered proceeds of taxes, but revenue from ‘nontax’ property-related fees and assessments.”³⁹ In other words, it is not entitled to subvention under Government Code section 17556(d). Revenues from Measure W are considered “non-tax” proceeds because it was passed with over a 2/3 majority. Therefore, any costs that can be covered using Measure W funds are not entitled to subvention.

The Los Angeles County Flood Control District (LACFCD) also has specific fee authority. In 2010, through Assembly Bill 2554, the Legislature amended the Los Angeles County Flood Control Act to specifically authorize the LACFCD to impose a fee or charge, in compliance with article XIII D of the California Constitution, to pay the costs and expenses of carrying out projects and providing services to improve water quality and reduce stormwater and urban runoff pollution in the district.⁴⁰ Formed in 1915, the LACFCD is a special act district that provides flood control and water quality services to 85 cities and most of the unincorporated area in Los Angeles County. The LACFCD is governed by the Los Angeles County Board of Supervisors. Any revenues from any fee or charge would be allocated as follows – 10% to the District for implementation and administration of water quality programs, 40% to Los Angeles County and to the cities within the district for water quality improvement programs, and 50% to nine watershed authority groups to implement collaborative water quality improvement projects. In issuing the 2021 Permit, the Los Angeles Water Board noted that this specific statutory fee authority could be used

to pay the costs and expenses of carrying out projects and programs to increase *stormwater capture and reduce stormwater and urban runoff pollution* in the district ... Projects and programs funded by the revenues from the tax, *fee or charge* may include projects providing multiple benefits

³⁶ See Press Release, County Supervisor Lindsey Horvath, Board of Supervisors Approve Plans for \$147 Million in Safe, Clean Water Infrastructure (Oct. 23, 2024), <https://lindseyhorvath.lacounty.gov/board-approve-plans-147-million-clean-water-infrastructure/> (last accessed on Jan. 16, 2026).

³⁷ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 30. (emphasis added)

³⁸ Cal. Const., art. XIII C, § 1, subd. (e), par. (7).

³⁹ 2025 Commission Decision, p. 245.

⁴⁰ Assembly Bill 2554, Stats. 2010, ch. 602.

that increase water supply, improve water quality, and, where appropriate, provide community enhancements such as the greening of schools, parks, and wetlands, and increased public access to rivers, lakes, and streams.⁴¹

Claimants provide no evidence as to why none of these funding sources could be used to offset permit compliance costs (likely because they would be wholly unable to make that showing if they tried).⁴² However, even if Claimants opt not to use these funds to cover costs associated with the 2021 Permit requirements, it should not be at the State's expense.⁴³ In light of all of the above, if the Commission finds that there are any state-mandated activities arising from the 2021 Permit (which there are not), reimbursement should be denied for the entire test claim period.⁴⁴

II. The Commission's Prior Decision On The 2012 Permit Dictates That The Commission Should Deny The Test Claim On The 2021 Permit In Its Entirety.

The 2021 Permit became effective on July 23, 2021. The 2021 Permit regulates stormwater (wet weather) and non-stormwater (dry weather) discharges from the MS4s of 99 permittees within the coastal watersheds of Los Angeles and Ventura Counties to Waters of the United States. By design, the 2021 Permit carries over and builds on prior

⁴¹ 2021 Permit, Fact Sheet, p. F-386. (emphasis added).

⁴² Table F-20 in the 2021 Permit's Fact Sheet includes a list of Measure W projects funded in 2020 and 2021. A majority of these projects were also proposed compliance projects in the Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) approved prior to the adoption of the 2021 Permit. (2021 Permit, Fact Sheet, p. F-85). See e.g., Table 3-4 in the *EWMP for the Upper San Gabriel River EWMP Group* (Upper San Gabriel EWMP) naming Adventure Park, Barnes Park, and Basset Park as Regional EWMP project sites; Section 4.5.4 of the *EWMP for the Upper Los Angeles River Watershed Management Group* (ULAR EWMP) describing project plans for Roosevelt Park; Section 4.5.8 of the *EWMP for the Ballona Creek Watershed* (Ballona Creek EWMP) describing project plans for Ladera Park. The Upper San Gabriel River EWMP (Jan. 2016) is available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/upper_san_gabriel/USGRRevisedEWMP_20160114.pdf; the ULAR EWMP (Jan. 2016) is available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_angeles/upper_losangeles/20160127/UpperLARiver_mainbody_revEWMP_Jan2016.pdf; the Ballona Creek EWMP (rev. Feb. 2016) is available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/ballona_creek/BallonaCreek_RevisedEWMP_corrected2016Feb1.pdf (last accessed Jan. 16, 2026).

⁴³ See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812 ("to the extent a local agency... 'has the authority' to charge for the mandated program or increased level of service, that charge cannot be recovered as a state mandated cost").

⁴⁴ While Ventura County permittees did not file a separate test claim on the 2021 Permit, to the extent they are considered similarly situated to the Claimants, they would not be entitled not to subvention either. On June 30, 1992, the Ventura County Board of Supervisors adopted a benefit assessment fee for stormwater and flood management in the unincorporated areas of Ventura County and the cities within the County. The revenues from this assessment are used in part to finance the implementation of its municipal stormwater permit program. For additional discussion, see 2021 Permit, Fact Sheet, p. F-201.

MS4 permits, including the 2012 Permit. In general, any changes incorporated into the 2021 Permit merely clarify existing requirements, eliminate redundancies, conform the permit to current regulations, and create a consistent municipal stormwater permitting regionwide.⁴⁵ The Commission has already determined that the challenged provisions are not reimbursable state mandates within the meaning of article XIII B, section 6 of the California Constitution in the 2025 Commission Decision.⁴⁶ Therefore, the 2022 Test Claim must be denied in its entirety. The Water Boards' reasoning for each challenged provision is set forth below.

A. Requirements to comply with TMDLs in the Santa Clara River Watershed Management Area, the Santa Monica Bay Watershed Management Area, the Dominguez Channel Watershed Management Area, the Los Angeles River Watershed Management Area, the San Gabriel River Watershed Management Area, and the Los Cerritos Channel and Alamitos Bay Watershed Management Area (Parts IV.A.2 and B, and Attachments J through S (except attachments K, L, N) and associated monitoring provisions (Part VII, and Attachment E).⁴⁷

Claimants allege that the TMDL-based requirements and the associated monitoring provisions in the 2021 Permit are state mandates that are entitled to subvention.⁴⁸ Part IV.A.2 and B require that Claimants comply with applicable water quality-based effluent limitations (WQBELs) necessary to implement thirty-six federally-approved or federally-established TMDLs in Attachments M and O through S.⁴⁹ Thirty-three of these TMDLs were included in the 2012 Permit.⁵⁰ Attachment J identifies the Permittees subject to

⁴⁵ See, e.g., 2021 Permit, Fact Sheet, Part XI (rationale for adding compliance determination provisions), Part III.I (rationale for removing certain effluent limitations), and Part I.D (rationale for issuance of a regional permit covering both Los Angeles and Ventura Counties), pp. F- 248, F-102-122, and F-11., respectively.

