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May 31, 2017

VIA DROP BOX

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07* – Submittal by Joint Test Claimants Riverside County Flood Control and Water Conservation District, County of Riverside, and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto of Supplemental Brief Discussing *Department of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749

Dear Ms. Halsey:

I am Claim Representative for the above-referenced Joint Test Claimants and am submitting on their behalf the attached Supplemental Brief discussing the impact of the State Supreme Court's decision in *Department of Finance v. Commission on State Mandates* on the above-referenced test claim. This brief is submitted in response to the Commission's request set forth in its letter of April 7, 2017.

If you or your staff has any questions concerning the brief, please contact me. The Joint Test Claimants respectfully reserve their right to address the impact of this case, as well as other arguments made by the Santa Ana Water Board, in their Rebuttal Comments and other future briefing.

Very truly yours,

David W. Burhenn

DB:dwb

SUPPLEMENTAL BRIEF DISCUSSING

***DEPARTMENT OF FINANCE v. COMMISSION ON STATE MANDATES* (2016) 1 Cal. 5th 749**

***CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION, ORDER NO. R8-2010-0033*, 10-TC-07**

This brief is filed on behalf of joint test claimants Riverside County Flood Control and Water Conservation District, the County of Riverside ("County") and the Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto in Test Claim 10-TC-07 ("Joint Test Claimants") in response to the request of the Commission on State Mandates ("Commission") in a letter dated April 7, 2017 for additional briefing concerning the impact of the opinion of the California Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749.

The Joint Test Claimants will first discuss the key holdings made by the Supreme Court in *Dept. of Finance* and then apply those holdings to the issues raised in Test Claim 10-TC-07 regarding applicable requirements of Santa Ana Water Board Order No. R8-2010-0033, which is the municipal separate storm sewer system ("MS4") permit for the Joint Test Claimants (the "Permit").

I. *Department of Finance* Has Established a Clear Test for Considering Test Claims Involving Municipal Storm Water Permits with Federal and State Requirements

In *Dept. of Finance,* the California Supreme Court addressed a question considered by several courts and this Commission:[1] Are requirements imposed by state water boards on local agencies in MS4 permits exclusively "federal" mandates, exempt from the requirement for the State to provide for a subvention of state funds under Article XIII B, section 6 of the California Constitution?

The Supreme Court set forth the test of what constitutes a federal versus a state mandate in the context of MS4 permits, as well as who gets to make that determination under the California Constitution. That test is:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.

1 Cal. 5th at 765.

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[1] This issue had been pending since 2007, when former Govt. Code, § 17516(c), which prohibited test claims involving orders of the regional or state water boards, was declared unconstitutional in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal. App.4th 898, 904, 920.

Dept. of Finance involved a challenge to the decision of the Commission in Test Claims 03-TC-04, -19, -20 and -21, which found that certain provisions in the 2001 Los Angeles County MS4 permit in fact constituted state mandates and, concerning a provision requiring the installation and maintenance of trash receptacles at transit stops, required a subvention of state funds. The Commission similarly found, in Test Claim 07-TC-09, that a number of provisions in the 2007 San Diego County MS4 permit constituted state mandates. That test claim is presently before the Court of Appeal.

Significantly, the process by which the Commission evaluated these two test claims, which involved the examination of federal statutory or regulatory authority for the MS4 permit provisions at issue, the text of previous permits, evidence of other permits issued by the federal government and evidence from the permit development process, was validated by the Supreme Court in *Dept. of Finance.* In affirming the Commission's decision in regards to the Los Angeles County test claims, the Court explicitly rejected the argument which has been repeatedly raised by the State in both Test Claim rebuttals and in court filings: that the provisions were simply expressions of the "maximum extent practicable" ("MEP") standard required of stormwater permittees in the Clean Water Act ("CWA"),[2] and thus represented purely federal mandated requirements, exempt from consideration as state mandates pursuant to Govt. Code § 17756(c).

A. The Supreme Court Applied Mandates Case Law in Reaching Its Decision

Key to the Supreme Court's decision is its careful application of existing mandate jurisprudence in determining whether an MS4 permit provision was a federal, as opposed to state, mandate. The Commission must also apply those key cases in its determination of this Test Claim.

The question posed by the Court was this:

> [H]ow to apply [the federal mandate] exception when federal law requires a local agency to obtain a permit, authorizes the state to issue the permit, and provides the state discretion in determining which conditions are necessary to achieve a general standard established by federal law, and when state law allows the imposition of conditions that exceed the federal standard.

1 Cal. 5th at 763.

In answering that question, the Court considered three key cases, starting with *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51. In *City of Sacramento*, the Court found that a state law requiring local governments to participate in the State's unemployment insurance program was in fact compelled by federal law, since the failure to do so would result in the loss of federal subsidies and federal tax credits for California corporations. The Court found that because of the "certain and severe federal penalties" that would accrue, the State was left "*without discretion*" (italics added by Supreme Court) and thus the State "'acted in response to a federal "mandate."'" *Dept. of Finance,* 1 Cal. 5th at 764, quoting *City of Sacramento,* 50 Cal. 3d at 74.

The Court next reviewed *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, in which the county alleged that a state requirement to provide indigent criminal defendants with funding for experts was a state mandate. The court disagreed, finding that because this requirement reflected a binding Supreme Court precedent interpreting the federal

[2] 33 U.S.C. § 1342(p)(3)(B)(iii).

Constitution (*Gideon v. Wainwright* (1963) 372 U.S. 335), even absent the state law, the county still would have been bound to fund defense experts. Thus, the legislation "merely codified an existing federal mandate." 1 Cal. 5th at 764.

The Court finally considered *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, where a state plan adopted under a federal special education law required local school districts to provide disabled children with certain educational opportunities. While the state argued that the plan was federally mandated, the *Hayes* court found that this was merely the "starting point" of its analysis, which was whether the "'manner of implementation of the federal program was left to the *true discretion* of the state.'" *Dept. of Finance,* 1 Cal. 5th at 765, quoting *Hayes* at 1593 (emphasis added by Supreme Court). *Hayes* concluded that if the State "'freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.'" 1 Cal. 5th at 765, quoting *Hayes* at 1594.

From these cases, the Supreme Court distilled the "federally compelled" test set forth above, holding that "if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a 'true choice,' the requirement is not federally mandated." 1 Cal. 5th at 765. The Court also held that it is the State, not the test claimants, which has the burden to show that a challenged permit condition was mandated by federal law. *Id.* at 769.

Thus, the Commission must employ this test, and allocate to the State the burden of proving that the provision in question represents a federal, as opposed to state, mandate.

B. The Supreme Court Examined the Nature of Clean Water Act MS4 Permitting and Determined That Water Boards Have Great Discretion in Establishing Permit Requirements

In *Dept. of Finance,* the Supreme Court reviewed the interplay between the federal CWA and California law set forth in the Water Code (1 Cal. 5th at 767-69) and determined that with respect to the adoption of MS4 permits, the State had chosen to administer its own permitting program to implement CWA requirements. 1 Cal. 5th at 767 (*citing* Water Code § 13370(d)). Thus, an action involving a permit issued under the CWA was different from a situation where the State was compelled to administer its own permitting system.

The Court (at 1 Cal. 5th 767-68) found that the State's permitting authority under the CWA was similar to that in *Division of Occupational Safety & Health v. State Bd. Of Control* (1987) 189 Cal.App.3d 794. There, the State had the choice of being covered by federal occupational safety and health ("OSHA") requirements or adopting its own OSHA program, which had to meet federal minimums and had to extend its standards to State and local employees. In that case, state OSHA requirements called for three-person firefighting teams instead of the two-person teams that would have been allowed under the federal program. The court found that because the State had freely exercised its option to adopt a state OSHA program, and was not compelled to do so by federal law, the three-person team requirement was a state mandate.

The Supreme Court also distinguished the broad discretion provided to the State under the federal CWA stormwater permitting regulations with the facts in *City of Sacramento, supra,* where the State risked the loss of subsidies and tax credits if it failed to comply with federal law:

> Here, the State was not compelled by federal law to impose any particular requirement. Instead, as in *Hayes, supra* . . . the Regional Board had discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard.

1 Cal. 5th at 768 (citation omitted). The Court held that the EPA regulations "gave the board discretion to determine which specific controls were necessary to meet the [MEP] standard." *Id.* at 767-68.

C. The Court Rejected the State's Argument That the Commission Must Defer to the Water Board's Determination of What Constitutes a Federal Mandate

The Supreme Court rejected another of the State's key arguments, that the Commission should defer to a regional board's determination of what in a stormwater permit constitutes a federal, versus state, mandate. 1 Cal. 5th at 768-69.

The Court first addressed whether the Commission ignored "the flexibility in the CWA's regulatory scheme, which conferred discretion on the State and regional boards in deciding what conditions were necessary to comply with the CWA" and whether the Los Angeles County MS4 permit "itself is the best indication of what requirements *would have been imposed* by the EPA if the Regional Board had not done so," such that the Commission "should have deferred to the board's determination of what conditions federal law required." 1 Cal. 5th at 768 (emphasis in original).

The Court flatly rejected these arguments, finding that in issuing the permit, "the Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. [citation omitted]. It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law." *Id.* The Court (at 1 Cal. 5th 768) cited as authority *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal. 4th 613, where it held (over Water Board opposition) that a federal National Pollutant Discharge Elimination System ("NPDES") permit issued by a water board (such as the Permit in this Test Claim) may contain State-imposed conditions that are more stringent than federal law requirements. 35 Cal. 4th at 627-28.

The Court next addressed the Water Boards' argument that the Commission should have deferred to the regional board's conclusion that the challenged requirements in the Los Angeles County MS4 permit were federally mandated. Finding that this determination "is largely a question of law," the Court distinguished situations where the question involved the regional board's authority to impose specific permit conditions from those involving the question of who would pay for such conditions. In the former situation, "the board's findings regarding what conditions satisfied the federal [MEP] standard would be entitled to deference." 1 Cal. 5th at 768.

But, the Court held,

> Reimbursement proceedings before the Commission are different. The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the

single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.

Id. at 769.

The Court explained that "the State must explain why federal law mandated these requirements, rather than forcing the Operators to prove the opposite." *Id.* In placing that burden on the State, the Court held that because article XIII B, section 6 of the Constitution established a "general rule requiring reimbursement of all state-mandated costs," a party claiming an exception to that general rule, such as the federal mandate exception in Govt. Code section 17556, subdivision (c), "bears the burden of demonstrating that it applies." *Id.* at 769.