⁴⁶ In the 2025 Commission Decision, the Commission held that a narrow subset of requirements in the 2012 Permit relating to the development and submission of WMPs to comply with some United States Environmental Protection Agency (U.S. EPA)-established Total Maximum Daily Loads (TMDLs) were partially reimbursable through January 1, 2018. It is unclear whether Claimants renew their challenge to the WMPs as the Test Claim does not specifically plead Part IX of the 2021 Permit. (Test Claim 22-TC-01, Test Claim Form for Los Angeles County § 4 and Test Claim Form for the LACFCD § 4). However, even if the WMP provisions are at issue in this Test Claim, it is irrelevant because the Commission has already determined that Claimants have fee authority to comply with these requirements as of January 1, 2018, which is well before the effective date of the 2021 Permit (September 11, 2021).

⁴⁷ The 2021 Permit also incorporates ten TMDLs in Attachments K, L, and N that only apply to permittees in Ventura County. Claimants are not challenging Attachments K, L, and N and the Commission does not have jurisdiction over those TMDLs. Therefore, the TMDLs unique to Ventura County permittees are not addressed in these comments.

⁴⁸ Claimants do not specifically challenge the provisions in the 2021 Permit related to the development of watershed management programs (WMPs) (Part IX, p. 77-91).

⁴⁹ 2021 Permit, Fact Sheet, p. F-153. Note, some WQBELs are expressed as receiving water limitations.

⁵⁰ The three additional TMDLs are the Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only), the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community

each TMDL.⁵¹ Attachments M and O through S set forth the specific WQBELs and the compliance deadlines for each TMDL applicable to Claimants.⁵² Part VII and Attachment E set forth TMDL-related monitoring provisions. None of these requirements impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution as discussed below.

1. Attachment J (Permittees and TMDL Matrix)

Attachment J to the 2021 Permit (Permittees and TMDL Matrix) does not impose a state mandated program because it “does not impose any requirements on the permittees but simply identifies the TMDLs at issue in this Test Claim.”⁵³

2. Compliance with TMDLs incorporated in the 2012 Permit

Compliance with the numeric WQBELs and receiving water limitations for the TMDLs as required by Part IV.A.2 and B.1 and Attachment M and O-S do not mandate a new program or higher level of service with respect to the thirty-three TMDLs that were included in the prior permit (the 2012 Permit) because the 2021 Permit merely carries over the requirement to comply with these TMDLs from prior permits.⁵⁴ The Commission has already held that compliance with these TMDLs do not mandate a new program or higher level of service and should do so again here.⁵⁵

Furthermore, the Commission should reject Claimants’ far-fetched argument that any TMDLs incorporated into the 2012 Permit constitute a higher level of service since “the obligations imposed under the 2012 permit ceased with the termination of that permit.”⁵⁶ This argument belies reality. Pursuant to federal law and state regulations, the 2012 Permit was administratively extended past its stated expiration date.⁵⁷ This means the 2012 Permit remained in effect and Claimants were required to comply with the 2012 Permit, including its TMDL requirements, until it was superseded by a new permit — i.e., the 2021 Permit. Given that there was no interruption in Claimants’ obligations to

Impairments (U.S. EPA Established), and the San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL. 2021 Permit, Fact Sheet, Table F-25, pp. F-163 to F-167.

⁵¹ 2021 Permit, Part IV.B.1(c), p. 26; *Id.*, Attachment J.

⁵² 2021 Permit, Part IV.B.1(b) and (d), p. 26; *Id.*, Attachments M and O through S.

⁵³ 2025 Commission Decision, pp. 4 and 72.

⁵⁴ The 2021 Permit does not include the requirements of the Bacterial Indicator TMDLs for the Middle Santa Ana River Watershed because the California Regional Water Quality Control Board, Santa Ana Region (commonly known as the Santa Ana Water Board) was designated as the regulator for the stormwater discharges of bacteria being addressed by this TMDL in 2013. (2021 Permit, Fact Sheet, p. F-156).

⁵⁵ 2025 Commission Decision, pp. 4-17 and 71-111.

⁵⁶ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 13.

⁵⁷ 2021 Permit, Fact Sheet, p. F-54; 40 C.F.R. § 122.6; 23 CCR § 2235.4.

comply with the TMDLs in the 2012 Permit, the TMDL requirements in the 2021 Permit cannot reasonably be characterized as a new or a higher level of service.

In some cases, the Los Angeles Water Board revised the expression of WQBELs and receiving water limitations in the 2021 Permit to facilitate TMDL compliance. These revisions do not create a new program or higher level of service because these revisions consisted of translating and/or recalculating the WQBEL or receiving water limitations. Any revised limits in the 2021 Permit are set at an equivalent level of water quality protection as the WQBELs and receiving water limitations in the 2012 Permit.⁵⁸ Additionally, both the 2012 and 2021 Permits allow the permittees to comply in any lawful manner.⁵⁹ The Commission has already concluded there are no new programs or higher level of service to comply with the numeric wasteload allocations and receiving water limitations in the Regional Board-adopted TMDLs where

the prior permit required the permittees to comply with the numeric and narrative limits identified in the Basin Plan, the CTR, and other statewide plans to meet water quality standards for [pollutants addressed in a TMDL] and if there was an exceedance determined with monitoring, the claimants were required to identify the source and implement additional BMPs [best management practices] and monitoring to reduce the discharge of those pollutants.⁶⁰

TMDLs waste load allocations and any associated WQBELs and receiving water limitations merely calculate “the percentage of pollutant loads that need to be reduced to meet the existing water quality standards in the affected water bodies.”⁶¹ Recalculating and/or translating TMDL requirements into updated WQBELs and receiving water limitations does not change the underlying requirement to attain and maintain water quality standards in the receiving waters. Therefore, any revisions to the calculation and/or translation of TMDL waste load allocations in the 2021 Permit should not have any bearing on the Commission’s analysis on whether these requirements are a new program or higher level of service.

⁵⁸ 2021 Permit, Fact Sheet, pp .F-170 to F-171 (discussing the recalculation of exceedance days for the Santa Monica Bay Beaches Bacteria and Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL) and pp. F-172 to F174 (discussing the translation of certain mass-based WQBELs into concentration-based WQBELs for the Los Angeles River and Tributaries Metals TMDL, the Ballona Creek Metals TMDL, the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL, and the Los Cerritos Channel Metals TMDL) and pp. F-175 to F-176 (discussing recalculation of the ammonia (as nitrogen) WQBELs for the Los Angeles River Nitrogen Compounds and Related Effects TMDL based on site-specific temperature and pH monitoring data).

⁵⁹ 2021 Permit, Part IV.B.e, p. 26.

⁶⁰ 2025 Commission Decision, p. 111.

⁶¹ 2025 Commission Decision, p. 111.