The Supreme Court concluded that the State's proposed rule of "requiring the Commission to defer to the Regional Board" would "leave the Commission with no role to play on the narrow question of who must pay. Such a result would fail to honor the Legislature's intent in creating the Commission." *Id.* In doing so, the Court looked to the policies underlying Article XIII B section 6, and concluded that the Constitution "would be undermined if the Commission were required to defer to the Regional Board on the federal mandate question." *Id.*

The Court noted that the "central purpose" of article XIII B is to rein in local government spending (citing *City of Sacramento, supra,* 50 Cal. 3d at 58-59) and that the purpose of section 6 "is to protect local governments from state attempts *to impose or shift the costs* of new programs or increased levels of service by entitling local governments to reimbursement" (citing *County of San Diego v. State of California* (1997) 15 Cal. 4th 68, 81), 1 Cal. 5th at 769, emphasis supplied). Requiring the State to establish that a permit requirement is federally mandated, the Court found, "serves those purposes." *Id.*

D. Applying Its Test, the Court Upheld the Commission's Determination that Inspection and Trash Receptacle Requirements In The Los Angeles County MS4 Permit Were State Mandates

Applying the "federally compelled" test, the Supreme Court reviewed and upheld the Commission's determination that the inspection and trash receptacle requirements in the Los Angeles County MS4 Permit were, in fact, state mandates.

1. The Inspection Requirements

The test claimants had argued in *Dept. of Finance* that a requirement in the Los Angeles County MS4 Permit that the MS4 operators inspect certain industrial facilities and construction sites was a state mandate. The Commission agreed and the Supreme Court upheld that determination, citing the grounds employed by the Commission.

First, the Court noted that there was no requirement in the CWA, including the MEP provision, which "expressly required the Operators to inspect these particular facilities or construction sites." 1 Cal. 5th at 770. While the CWA made no mention of inspections, the implementing federal regulations required inspections of certain industrial facilities and construction sites (not at issue at the test claim) but did not mention commercial facility inspections "at all." *Id.* Second, the Court agreed with the Appellants that state law gave the regional board itself "an overarching mandate" to inspect the facilities and sites. *Id.*

The Court further found that with respect to the requirement of the operators to inspect facilities covered by general industrial and general construction stormwater permits, "the State Board had placed responsibility for inspecting facilities and sites on the *Regional Board"* and that in fact the State Board was authorized to charge a fee for permittees, part of which "was earmarked to pay the Regional Board for 'inspection and regulatory compliance issues.'" *Id.* (emphasis in original) (*citing* Water Code §§ 13260(d) and 13260(d)(2)(B)(iii)). The Court further cited evidence before the Commission that the regional board had offered to pay the County to inspect industrial facilities, an offer that made no sense "if federal law required the County to inspect those facilities." *Id.*

The Court, citing *Hayes, supra,* found that the regional board had primary responsibility for inspecting the facilities and sites and "shifted that responsibility to the Operators by imposing these Permit conditions." 1 Cal. 5th at 771. The Court further rejected the State's argument that the inspections were federally mandated "because the CWA required the Regional Board to impose permit controls, and the EPA regulations contemplated that some kind of operator inspections would be required." *Id.* The Court held that the mere fact that federal regulations "contemplated some form of inspections, however, does not mean that federal law required *the scope and detail* of inspections required by the Permit conditions." *Id.* (emphasis supplied).

2. The Trash Receptacle Requirement

The Supreme Court also upheld the Commission's determination that a requirement for certain Los Angeles County MS4 permittees to place trash receptacles at transit stops represented a state mandate.

The Court first found, as did the Commission, that while MS4 operators were required to "include a description of practices and procedures in their permit application" (*citing* 40 CFR § 122.26(d)(2)(iv)), the permitting agency had "discretion whether to make those practices conditions of the permit." *Id.* at 771-72. As the Commission found, there was no CWA regulation cited by the State which required trash receptacles at transit stops, and there was evidence that EPA-issued permits in other cities did not require trash receptacles at transit stops. *Id.* at 772. This latter fact, that "the EPA itself had issued permits in other cities, but did not include the trash receptacle condition," in the Court's view, "undermines the argument that the requirement was federally mandated." *Id.*

II. Application of the Supreme Court's Test in *Dept. of Finance* Must Lead to the Conclusion that the Permit Conditions at Issue in this Test Claim are State Mandates

The Supreme Court has provided the Commission with a clear test that it can apply in evaluating whether an MS4 permit provision in fact represents a federal or state mandate, and where the burden of persuasion lies. In this section, the Joint Test Claimants set forth how *Dept. of Finance,* when applied in evaluating the Permit provisions at issue in this Test Claim, must lead this Commission to conclude that the provisions represent state mandates.[3]

[3] The Supreme Court did not address the issue of whether the state mandates in the Los Angeles County MS4 permit were unfunded, and that issue is therefore not addressed in this Supplemental Brief.

Before turning to the elements of the Test Claim and how the Supreme Court's decision in *Dept. of Finance* impacts those elements, we wish to address how the opinion addresses some of the Santa Ana Water Board's arguments made in comments to the Commission in response to the Test Claim.

A. The Supreme Court's Decision Rejects the Reasoning Employed by the SAWB to Support Its Position that the Challenged Provisions Represented Federal Mandates

The Santa Ana Water Board ("SAWB") argues in its comments[4] on this Test Claim ("SAWB Comments") that the NPDES permitting program constituted a federal mandate which applies directly to local governments, that the State had not shifted any burden to local governments and that the mandates did not exceed federal law. SAWB Comments at 13-17. Those arguments, however, no longer have validity in light of *Dept. of Finance.*

The SAWB first argues (SAWB Comments at 2) that the "Permit as a whole, including the challenged provisions, is mandated on the local governments by federal law" and that the "central issue before the Commission is whether the challenged requirements exceed the federal mandate for MS4 permits." *Id.* at 13. The SAWB further argues that the Board was mandated by federal law to "prescribe the BMPs [best management practices] that the MS4 must implement." *Id.* This argument was considered and rejected by the Supreme Court, when it held that the permit requirements are not federal mandates simply because they are contained in an NPDES permit. 1 Cal. 5th at 767. Instead, "in issuing the Permit, the Regional Board was implementing both state and federal law." *Id.* at 768. In the case of the Los Angeles County MS4 permit requirements, the Supreme Court held that "[i]t is clear federal law did not compel the Regional Board to impose these particular requirements." *Id.* at 767. The Court held further that the regional board there "was not required by federal law to impose any specific permit conditions." *Id.*

The SAWB also criticizes the Commission's approach in relying on *Hayes, supra,* and *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, in determining the existence of state mandates. SAWB Comments at 14. In particular, the SAWB criticizes the Commission's particularized approach in assessing state mandates in the 2007 San Diego County permit, where the Commission carefully examined whether federal law or regulation required a municipality to adopt or implement a hydromodification plan, arguing that it was inconsistent with the ruling of the Los Angeles County Superior Court in the Los Angeles County test claim. In overruling the superior court, the Supreme Court adopted this very same particularized approach over simple deference to what the water boards asserted met the MEP standard. *See Dept. of Finance,* 1 Cal. 5th at 770 (the CWA "makes no mention of inspections" and "The regulations do not mention commercial facility inspections at all.")

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[4] *See* letter dated August 26, 2011 from David Rice, Esq., Staff Counsel in the Office of Chief Counsel, State Water Resources Control Board, on behalf of the SAWB. In addition, the Department of Finance ("DOF") made comments in a letter dated August 25, 2011 from Lisa Ann L. Mangat, Program Budget Manager. This brief addresses the SAWB comments as they relate to the impact of *Department of Finance.* The DOF comments essentially echo the legal arguments made by the SAWB, and thus will not be addressed in this brief.

The SAWB criticizes the Commission for what it considered a misapplication of the holding in *Hayes,* arguing that the State's decision in 1972 to assume NPDES permitting authority "did not shift any permit compliance costs to local agencies because the Clean Water Act already imposed those costs directly on the local agencies." SAWB Comments at 17. The Supreme Court, however, rejected this analysis. It found that the fact that the State affirmatively chose, but was not compelled, "to administer its *own* permitting system" demonstrated that, as in *Hayes*, the "Regional Board had discretion to fashion requirements which it determined would meet the CWA's [MEP] standard." 1 Cal. 5th at 768 (emphasis in original). *Dept. of Finance* confirms that the Commission appropriately cited *Hayes* to show that where a state agency "freely chose" to impose costs on the local agency as a means of implementing a federal program, those costs were a reimbursable state mandate.

B. The Supreme Court Made Clear That Test Claimants Need Not Challenge the Federal Nature of MS4 Permit Requirements Before the Water Boards

The SAWB argues that "the question of whether Permit provisions exceed federal requirements is more properly brought before the State Water Board" and that the Joint Test Claimants should have exhausted that administrative remedy before the State Water Board. Failing to do so, argues the SAWB, represents an "impermissible collateral attack" on the Permit. SAWB Comments at 20. As noted in Section I.C above, the Supreme Court rejected arguments made by the State that the Water Boards had exclusive jurisdiction over whether a municipal stormwater permit exceeded federal minimum requirements. The Court held that the Commission is the sole and exclusive venue for determination of this question and that no deference is owed to the Water Boards.

The only circumstance under which the Court found that deference to the Water Boards' expertise would be appropriate was if a regional board "found, when imposing the disputed permit conditions, that those conditions were the only means by which the [MEP] standard could be implemented." 1 Cal. 5th at 768. Such a finding must be case specific. *Id.* at n.15. There is no such finding in the Permit or the Permit Fact Sheet.

The SAWB points to Section II.B.10 in the Permit Findings, arguing that this provision represents a finding that the Permit provisions "exceed the minimum federal requirements." SAWB Comments at 20. This finding, however, merely states, in relevant part, that the Permit "implements federally mandated requirements under CWA Section 402(p)(3)(B)." Permit Findings, Section II.B.10(a).[5] This is certainly not a sufficient case specific finding that specific permit requirements constitute the only means by which the MEP standard can be achieved. Absent such a finding, no deference may be afforded to the SAWB on the question of whether the

[5] The other three subparts of this finding do not relate to federal minimum requirements, but allege that the permittees' obligations were similar to or less stringent than those imposed on non-governmental permittees, that the permittees had authority to levy service charges, fees, or assessments to pay for the Permit requirements and that the permittees requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants in the Clean Water Act. Permit Finding II.B.10(b)-(d).

Permit exceeded federal requirements. (This argument is addressed further below with respect to specific Permit requirements at issue in the Test Claim.)

Moreover, the Court held that it is the Water Boards which bear the burden of establishing this exception to the requirement to reimburse unfunded state mandates. 1 Cal. 5th at 768. *Dept. of Finance* makes clear that issues of whether a permit requirement constitutes a state mandate must be heard by the Commission, which has exclusive jurisdiction over such matters.

C. Application of the Supreme Court's Decision to the Issues Raised in the Joint Test Claim Supports A Finding That They Constitute State, Not Federal, Mandates

Test Claim 10-TC-07 concerns the following provisions of SAWB Order No. R8-2010-0033:

1. The requirement, primarily set forth in Section IV of the Permit, to develop and update Local Implementation Plans ("LIP").

2. The requirement in Section VIII of the Permit to promulgate and implement ordinances to address pathogen or bacterial indicator sources such as animal wastes.

3. The requirement in Section IX of the Permit to develop and implement an Illicit Discharge Detection and Elimination ("IDDE") program to enhance the existing Illicit Connections/Illegal Discharges ("IC/ID") programs.

4. The requirement in Section X of the Permit for the County to create and maintain a database of septic systems approved since 2008.

5. The requirements in Section XI of the Permit relating to the inspection of various commercial businesses and operations, the development of enforcement strategies and an evaluation of the Copermittees' residential programs.