3. Compliance with TMDLs that are newly incorporated into the 2021 Permit

Compliance with the numeric WQBELs and receiving water limitations for the TMDLs as required by Part IV.A.2 and B.1 and Attachments M and O-S do not mandate a new program or higher level of service with respect to the three TMDLs that were newly incorporated into the 2021 Permit. The 2012 Permit already required permittees to comply with the water quality standards for the pollutants addressed by these TMDLs. The 2021 Permit adds requirements to implement three additional TMDLs applicable to Claimants: 1) the Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) (Attachment M), 2) the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (U.S. EPA-established) (Attachment O), and 3) the San Gabriel River, Estuary, and Tributaries Indicator Bacteria TMDL (Attachment R).⁶² The Santa Clara River Lakes Nutrients TMDL assigns wasteload allocations for total Phosphorous and total Nitrogen to address the narrative water quality objectives for biostimulatory substances (i.e., nutrients) contained in the Los Angeles Water Board's Water Quality Control Plan for the Los Angeles Region (Basin Plan).⁶³ The Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments assigns wasteload allocations to MS4s for Total Nitrogen, Total Phosphorous and sediment loading to address water quality objectives related to benthic community effects.⁶⁴ The San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL assigns wasteload allocations based on the bacteriological water quality objectives for fresh and marine

⁶² 2021 Permit, Fact Sheet, Table F-25, pp. F-164 to F-167; see also discussion on pp. F-175, F-183 (Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Impairments) and p. F-167 (San Gabriel River, Estuary, and Tributaries Indicator Bacteria TMDL.)

⁶³ Basin Plan, ch. 7, Section 7-43, Table 7-43.1, p. 7-560 (discussion of numeric targets) and p. 7-562 (wasteload allocations assigned to storm drain discharges); Staff Report for Santa Clara River Lakes Nutrients TMDL (Jun. 21, 2016) p. 9. The entire Basin Plan is available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.html (last accessed Jan. 16, 2026). Chapter 7 of the Basin Plan is directly available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2020/Chapter_7/Chapter_7.pdf (last accessed Jan. 16, 2026). A copy of the Staff Report for the Santa Clara River Lakes Nutrients TMDL is available at https://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/115_new/SCRLakesNutrientsdraftstaffreport_EOcorrection_clean.pdf (last accessed Jan. 16, 2026).

⁶⁴ Benthic-related water quality objectives in the Basin Plan include but are not limited to: the narrative objective for sediment ("waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses"), the narrative objective for Biostimulatory Substances ("waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely effects beneficial uses"), numeric water quality objectives for ammonia, nitrate, Total Nitrogen, and Total Phosphorous. (Basin Plan, ch. 3; The Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (July 2, 2013), § 2.1.2 (water quality objectives), pp. 2-2 to 2-3. (summarizing the relevant water quality objectives). Chapter 3 of the Basin Plan is directly available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2020/Chapter_3/Chapter_3.pdf (last accessed Jan. 16, 2026). The TMDL is available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/docs/2013_MCW%20Nutrients%20&%20Sediments%20TMDL.pdf (last accessed Jan. 16, 2026).

waters in Chapter 3 of the Basin Plan.⁶⁵ The Commission has held that compliance with wasteload allocations and receiving water limitations in both Regional Board-adopted and U.S. EPA-established TMDLs are not new where “the activities required to comply with the TMDLs are the same as the prior permit and do not mandate a new program or higher level of service.”⁶⁶ In reaching this conclusion, the Commission noted that existing discharge prohibitions and receiving water limitations already required Claimants to comply with applicable water quality standards and implement any necessary BMPs and structural controls to meet these standards.⁶⁷ Likewise, here, Claimants were already required by the 2001 and 2012 Permits to comply with the water quality standards addressed by these TMDLs and, if there was an exceedance, to identify the source and implement additional BMPs and monitoring to reduce the discharge of those pollutants in order to come into compliance with these water quality standards.⁶⁸

To the extent Claimants imply that development and/or implementation of a WMP is evidence of increased costs,⁶⁹ the Water Boards note that the Commission has already held that, except as to a handful of U.S. EPA-established TMDLs, the development of WMPs to achieve compliance with WQBELs and receiving water limitations is voluntary and does not increase the costs of a state mandate based on the plain language of the test claim permit.⁷⁰ Moreover, while the Commission previously found that development of WMPs to comply with some U.S. EPA-established TMDLs had mandated a new program or higher level of service on a “practical compulsion theory,” these circumstances are not present in the 2021 Permit.⁷¹ The 2021 Permit only newly incorporates one U.S. EPA-established TMDL applicable to Claimants (The Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments).⁷² The Los Angeles Water Board adopted an Implementation

⁶⁵ Basin Plan, ch. 7. Section 7-41, Table 7-41.1, pp. 7-528 to 759 (numeric target) pp. 7-529 to 531 (wasteload allocations). Chapter 7 of the Basin Plan is directly available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2020/Chapter_7/Chapter_7.pdf (last accessed Jan. 16, 2026).

⁶⁶ 2025 Commission Decision, p. 97.

⁶⁷ 2025 Commission Decision p. 111 (discussing Regional Board-adopted TMDLs); p. 150 (discussing U.S. EPA-established TMDLs).

⁶⁸ Compare 2001 Permit, Part 2, pp. 17-18, and 2012 Permit, Part V.A.3, pp. 35-36 with 2021 Permit Part V.C, p. 36.

⁶⁹ Test Claim 22-TC-01, Narrative Statement in Support of Test Claim, p. 13 (noting “[a] permittee can also be deemed in compliance with interim WQBELs and receiving water limitations if it is implementing an approved Watershed Management Program, consistent with the actions and schedules contained therein. 2021 Permit Part X.B.1.b.i.”).

⁷⁰ 2025 Commission Decision, pp. 6 and 117.

⁷¹ 2025 Commission Decision, pp. 10-17 and 133-147.

⁷² 2021 Permit, Fact Sheet, Table F-25, p. F-165.

Plan for this TMDL in 2016.⁷³ Claimants raise no specific arguments that development of a WMP to address this one TMDL increased their costs. Even if they had, it would not affect the outcome of the 2021 Test Claim, as Claimants have fee authority for the development of such plans.⁷⁴ Therefore, the Commission should find that the implementation of any newly incorporated TMDLs in the 2021 Permit is not a new program or higher level of service.

4. TMDL Monitoring Requirements

The TMDL monitoring requirements in Part VII and Attachment E do not mandate a new program or higher level of service because the stormwater and non-stormwater monitoring is already required by federal law and the minimum requirements imposed are not new and do not mandate a new program or higher level of service. Part VII of the 2021 Permit requires Claimants to comply with the monitoring and reporting program in Attachment E.⁷⁵ Attachment E establishes monitoring, reporting, and recordkeeping requirements.⁷⁶ Claimants can comply with Attachment E by submitting an Integrated Monitoring Program (IMP) individually or by submitting a Coordinated Integrated Monitoring Program (CIMP) as part of a group of Permittees that coordinates monitoring efforts on a watershed or subwatershed basis.⁷⁷ The IMP or CIMP must contain the following elements: (1) receiving water monitoring, (2) stormwater outfall-based monitoring, (3) non-stormwater outfall-based monitoring, (4) new-development/re-development effectiveness tracking, and (5) regional studies.⁷⁸ Claimants assert that these monitoring requirements are a reimbursable state mandate because no federal law or regulation requires monitoring to determine compliance with TMDL-based WQBELs. Claimants further argue that the monitoring requirements are a higher level of service because “any finding that this obligation is a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit,” and because the adoption of the 2021 Permit extended the obligation to monitor for TMDL compliance through the life of the 2021 Permit.⁷⁹ None of these arguments are persuasive. The Commission has already decided that monitoring and reporting provisions in the 2012 Permit do not mandate a new program or higher level of

⁷³ Basin Plan, Chapter 7. Section 7-42. Chapter 7 of the Basin Plan is directly available at https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2020/Chapter_7/Chapter_7.pdf (last accessed Jan. 16, 2026).

⁷⁴ 2025 Commission Decision, p. 28 (“Beginning January 1, 2018, there are no costs mandated by the state [to develop and submit a WMP] because the claimants have fee authority”).

⁷⁵ 2021 Permit, Part VII, p. 40.

⁷⁶ 2021 Permit, Fact sheet, p. F-56 (discussing the purpose of the monitoring and reporting provisions in Attachment E).

⁷⁷ 2021 Permit, Fact Sheet, p. F-56.

⁷⁸ 2021 Permit, Fact Sheet, p. F-56.

⁷⁹ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 15.

service.⁸⁰ The adoption of the 2021 Permit merely continued the requirement for Claimants to have a monitoring program sufficient to determine compliance with WQBELs and receiving water limitations as required by federal law.⁸¹ Claimants suggestion that the 2021 Permit was a higher level of service because it “extended the obligation for the life of the 2021 Permit” is absurd. At no point were the Permittees relieved from their obligation to implement the monitoring requirements to determine compliance with TMDLs.⁸² The 2012 Permit was administratively extended until it was superseded by the 2021 Permit.⁸³ Claimants cite no specific change to the monitoring related provisions in the 2021 Permit or Attachment E that impose a new program or higher level of service from the 2012 Permit.⁸⁴ Therefore, the Commission should hold that the monitoring provisions in the 2021 Permit are not state mandates subject to subvention just as it did in the 2025 Commission Decision.

**B. Requirements relating to the prohibition of non-stormwater discharges
(Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, and A.6)**

Claimants allege that the requirements in the 2021 Permit relating to the prohibition of non-stormwater discharges are state mandates that are entitled to subvention. Part III.A of the 2021 Permit requires each permittee to prohibit non-stormwater discharges through the MS4 to receiving waters, implement BMPs for conditionally exempt non-stormwater discharges, to ensure implementation of BMPs by developing and implementing procedures for dischargers that are not a permittee to address non-stormwater discharges, to evaluate non-stormwater monitoring data, and if a conditionally exempt non-stormwater discharge is found to be a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or WQBELs, to take certain steps to address this.⁸⁵ Claimants assert that these requirements are a reimbursable state mandate because they go beyond what is required by federal regulations.⁸⁶ Claimants further argue that the non-stormwater discharge requirements are a new program or higher level of service because some of the requirements are the partial subject of the 2012 Test Claim and “any finding that this

⁸⁰ 2025 Commission Decision, pp. 158161 (finding stormwater and non-stormwater monitoring sufficient to determine compliance with TMDL receiving water limitations and WQBELs was already required by federal law and that monitoring requirements were not new and did not impose a higher level of service.)

⁸¹ 33 U.S.C. §§ 1318, 1342(a)(2); 40 C.F.R. §§ 122.26(d)(2), 122.41(h), (j)-(l), 122.42(c), 122.44(i), 122.48.

⁸² 2021 Permit, Attachment E, Part III, p. E-6 (requiring “Los Angeles County [p]ermittees … to implement the most recent version of the monitoring programs … until those monitoring programs are revised per this MRP) and Part III.D.1.a, p. E-9 (requiring Los Angeles County permittees to submit an updated MRP within 18 months of the effective date of the 2021 Permit.).

⁸³ 2021 Permit, Fact Sheet, p. F-54; 40 C.F.R. § 122.6; 23 CCR § 2235.4.

⁸⁴ Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state.

⁸⁵ 2021 Permit, Part III.A, pp. 12-16.

⁸⁶ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 17.

obligation is a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit”⁸⁷ and the adoption of the 2021 Permit “extended those obligations for the life of the 2021 Permit.”⁸⁸ Claimants also argue that some of the requirements are newly imposed in the 2021 Permit and therefore a higher level of service. Claimants are wrong. None of the non-stormwater discharge requirements impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution as discussed below.

1. Prohibition of Non-Stormwater Discharges (Part III.A.1)

Part III.A.1 implements federal law and does not mandate a new program or higher level of service. Part III.A.1 states that “[e]ach Permittee for the portion of the MS4 for which it is an owner or operator shall prohibit non-stormwater discharges through the MS4 to receiving waters.”⁸⁹ The Commission has already held that this requirement is mandated by federal law because “[t]he Clean Water Act provides that permits for discharges from MS4s ‘shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers’”⁹⁰ and that MS4 permittees are “required to prohibit the discharge from entering the MS4, traveling through the MS4, and then leaving the MS4 into the waters of the United States.”⁹¹ The Commission has also already held that this requirement is not new.⁹² While Part III.A in the 2021 Permit was reorganized for clarity, the substance of the requirements in Part III.A.1 and III.A.2⁹³ in the 2021 Permit are virtually identical to Part III.A.1 in the 2012 Permit, which itself had been carried over from prior iterations of the permit.⁹⁴ Therefore, the Commission should hold that Part III.A.1 of the 2021 Permit is not a state mandate entitled to subvention consistent with the 2025 Commission Decision.

2. Conditional Exemptions from Non-Stormwater Discharge Prohibition (Parts III.3.a and III.3.b and the Permittee Requirements in Parts III.A.5.a, III.A.5.b, III.A.5.c, and III.A.6)

Parts III.3.a and III.3.b conditionally exempts certain categories of non-stormwater discharges from the non-stormwater discharge prohibition, including discharges from

⁸⁷ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 19.

⁸⁸ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 19.

⁸⁹ 2021 Permit, Part III.A.1, p. 12.

⁹⁰ 2025 Commission Decision, p. 168-169.

⁹¹ 2025 Commission Decision, p. 169.

⁹² 2025 Commission Decision, p. 170.

⁹³ Part III.A.2 of the 2021 Permit was not specifically pled in the 2021 Test Claim but the exceptions contained in this provision were formerly included in Part III.A.1(a-e) of the 2012 Permit and were the partial subject of the 2012 Test Claim. (2025 Commission Decision, p. 166.)