6. The requirements in Section XII of the Permit to, among other things, develop new standard designs and BMPs, a Watershed Action Plan, review planning documents to incorporate watershed protection principles, submit revised Water Quality Management Plans ("WQMPs"), develop new procedures, incorporate Low Impact Development ("LID") and hydromodification requirements to public agency projects, develop criteria for LID alternatives and in-lieu funding, create databases and inspect public projects.

7. The requirements in Section XV of the Permit for training of Copermittee employees in SWQMP review and CEQA requirements.

8. The requirements in Section XVII of the Permit for an assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis.

Under *Dept. of Finance,* all of these mandates are state, not federal.

1. LIP Provisions

Dept. of Finance supports the position of the Joint Test Claimants, as previously set forth in their Narrative Statement (at 11-12) that the imposition of the detailed and prescriptive LIP provisions in the Permit are in fact not federal mandates. As the Narrative Statement noted, the Permit's requirements for the development, implementation and updating of a LIP were not required by federal law or regulation and the Regional Board, in the Permit Fact Sheet,[6] did not in fact cite to the CWA or its regulations as specific authority for these requirements. While 40 CFR § 122.26(d)(2)(iv) requires that permittees set forth a management program to address discharges from their MS4s, the permittees satisfied this requirement through development and completion of the Drainage Area Management Plan ("DAMP") during previous Permit iterations.

The SAWB argues that it included the LIP provisions after the Board reviewed audit reports and determined that the LIP provisions "were included to facilitate improved implementation of the DAMP . . . ." SAWB Comments at 23. The SAWB does not indicate, however, that federal law or regulation required inclusion of the LIP provisions; at most, the comments cite as federal authority an EPA "MS4 Permit Improvement Guide." The SAWB admits, however, that this Guide was not even finalized until after the effective date of the Permit (SAWB Response at 22 n.105) and so clearly could not be cited as authority that was relied upon by the Board.

Moreover, the Guide itself states that it does not "impose legal obligations upon any member of the public":

> This Guide includes suggestions on how to develop permit language for MS4 permittees. This Guide does not impose any new legally binding requirements on EPA, States, or the regulated community, and does not confer legal rights or impose legal obligations upon any member of the public.

U.S. EPA MS4 Permit Improvement Guide, Attachment 43 to SAWB Comments, at 3.

From this language, it is clear that the Guide did not, and could not, compel action by the SAWB to adopt the Permit requirements at issue in this Joint Test Claim. The SAWB thus cannot argue that based upon its terms, the Board was compelled to adopt any "particular implementing requirement." *Dept. of Finance,* 1 Cal. 5th at 765. Additionally, the provision of unspecified "similar guidance" by EPA personnel (*see* SAWB Comments at 22 n.105) does not constitute a requirement of federal law.

Using the Supreme Court's analysis in *Dept. of Finance*, it is clear that in no sense did federal law dictate the LIP requirements contained in the Permit. The SAWB used its discretion

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[6] Because the Fact Sheet is a required element of an NPDES permit, and because it must contain a summary of the "basis for the draft permit conditions including references to applicable statutory or regulatory provisions" (40 CFR § 124.8), it is contemporary evidence of a Water Board's reliance on federal requirements in devising Permit terms. The absence of a citation to specific federal authority in the Fact Sheet cannot be cured by post-Permit statements or reference to post-Permit guidance documents.

to incorporate those particular implementing requirements and, under the Supreme Court's test, it made a "true choice" to impose those requirements. 1 Cal. 5th at 765.

2. Promulgation and Implementation of Bacteria Source Ordinances

As set forth in the Narrative Statement (pages 13-14), Section VIII.C of the Permit, requiring permittees to promulgate and implement ordinances to control known pathogen or bacteria indicator sources, was not compelled by any requirement of federal law or regulation. The only CWA regulation that discussed ordinances in the context of stormwater required that permittees demonstrate that they have "adequate legal authority" to address the operation of their MS4s, including with respect to the control of pollutants. 40 CFR § 122.26(d)(2)(i). This general regulation, however, did not require that permittees specifically adopt ordinances to address bacteria or pathogen sources; Section VIII.C thus represents the SAWB's "true choice" to impose such a "particular implementing requirement." *Dept. of Finance,* 1 Cal. 5th at 765.

In its comments, the SAWB makes three arguments (at 25-27), two of which "bootstrap" unrelated requirements into justification for Section VIII.C and one of which asserts that the requirement represents a "logical and practicable approach to reducing the discharge of pollutants to meet the federal minimum MEP standard." Under *Dept. of Finance,* none of these arguments establishes that Section VIII.C was compelled by federal law.

The SAWB first argues (at 25-26) that Section VIII.C is mandated by the general requirement in the CWA that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers" (33 U.S.C. § 1342(p)(3)(B)(ii)) and further that the regulations define an "illicit discharge" as a discharge not composed entirely of stormwater. These provisions do not, however, require the adoption of ordinances. The SWAB exercised its "true choice" to impose that particular implementing requirement.

The SAWB next argues (at 26) that promulgating ordinances is "required" as part of the implementation of the Middle Santa Ana River bacteria TMDL, stating that "[o]rdinances *may be necessary* to control pathogens and bacterial indicator sources as part of the Comprehensive Bacteria Reduction Management Plan that Permittees are planning to develop and implement as part of their MSAR TMDLs compliance strategy." (emphasis supplied). Whether or not ordinances "may be necessary" for the reduction management plan is a strategy that could have been left to the permittees. The SAWB, however, made the decision to compel such a strategy in Section VIII.C, thus making the "true choice" that, under *Dept. of Finance,* is not a federal mandate.