⁹⁴ See e.g., 2001 Permit, Part I.A., p. 23.

non-emergency fire-fighting activities,⁹⁵ drinking water supplier distribution systems where not otherwise regulated by an individual or general NPDES permit,⁹⁶ and other categories of non-essential non-stormwater discharges that are not a source of pollutants.⁹⁷ Conditionally exempt non-stormwater discharges that fall within one of these enumerated categories are allowed, provided that the permittee meets all the conditions and BMPs specified in the permit, including the conditions in Table 5 of the 2021 Permit,⁹⁸ “or as otherwise specified or approved by the Regional Water Board Executive Officer.”⁹⁹ Part III.A.5.a requires permittees to develop and implement procedures to ensure that a discharger, if not a permittee, controls non-stormwater discharges such that they are not a significant source of pollutants to waters of the United States. Part III.A.5.b requires permittees to maintain records of all conditionally exempt non-stormwater discharges greater than 100,000 gallons in an electronic database. Part III.A.5.c requires permittees to identify if any of the exempted categories of non-stormwater discharges are a source of pollutants causing or contributing to exceedances of WQBELs or receiving water limitations.

The Commission has already held that the above requirements do not constitute state-mandated new programs or higher levels of service because, in relevant part, the permittees have the option of preparing a WMP to address conditionally exempt non-stormwater discharges, federal law only allows the discharge of exempted non-stormwater discharge categories if BMPs and control measures are implemented, and the provisions were not new.¹⁰⁰ Likewise, here, the 2021 Permit allows voluntary development of a WMP to address discharge prohibitions.¹⁰¹ Furthermore, almost all of the specifically challenged provisions are virtually identical to the requirements in the 2012 Permit. Part A.3.a (conditionally exempting essential non-stormwater discharges) is equivalent to Part III.2.a. in the 2012 Permit.¹⁰² Part A.III.b of the 2021 Permit (conditionally exempting certain non-essential stormwater discharges) maintains the

⁹⁵ 2021 Permit, Part III.A.3.a.i, p. 13.

⁹⁶ 2021 Permit, Part III.A.3.a.ii, p. 13.

⁹⁷ Non-essential non-stormwater discharges includes: lake dewatering, landscape irrigation, Dechlorinated/debrominated swimming pool/spa discharges not otherwise covered by a separate permit, dewatering of decorative fountains, non-commercial car washing by residents or by non-profit organizations, street/sidewalk wash water, short-term releases of potable water with no additives or dyes for filming purposes, and potable wash water used to clean reservoir covers.

⁹⁸ Table 5 sets forth applicable conditions for conditionally exempt non-stormwater discharges. 2021 Permit, pp. 17-22. Permittees are required to implement appropriate BMPs or ensure that any non-permittee dischargers implement appropriate BMPs consistent with the requirements in Table 5. 2021 Permit, Part A.5.a., p.14-15.

⁹⁹ 2021 Permit, Part III.A.3, p. 13-14.

¹⁰⁰ 2025 Commission Decision, p. 181-189.

¹⁰¹ 2021 Permit, Part IX.A.2, p. 77 (“Participation in a [WMP] is voluntary and allows a Permittee to address its highest watershed priorities, including complying with the requirements of ...Part III (Discharge Prohibitions)...”.

¹⁰² Note, the BMPs specified in Parts III.2.a.i and III.2.a.ii of the 2012 Permit were moved to Table 5 in the 2021 Permit. (Compare 2012 Permit, Part III.2.a on pp. 25-26 with 2021 Permit, Table 5, p. 17-18.)

same exceptions in Part III.A.2.b in the 2012 Permit almost word for word and extends the exception to two additional categories of discharges.¹⁰³ Part A.5.a of the 2021 Permit (requiring development and implementation of certain procedures for dischargers not subject to the Permit) is identical to Part III.A.5.a of the 2012 Permit except for minor changes to update the cross-references.¹⁰⁴ Part A.5.c of the 2021 Permit (requiring evaluation of monitoring data to determine if conditionally exempt non-stormwater discharges are a source of pollutants) is identical to Part III.A.4.c of the 2012 Permit except for minor changes to update the cross-references.¹⁰⁵ Part A.6 of the 2021 Permit (requiring actions to address non-stormwater discharges that are sources of pollutants) is identical to Part III.A.4.d. of the 2012 Permit except for minor changes to update the cross-references.¹⁰⁶

Claimants' attempt to characterize the continuation of existing requirements as a new program or higher level of service is not persuasive and should be rejected. As discussed above, the 2012 Permit was administratively extended in accordance with federal and state law. The 2021 Permit merely continued almost all of the existing requirements related to the non-stormwater discharge prohibition from the prior permit. Since there was no interruption in Claimants' obligations to comply with these requirements, these requirements can hardly be characterized as a new or higher level of service.

The 2022 Test Claim only specifically identifies one provision that was arguably not included in the 2012 Permit—Part.A.5.b. This provision requires Claimants to maintain records of discharges greater than 100,000 gallons in an electronic database. Claimants argue that “[n]othing in the federal regulations require MS4 operators to maintain such a database”¹⁰⁷ and that to the extent these obligations were not in the 2012 Permit, it is a higher level of service.¹⁰⁸ While the 2012 Permit did not specify where or in what format such records should be maintained, the 2012 Permit did require permittees to receive advance notice of any discharge over 100,000 gallons.¹⁰⁹ Common sense dictates if the permittees were receiving notices of large discharges, records of these notices would have to be maintained somewhere—and that somewhere would likely involve electronic or digital storage solutions. Stating the obvious in the 2021 Permit does not constitute a higher level of service. Claimants had inherent flexibility to determine the best manner for retaining these records in a cost-effective manner. Moreover, if Claimants did not

¹⁰³ The 2021 Permit adds exemptions for short term releases of potable waters with no additives or dyes for filming purposes and potable wash water used to clean reservoir covers. (2021 Permit, Part III.A.3.b.vii and viii, p. 14.)

¹⁰⁴ Compare 2012 Permit, Part III.A.5.a, pp. 27-28 with 2021 Permit, Part III.A.4.a, pp. 14-15.

¹⁰⁵ Compare 2012 Permit, Part III.A.4.c on pp. 28-29 with 2021 Permit, Part III.A.5.c, p 15.

¹⁰⁶ Compare 2012 Permit, Part III.A.4.d on pp. 29 with 2021 Permit, Part III.A.6, p. 15.

¹⁰⁷ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 18.

¹⁰⁸ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 19.

¹⁰⁹ 2012 Permit, Table 8, pp. 31-34.

want to implement this provision, Claimants had the option of developing alternative requirements. Part III.A.3 of the 2021 Permit allows any Permittee to propose for approval by the Los Angeles Water Board Executive Officer alternative conditions for the conditionally exempt discharges.¹¹⁰ Part IX of the 2021 Permit also allows Permittees participating in a WMP to comply with the discharge prohibitions in Part III.¹¹¹ As such, Part III.A.5.c of the 2021 Permit does not impose a reimbursable state mandate. Even if development of an electronic database to maintain some conditionally exempt non-stormwater discharges is a state mandated new program or higher level of service, Claimants have fee authority sufficient as a matter of law to cover all costs so there are no costs mandated by the state as discussed in Section 1, above. Therefore, the Commission should hold that all of the challenged non-stormwater requirements in Part III of the 2021 Permit are not state mandates subject to subvention just as it did in the 2025 Commission Decision.