The SAWB finally argues that Section VIII.C is required to meet the MEP standard and that "[r]equiring the promulgation and implementation of ordinances controlling pathogen sources is a logical and practicable approach to reducing the discharge of pollutants to meet the [MEP] standard." SAWB Comments at 27. What the SAWB cannot argue (and the Permit and Fact Sheet do not contain) is that it made a case specific finding that such a requirement "were the only means by which the [MEP] standard could be implemented," *Dept. of Finance,* 1 Cal.5th at 768, the only situation in which the Supreme Court found that deference should be afforded the judgment of a

regional water board. Here, the choice of which "particular implementing requirement" was up to the SAWB.

3. The requirement to develop and implement an Illicit Discharge Detection and Elimination ("IDDE") program to enhance the existing Illicit Connections/Illegal Discharges ("IC/ID") programs

As set forth in the Narrative Statement at 15-16, the requirement to enhance the IC/ID program in the Permit with an IDDE program lacked any specific CWA or regulatory sanction beyond a general requirement for MS4 operators to develop and implement a program to detect and remove illicit discharges and improper disposal into storm sewers. 40 CFR § 122.26(d)(iv)(B). Nowhere was there any requirement to develop and implement an IDDE program or to annually evaluate the enhanced IC/ID program. The Permit Fact Sheet (at 36) indicates that the SAWB chose to add what it called a "proactive" IDDE program to enhance the IC/ID program. This evidence, on its face, indicates that the SAWB exercised its "true choice" to require the IDDE program as a "particular implementing requirement" and thus, the program was not federally compelled. *Dept. of Finance,* 1 Cal. 5th at 765.

In its comments, the SAWB (at 28-29) makes two arguments. First, the Board quotes an excerpt from the aforementioned EPA MS4 Permit Improvement Guide (which was adopted after the effective date of the Permit and which itself indicates that it imposes no legal obligations) in which the Guide "recommends" that permittees "refer" to an IDDE manual when developing an IDDE program. The Permit, by contrast, requires permittees to "use" the referenced guide or other "equivalent program," a fact admitted by the SAWB Comments ("the Santa Ana Water Board included permit provisions *requiring* a more proactive approach . . . .") *Id.* at 28 (emphasis supplied).

The SAWB also argues that each of the challenged provisions "is specifically recommended" in the Guide or the IDDE manual. *Id.* at 29. "Recommendations" are not "requirements." What is lacking in this argument is any indication that federal law compelled these requirements, especially when the Permit Improvement Guide explicitly does not carry the force of federal law and the IDDE manual is the product not of a federal agency but a non-governmental organization, the Center for Watershed Protection ("CWP").[7] In fact, the SAWB made the "true choice" of including the IDDE program and other requirements not due to any federal compulsion, but under its discretion to choose to enhance the existing IC/ID programs in that manner. As such, the requirements represent a state-mandated new program and enhanced level of service.

Second, the SAWB argues that the IDDE and monitoring programs were intended to address certain conditions in the Permit area and that the requirements "are a logical and practicable approach to addressing pollutants causing impairments during dry weather conditions, and, as such, are consistent with the minimum federal MEP standard." *Id.* at 29. As the Joint Test Claimants noted above, the SAWB cannot argue (and the Permit and Fact Sheet do not state) that the Board made a case specific finding that the IDDE program requirements "were the only means by which the [MEP] standard could be implemented," *Dept. of Finance,* 1 Cal.5th at 768 and n.15,

[7] *See* Center's website homepage describing its mission and membership at www.cwp.org.

the only circumstance in which the Supreme Court found that deference could be given to the judgment of a regional water board as to the MEP standard. Moreover, nothing in the Permit or in the SAWB Comments supports a finding that the IDDE and monitoring program requirements were federally compelled.

Here, the SAWB imposed the "particular implementing requirements" at issue and made the "true choice" to require imposition of the IDDE and related programs. As such, those programs were not federally compelled and under *Dept. of Finance,* do not constitute a federal mandate.

4. Septic System Database

As the Narrative Statement sets forth (at 17), nothing in the CWA or the federal regulations implementing the statute addressed septic systems per se or the requirement to maintain a database of new septic systems. The SAWB Comments cite regulations generally addressing illicit discharges and contends that the regulations "specifically require the development and implementation of controls to limit infiltration of seepage from septic systems to the MS4 system." Comments at 30. The cited regulation, 40 CFR § 122.26(d)(2)(B)(7), however, refers to seepage from "municipal sanitary sewers," not private septic systems. And, even were that regulation to refer to septic systems, it would not constitute a regulation compelling the Permit provision at issue.

The Supreme Court addressed the effect of such general regulations in *Dept. of Finance.* There, the Court reviewed general federal regulatory provisions regarding inspections to see if they justified the specific inspection provisions in the Los Angeles County permit. 1 Cal. 5th at 771. Having parsed those regulations, the Court determined that they did not establish the federal character of the inspection obligations:

> The State argues the inspection requirements were federally mandated because the CWA required the Regional Board to impose permit controls, and the EPA regulations contemplated that some kind of operator inspections would be required. That the EPA regulations contemplated some form of inspections, however, does not mean that federal law required the scope and detail of inspections required by the Permit conditions.

Id. Similarly, the general federal regulations cited by the SAWB do not require the scope and detail of the creation of a septic system database.

The SAWB further links the database requirement to compliance with TMDLs in the Permit, but those requirements are silent with respect to the need for a septic system database. The Board's argument, that permit provisions must be "consistent with the assumptions of any applicable [waste load allocations]s" would potentially authorize any Permit provision that the Board wished to impose that might have some impact, direct or indirect, on the pollutants covered by a TMDL. But, this general requirement that permit provisions be "consistent" with the assumptions of a TMDL are exactly the type of regulations as to which the Supreme Court held did not mandate the "scope and detail" of specific permit requirements. 1 Cal. 5th at 771.

The SAWB concludes, as with other of the challenged Permit requirements, that it is "consistent with" the MEP standard. *Id.* That allegation of consistency, however, does not rise to the case specific finding that the database requirement was the only way that the MEP standard could be attained. *Dept. of Finance,* 1 Cal.5th at 768 and n.15.

5. Permittee Inspection and Related Requirements

As set forth in the Narrative Statement at 18-20, these Section XI Permit requirements compelled the Joint Test Claimants to (1) identify facilities involved in the transport, storage or transfer of pre-production plastic pellets and managed turf facilities, and determine whether those facilities require additional inspections; (2) identify and notify mobile businesses, develop source control and pollution prevention BMPs for those businesses and develop an enforcement strategy to address mobile business; and (3) to evaluate their residential programs.

With respect to the identification of plastic pellet and managed turf facilities, neither the CWA nor its implementing regulations set forth any requirements for such identification. The SAWB Comments similarly do not cite any statutory or regulatory authority that would compel these efforts, noting only that they were "a reasonable and practicable" "requirement" and "approach" to reduce pollutants "consistent with the federal minimum MEP standard." SAWB Comments at 32. As previously discussed, this conclusion, unsupported by either the terms of the Permit or the Fact Sheet, does not constitute a case-specific finding that the requirements "were the only means by which the [MEP] standard could be implemented," *Dept. of Finance,* 1 Cal.5th at 768 and n.15. No deference is thus owed to the SAWB's argument that this requirement is a federal mandate. Moreover, there is no citation to law or regulations indicating that the SAWB was compelled to adopt such "particular implementing requirements." 1 Cal. 5th at 768.

Similarly, with respect to the requirement to identify and notify mobile businesses, develop source control and pollution prevention BMPs and develop a mobile business enforcement strategy, there are no federal statutory or regulatory provisions compelling such programs, and the SAWB Comments cite none, again concluding that the requirements were "reasonable and practicable requirements designed to reduce pollutants consistent with the federal minimum MEP standard." SAWB Comments at 33. This is, of course, not the standard articulated by the Supreme Court in *Dept. of Finance,* as previously discussed.

Finally, concerning the requirement to evaluate the permittees' residential programs, the Narrative Statement (at 19) indicated that the only CWA regulatory provision which related to residential areas required the inclusion in the permit application of "[s]tructural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the [MS4], accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementation of such controls." 40 CFR § 122.26(d)(2)(iv)(A). This regulation in no sense required the specific evaluation of the residential program required in Permit Section XI. As the Supreme Court held in *Dept. of Finance,* the presence of certain general regulatory requirements does not mean that the "scope and detail" found in the Permit was compelled by those requirements.

The SAWB Comments cite no federal requirement for the residential evaluation, and merely conclude that including "residential program evaluations as part of annual reporting requirements will facilitate additional improvements in residential pollutant source control programs." SAWB Comments at 33. This conclusion does not support any inference that the residential evaluation program required in Section XI of the Permit was compelled by federal law or that federal law required the "particular implementing requirements" in Section XI.

6. New Development Requirements

As set forth in more detail in the Narrative Statement (at 20-32), Section XII of the Permit contains numerous requirements relating to new development. The detail and scope of these requirements is substantial, and in adopting them, the SAWB exercised its discretion to dictate to the Claimants how they must administer their new development programs. These detailed requirements were not, however, compelled by federal law or regulation.

In the Permit Fact Sheet at 38, the SAWB cited 40 CFR § 122.26(d)(2)(iv)(A)(2) as authority. This regulation requires MS4 permits to include a

> description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from [MS4s] which receive discharges from areas of new development and significant new development. Such plan shall address controls to reduce pollutants in discharges from [MS4s] after construction is completed.

As the Narrative Statement noted (at 28-29), the specific requirements of Permit Section XII are not compelled by this regulation. Instead, the requirements of Section XII of the Permit stem from the SAWB's exercise of its permitting discretion, their "true choice."

First, with respect to the requirement to develop and implement and maintain BMPs to reduce erosion and mitigate hydromodification in the design of culvert and bridge crossings (Permit Section XII A.5), the general requirement to describe "planning procedures" is, like the inspection requirements considered by the Supreme Court in *Dept. of Finance,* not one that compels the "scope and detail" of the culvert and bridge requirements contained in the Permit. The SAWB Comments again argue that the requirement for BMPs were consistent with the EPA MS4 Permit Improvement Guide and was "consistent with the federal mandate to reduce pollutants to the MEP standard." SAWB Comments at 34. As discussed above, the Guide is a post-facto compilation of explicitly non-binding suggestions, not federal authority which compelled these requirements. And, as also discussed above, there was no case specific finding in the Permit or Fact Sheet that the BMP requirement was the only means by which the MEP standard could be achieved required by the Supreme Court.

Second, concerning the requirement for a Watershed Action Plan ("WAP"), the numerous and detailed requirements in Permit Section XII.B also were not compelled by federal regulation. In fact, as the excerpt from the Permit Fact Sheet discussed in the Narrative Statement at 28-29, the WAP provisions stemmed from the determination of SAWB staff that there was a need to shift to watershed-based planning. The SAWB Comments (at 35-36) cite no statutory or regulatory

basis for the WAP requirement except the planning requirement regulation (addressed above) and a reference to EPA "watershed planning guidance documents," none of which compel action by the SAWB. In fact, the U.S. EPA "Handbook for Developing Watershed Plans to Restore and Protect Our Waters" ("Watershed Handbook") (cited in the SAWB Comments at 35), like the Permit Improvement Guide, is not legally binding:

> This document refers to statutory and regulatory provisions that contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, state, territories, authorized tribes, local governments, watershed organizations, or the public and may not apply to a particular situation based upon the circumstances.