C. Requirements involving Minimum Control Measures (Parts VIII.D.1-4, VIII.I.5, VIII.I.6, and VIII.I.8, VIII.F3.c.i-iii, VIII.G4.a, G.5.a-b.ii, VIII.H.2, and VIII.H.5.b)

Claimants allege that some of the requirements in the 2021 Permit related to the minimum control measures are state mandates entitled to subvention. Minimum control measures (commonly referred to as “MCMs”) are the baseline programmatic elements required to meet the requirements of Title 40, Code of Federal Regulations (40 C.F.R.), section 122.26(d)(2)(iv).¹¹² The minimum control measures require permittees to implement BMPs and other control measures that are considered necessary to reduce pollutants in stormwater to the maximum extent practicable and to effectively prohibit non-stormwater discharges as required by Clean Water Act section 402(p)(3)(B). In lieu of implementing minimum control measures as described in Part VIII.A.1 of the 2021 Permit, the permit allows Permittees to develop alternative BMPs when implemented through a WMP.¹¹³

Consistent with the 2025 Commission Decision, none of the contested minimum control measures in the 2022 Test Claim are reimbursable state mandates. In the 2025 Commission Decision, the Commission held that the minimum control measures in the 2012 Permit did not impose a state-mandated new program or higher level of service

¹¹⁰ Part III.A.3 states “[t]he following categories of non-stormwater discharges are exempt from the non-stormwater discharge prohibition, if (1) the Permittee ensures that all required conditions specified below, including in Table 5 of this Order, or other conditions specified and/or approved by the Los Angeles Water Board Executive Officer are met, ...” (2021 Permit, Part.A.3, p. 13)(emphasis added)

¹¹¹ 2021 Part IX.A.2, p. 77 (“Participation in a [WMP] is voluntary and allows a Permittee to address its highest watershed priorities, including complying with the requirements of ...Part III (Discharge Prohibitions)...”).

¹¹² 2021 Permit, Fact Sheet, p. F-208.

¹¹³ Note, the 2012 Permit did not allow permittees to eliminate any of the Planning and Land Development Program related control measures in Part IV.D.7. The 2021 Permit does not carry over this exclusion. Compare 2012 Permit, Part IV.C.5.b.iv.(1)(c), p. 60 with 2021 Permit, Part IX.B.6.a.iii., p. 81.

when “the test claim permit gives the permittees a choice to comply with the specific BMPs and control measure requirements or develop and implement customized watershed programs and BMPs consistent with federal law.”¹¹⁴ The Commission also held that many of the specific requirements in these sections were not reimbursable state mandates because they had been required by a prior permit and were not new.¹¹⁵ Here, the 2021 Permit allows Claimants to use a WMP to comply with *all* challenged minimum control measures and most, if not all, of the minimum control measures are not new as discussed below. Therefore, the Commission should extend its holdings in the 2025 Commission Decision to the 2022 Test Claim and find that none of the challenged minimum control measures in the 2021 Permit impose a reimbursable state-mandated program within the meaning of article XIII B, section 6. Each category of challenged minimum control measures is discussed in more detail below.

1. Requirements relating to the Illicit Discharge Detection and Elimination Program (Parts VIII.I.5, VIII.I.6, and VIII.I.8)

Part VIII.I of the 2021 Permit requires permittees to continue to implement a program to address illicit discharges and improper disposal into the storm sewer. Previously called the “Illicit Connections and Illicit Discharges Elimination Program,” these requirements are intended to implement Clean Water Act section 402(p)(3)(B)(ii) and 40 C.F.R. section 122.26(d)(2)(iv)(B), which together impose a requirement on the MS4 permittees to effectively prohibit non-stormwater in MS4s and, to that end, to detect, eliminate, and prevent illicit discharges to the MS4.¹¹⁶ Claimants plead Parts VIII.I.5, VIII.I.6, and VIII.I in the 2022 Test Claim.¹¹⁷ Part VIII.I.5 requires Permittees to continue to implement a spill response. Part VIII.I.6 requires permittees to maintain and publicize a program for the public to report illicit discharges and water quality related complaints into or from the MS4. Part VIII.I.8 requires permittees to track public reports and investigations of illicit discharges. All of these provisions were carried over from the 2012 Permit.¹¹⁸ The Commission has already concluded that the challenged provisions are not new because they were also included in the 2001 Permit.¹¹⁹ Claimants have raised no specific changes to these requirements that raise a new program or higher

¹¹⁴ 2025 Commission Decision, p. 195.

¹¹⁵ 2025 Commission Decision, p. 201-203 (discussion related to the Illicit Connections and Illicit Discharges Elimination Program, the Public Information and Participation Program Public Agency Activities Program, Industrial/Commercial Facilities Program, the Development Construction Program minimum control measures in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8-10 of the 2012 Permit.)

¹¹⁶ 2021 Permit, Fact Sheet, p. F-233 to 234.

¹¹⁷ Test Claim 22-TC-01, County of Los Angeles Test Claim Form, § 4, p. 2.; LACFCD Test Claim Form, § 4, p. 2.

¹¹⁸ Compare 2012 Permit, Parts VI.D.10.e., VI.D.5.c.i, and IV.D.10.d.iv-v, pp. 140, 87, 139, respectively, with 2021 Permit, Parts VIII.I.5, VIII.I.6, and VIII.I.8 on p. 76.

¹¹⁹ 2025 Commission Decision, pp. 202-203 (noting, “existing federal law requires each permittee have a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from MS4s” and “federal law requires that each permittee have procedures in place to prevent, contain, and respond to spills that may discharge into the MS4.”)

level of service (because there are none.) General arguments that these requirements impose a higher level of service because the 2012 Permit was terminated are not credible and should be rejected. Therefore, the Commission should once again find that the challenged minimum control measures relating to the Illicit Discharge Detection and Elimination Program are not a state-mandated program entitled to subvention.

2. Requirements relating to the Public Information and Participation Program (Parts VIII.D.1, D.3, and D.4)

Parts VIII.D requires continued implementation of a public information and participation program. Claimants plead Parts VIII.D.1, D.3, and D.4 in the 2022 Test Claim.¹²⁰ Part VIII.D.1 requires permittees to implement their existing public participation program individually or collaboratively with other permittees or partners.¹²¹ Part VIII.D.3 requires permittees to promote community involvement in their stormwater program through increased public awareness, educational and informational activities, and the distribution of educational materials on the proper handling of various waste materials via the Permittee's website or social media, various points-of-purchase, radio/television, or schools.¹²² Part VIII.D.4 requires permittees to document public information and participation activities and to develop metrics to track the efficacy of these programs.¹²³ Part VIII.D.1 and D.3 are carried over from the 2012 Permit with minor wording changes that do not affect the substance or the intent of these requirements.¹²⁴ The Commission has already concluded that these provisions are not mandated by the state because "permittees can choose to comply with these requirements or implement their own program consistent with federal law"¹²⁵ and that they are not new because they were also included in the 2001 Permit.¹²⁶ General arguments that any continued requirements impose a higher level of service because the 2012 Permit was terminated are not credible and should be rejected.

To the extent Claimants argue that any public participation obligations newly imposed by the 2021 Permit are a new or higher level of service, the Test Claim should still fail. Claimants only specifically pled one provision that was not expressly included in the prior permit—Part VIII.D.4. Part VIII.D.4 requires permittees to document and track the

¹²⁰ Test Claim 22-TC-01, County of Los Angeles Test Claim Form, § 4, p. 2.; LACFCD Test Claim Form, § 4, p. 2.

¹²¹ 2021 Permit, Part VIII.D.1, p. 44.

¹²² 2021 Permit, Part VIII.D.3, p. 45-46.

¹²³ 2021 Permit, Part VIII.D.4, p. 46.

¹²⁴ Compare 2012 Permit, Part VI.D.5.a.i, p. 86, with 2021 Permit Part VIII.D.1, p. 44. Compare 2012 Permit Part VI.D.5.d, pp. 87-88 with 2021 Permit, Part VIII.D.3, pp. 45-46.

¹²⁵ 2025 Commission Decision, p. 209.

¹²⁶ 2025 Commission Decision, p. 211 (holding, “[a]lthough there are slight wording differences between the prior permit and Part VI.D.5.a.-d. of the test claim permit, these activities do not impose a new program or higher level of service”).

effectiveness of their public information and participation programs.¹²⁷ Arguably, Part VIII.D.4 is not actually a new or a higher level of service. The 2012 Permit required permittees to include an update on the effectiveness of their minimum control measures, including their public participation and information programs, in their annual reports.¹²⁸ Inherent in this task, is the need to develop a metric to measure effectiveness and then to document and track the chosen metric so that the permittees could provide an update in their annual report. Nevertheless, the Los Angeles Water Board acknowledges that the Fact Sheet to the 2021 Permit characterizes the requirement for permittees to develop metrics to evaluate the success of their public participation and information programs as “new.”¹²⁹ However, whether the requirement is new is not the end of the analysis. To be a reimbursable state mandate, the requirement must also be legally or practically compelled by state law. The Commission has already held that no state-mandate exists where Claimants can choose to comply with the permit as drafted or, in the alternative, it can comply through a WMP.¹³⁰ Given that the plain language of the 2021 Permit continues to allow Claimants to comply with the minimum control measures, including the public information and participation program requirements, using a WMP,¹³¹ the Commission should hold that Part VIII.D.4 does not impose a state mandate entitled to subvention.

3. Requirements contained in the Planning and Land Development Program, including requirements to track, enforce and inspect new development and redevelopment post-construction BMPs (Parts VIII.F.3.c.i, F.3.c.ii, and F.3.c.iii)

The planning and land development program provisions in the 2021 Permit require permittees to impose requirements on development projects (including significant redevelopment projects) within their jurisdiction to address stormwater pollution and hydromodification impacts.¹³² Claimants plead Parts VIII.F.3.c.i, F.3.c.ii, and F.3.c.iii in the 2022 Test Claim.¹³³ Part VIII.F.3.c.i requires implementation of a geographic information system (GIS) or other electronic system to track development projects that are required to have post-construction BMPs.¹³⁴ Part VIII.F.3.c.ii requires permittees to

¹²⁷ 2021 Permit, Part VIII.D.4, p. 46.

¹²⁸ “Provide an assessment of the effectiveness of the Permittee(s) control measures in effectively prohibiting non-stormwater discharges through the MS4 to the receiving water.” (2012 Permit, Part X.VIII.A.4.b, Attachment E, p. E-43.)

¹²⁹ 2021 Permit, Fact Sheet, p. F-216.

¹³⁰ 2025 Commission Decision, pp.199-203, 209.

¹³¹ 2021 Permit, Part IX B.6.a., p. 81.

¹³² 2021 Permit, Fact Sheet, p. F-222.

¹³³ Test Claim 22-TC-01, County of Los Angeles Test Claim Form, § 4, p. 2.; LACFCD Test Claim Form, § 4, p. 2.

¹³⁴ 2021 Permit, Part VII.F.3.c.i, pp. 57-58.

inspect of post-construction BMPs prior to issuing occupancy certificates.¹³⁵ Part VIII.3.c.iii requires permittees to develop a post-construction BMP maintenance inspection checklist and to inspect post-construction BMPs every 2 years.¹³⁶ The 2021 Permit continued these requirements from the 2012 Permit in their entirety¹³⁷ and these requirements were the partial subject of the Claimants' test claims on the 2012 Permit. The Commission has already concluded that these requirements are not entitled to subvention and should do so again here.

In the 2025 Commission Decision, the Commission found that some of the planning and land development program mandatory minimum control measures were new and mandated by the state because federal law did not impose these specific requirements and not all of the requirements had been included in the 2001 Permit.¹³⁸ Nevertheless, the Commission ultimately concluded that Claimants were not entitled to reimbursement because they have regulatory fee authority sufficient as a matter of law to cover the costs of these activities.¹³⁹ Here, the Commission should find that there is not even a state mandate. In the 2025 Commission Decision, the Commission analyzed the planning and land development program separately from the other minimum control measures because the 2012 Permit did not allow Permittees to replace the default planning and land development minimum control measures with an alternative local program through a WMP.¹⁴⁰ While the other minimum control measures were not mandated by the state because "permittees can choose to comply with these requirements or implement their own program consistent with federal law,"¹⁴¹ the 2012 Permit did not extend the same flexibility to the planning and land development program minimum control measures. The 2021 Permit, by contrast, now allows permittees to comply with the planning and land development program minimum control measures using a WMP.¹⁴² Therefore, to the extent the Commission had previously concluded that these were state-mandates because Claimants could not comply through a WMP, this is no longer the case and the Commission should not distinguish these requirements from the other minimum control measures. Even if there was an argument that the planning and development program requirements are state mandates because they are merely a continuation of the 2012 Permit requirements, the Commission has already concluded

¹³⁵ 2021 Permit, Part VII.F.3.c.ii, p. 58.

¹³⁶ 2021 Permit, Part VII.F.3.c.iii, p. 58.

¹³⁷ Compare 2021 Permit, Parts VII.F.3.c.i-iii, p. 57-58 with 2012 Permit, Part IV.D.7.d.iv.1.a-c, p. 112-113.

¹³⁸ 2025 Commission Decision, p. 228.

¹³⁹ 2025 Commission Decision, p. 229.

¹⁴⁰ 2025 Commission Decision, pp. 219-220.

¹⁴¹ 2025 Commission Decision, p. 209.

¹⁴² In the 2012 Permit these requirements could not be replaced with alternative requirements in a WMP pursuant to 2012 Permit, Part VI. C.5.b.iv.(1)(c), p. 60 (stating, "[t]he Planning and Land Development Program is not eligible for elimination.").

that Claimants have regulatory fee authority as a matter of law.¹⁴³ Claimants' general arguments that any continued requirements impose a higher level of service because the 2012 Permit was terminated are not credible and should be rejected. In light of all of the above, the Commission should find that the challenged Planning and Land Development Program minimum control measures are not a state-mandate entitled to subvention.

4. Requirements relating to the Construction Program, including requirements to require construction-related BMPs, verify certain permit enrollments, to electronically inventory various land use permits and to update this inventory (Parts VIII.G.4.a, G.5.a, G.5.b.i. and G.5.b.ii (Los Angeles County Only)

Part VIII.G of the 2021 Permit addresses the requirement for the permittees to implement a program to reduce pollutants in stormwater runoff from construction sites to the MS4.¹⁴⁴ Los Angeles County pleads Part VIII.G.4.a, G.5.a, G.5.b.i and G.5.b.ii and is not seeking reimbursement for inspection requirements in accordance with the 2022 *Department of Finance* decision.¹⁴⁵ Part VIII.G.4.a of the 2021 Permit requires permittees to require implementation of minimum erosion and sediment control BMPs at construction sites less than one acre.¹⁴⁶ Part VIII.G.5.a of the 2021 Permit requires permittees to verify that construction sites that are one acre or greater have the necessary permits and that these sites are implementing certain minimum post-construction BMPs.¹⁴⁷ Part VIII.G.5.b.i of the 2021 Permit requires permittees to have an inventory system to track various construction and grading permits for sites that are one acre or greater.¹⁴⁸ Part VIII.G.5.b.ii of the 2021 Permit requires permittees to track basic construction site program information, such as contact information, project location, inspection dates, etc.¹⁴⁹ These requirements were carried over from the prior permit with slight modifications to clarify existing requirements.¹⁵⁰ These clarifications do not impose a new program or higher level of service but merely streamline the requirements. Los Angeles County does not identify any specific changes to these provisions that constitute a new or higher level of service and its general argument that any continued requirements impose a higher level of service because the 2012 Permit

¹⁴³ 2025 Commission Decision, pp. 229, 260.

¹⁴⁴ 2021 Permit, Fact Sheet, p. F-225 (citing in relevant part 40 C.F.R. § 126.26(d)(2)(iv)(D) and § 122.34(b)(4)).

¹⁴⁵ Test Claim 22-TC-01, Narrative Statement in Support of Joint Test Claim, p. 24.

¹⁴⁶ 2021 Permit, Part VII.G.4.a, pp. 62-63.

¹⁴⁷ 2021 Permit, Part VII.G.5.a, p. 64

¹⁴⁸ 2021 Permit, Part VIII.G.5.b.i, p.64.

¹⁴⁹ 2021 Permit, Part VIII.G.5.b.ii, p.64-5.

¹⁵⁰ Compare 2021 Permit, Part VIII.G.4.a, Tables 7 and 8, pp. 62-63 with 2012 Permit Part VI.D.8.d.i.(1), Tables 12, 13 and 16, pp. 113-114, 118, and 119-120. Compare 2021 Permit, Part VIII.G.5.a, and VIII.G.5.b.i-ii, pp. 62-65 with 2012 Permit Part VI.D.8.h.ii.(8), Part VI.D.8.g.i , and Part VI.D.8.g.ii, pp. 117 and 115, respectively.

was terminated is not credible and should be rejected. Furthermore, the Commission has already concluded that these requirements are not mandated by the state because the “permittees can choose to comply with these requirements or implement their own WMP consistent with federal law.”¹⁵¹ The Commission also held that the claimant has fee authority sufficient as a matter of law to cover these costs.¹⁵² Therefore, the Commission should once again find that the challenged construction program minimum control measures are not a state-mandate entitled to subvention.

5. Requirements relating to the Public Agency Activities Program, including requirements to maintain an updated inventory of permittee-owned or operated public facilities that are potential sources of stormwater pollution and implementation of an Integrated Pest Management Program (Parts VIII.H.2 and H.5.b)

Part VIII.H of the 2021 Permit addresses the requirement for the permittees to implement a public agency activities program.¹⁵³ Claimants plead Parts VIII.H.2 and H.5.b in the 2022 Test Claim.¹⁵⁴ Part VIII.H.2 of the 2021 Permit requires permittees to maintain an inventory or database of permittee owned or operated facilities that are potential sources of pollutants to the MS4.¹⁵⁵ Part VIII.H.5.b of the 2021 Permit requires permittees to implement an integrated pest management program and to comply with applicable state pesticide regulations (something they were already required to do).¹⁵⁶ In the 2025 Commission Decision, the Commission concluded that these requirements are not mandated by the state because “the permittees can choose to comply with these requirements or implement their own program [through a WMP] consistent with federal law.”¹⁵⁷ The Los Angeles Water Board made no substantive changes to these requirements.¹⁵⁸ Claimants do not identify any specific changes to these provisions in the 2021 permit that constitute a new or higher level of service and their general argument that any continued requirements impose a new or higher level of service because the 2012 Permit was terminated is not credible and should be rejected. Therefore, the Commission should once again find that the challenged public agency activity program requirements are not a state-mandate entitled to subvention.

¹⁵¹ 2025 Commission Decision, p. 219.

¹⁵² 2025 Commission Decision, p. 219.

¹⁵³ 2021 Permit, Fact Sheet, p. F-225 (citing in relevant part 40 C.F.R. § 126.26(d)(2)(iv)(D) and § 122.34(b)(4)).

¹⁵⁴ Test Claim Form, p. 2.

¹⁵⁵ 2021 Permit, Part VII.H.2, pp. 66-68.

¹⁵⁶ 2021 Permit, Part VII.H.5.b, p. 71.

¹⁵⁷ 2025 Commission Decision, p. 206.

¹⁵⁸ Compare 2021 Permit, Parts VIII.H.2 and VIII.H.5.b, pp. 66-68 and 71 with 2012 Permit, Parts VI.D.9.c and VI.D.9.g.ii, pp. 123-125 and 129-130 respectively.

III. Conclusion

Claimants' 2022 Test Claim must be denied in its entirety. First, as a matter of law and on this basis alone, Claimants have fee authority sufficient to cover the costs of the challenged permit provisions. Second, the challenged provisions are not state mandates at all because they are either required by federal law or do not impose new programs or higher levels of service on Claimants, consistent with the Commission's prior decisions on the same or similar provisions.

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

Sincerely,



Adriana Nuñez
Attorney IV

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 January 21, 2026, I served the:

- **Current Mailing List dated January 8, 2026**
- **Water Boards' Comments on the Test Claim filed January 20, 2026**

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105, 22-TC-01

Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105: Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, A.6; Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); Part VII and Attachment E; Parts VIII.D.1, D.3, D.4; Parts VIII.F.3.c.i, F.3.c.ii, F.3.c.iii; Parts VIII.G.4.a, G.5.a, G.5.b.i, G.5.b.ii; Parts VIII.H.2 and H.5.b; and Parts VIII.I.5, I.6, I.8., effective September 11, 2021

County of Los Angeles and Los Angeles County Flood Control District, Claimants

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 21, 2026 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/8/26

Claim Number: 22-TC-01

Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105

Claimants: County of Los Angeles
Los Angeles County Flood Control District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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