Watershed Handbook, March 2008, Disclaimer page.[8]

Third, concerning the need for review of each permittee's general plan and related documents to eliminate barriers to implementation of LID principles and hydromodification requirements, and their incorporation into a revised WQMP in Permit Section XII.C.1 and D.1, these requirements again were not federally compelled. The SAWB has argued that the requirements were consistent with "U.S. EPA guidance" and fulfilled "the minimum federal mandate of reducing pollutants to the MEP." SAWB Comments at 37. As discussed above, under *Dept. of Finance* these arguments do not meet the test set by the Supreme Court that a requirement in an MS4 permit be federally compelled.

Fourth, the requirement that permittees update their WQMPs to incorporate LID principles and hydromodification provisions (Permit Section XII.E) requires among other things that permittees ensure that development projects employ LID BMPs, incorporate LID principles into a revised WQMP, revise permittee ordinances, codes and design standard to promote green infrastructure and LID techniques, develop and implement education programs on LID principles, ensure that the WQMP specifies preferential use of site design LID BMPs, review development project WQMPs for the presence of hydrologic conditions of concern ("HCOC") and evaluate and mitigate such HCOCs. The Commission has already determined that similar requirements in the 2007 San Diego County MS4 permit represented a state mandate (*In re* Test Claim on San Diego Regional Water Quality Control Board Order No. R9-2007-001, Case No. 07-TC-09, Statement of Decision, March 26, 2010 ("San Diego County Statement of Decision") at 41-54). *Dept. of Finance* supports this determination; general requirements to address discharges from "areas of new development and significant redevelopment" (the language in 40 CFR § 122.26(d)(2)(iv)(A)(2) cited by the SAWB in the Permit Fact Sheet) do not constitute a federal mandate for the highly specific elements included in the Permit requirements.

The SAWB Comments (at 37-39) do not cite regulatory provisions which compel action by MS4 permit writers and permittees, but instead refer to the non-binding Permit Improvement Guide (discussed above), a cover memorandum to that Guide, language in the preamble of an unrelated regulation governing smaller MS4 systems and an administrative decision from the State of Washington, all in support of the argument that the provisions in Permit Section XII.E are a "reasonable and practical requirement for reducing pollutants at their source to meet the minimum

[8] Excerpts of which are attached hereto as Attachment 1.

federal MEP standard" (SAWB Comments at 38) and that the SAWB's inclusion of LID requirements were "required to implement the MEP standard." (*Id.* at 39).

As previously discussed, these arguments and authorities do not represent the case specific determination that the incorporation of the LID and hydromodification principles represented the only means by which the MEP standard could be satisfied, and thus are entitled to no deference under *Dept. of Finance.* 1 Cal. 5th at 768. And, none of the authorities cited by the SAWB constitutes a federal requirement that would compel the Board to adopt the particular implementing requirements at issue.

Fifth, the requirement for permittees to submit a revised WQMP to incorporate the LID and hydromodification elements (Permit Section XII.D.1) is a further specific requirement which is not compelled by federal regulatory language. The SAWB Comments (at 39) again claim that the provision is necessary to meet the MEP standard, but the record does not support the existence of a case specific finding, required by *Dept. of Finance,* that the provision was the only means by which the MEP standard could be attained.

Sixth, the requirement to develop and implement standard design and post development BMPs for various road projects (Permit Section XII.F) is a highly specific and prescriptive provision requiring adherence to specific requirements, including those requirements in EPA's "Green Street" guidance document. As with the other requirements in Permit Section XII, the "scope and detail" of these requirements far exceeds the general language of the CFR section cited by the SAWB in the Permit Fact Sheet as authority and, thus, represents the "true choice" of the Board to impose the requirements. The SAWB Comments (at 39-40) quote a Permit finding which explains the Board's technical rationale for including the requirements. That finding does not, however, indicate that the requirements were compelled by federal law or regulation. Again, the SAWB had the discretion to impose specific permit requirements, including requirements that exceed federal requirements. *City of Burbank, supra,* 35 Cal. 4th at 627-28. But, as the Supreme Court held, that is not the question: "The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them." *Dept. of Finance,* 1 Cal. 5th at 769.

Seventh, the Permit requirement to develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs (Section XII.G.1) is also an exercise of the SAWB's "true choice" to require such efforts, rather than a requirement that is federally compelled. The SAWB's Comments cite no federal statutory or regulatory support for the requirement, but claims that it is "consistent" with the post-facto, non-binding Permit Improvement Guide and is "consistent with the federal minimum MEP standard." SAWB Comments at 40-41. As previously discussed, this rationale does not establish a federally compelling basis for the Permit provision.

Eighth, the Permit's requirements that permittees maintain a database to track structural post-construction BMPs installed after the Permit's adoption, to inspect such BMPs prior to the rainy season and to develop an inspection frequency for various projects (Permit Section XII.K.4-5) also is not a federally compelled requirement. The SAWB Comments (at 41) cite a regulation (40 CFR § 122.26(d)(iv)(A)(1)) which requires a description of maintenance activities and a

schedule for structural controls to be included in a Report of Waste Discharge, but this regulation does not mandate the items required of the permittees in Permit Section XII.K.4-5. The Comments further cite (at 41-42) recommendations from the aforementioned Permit Improvement Guide and un-specified EPA communications with SAWB staff as to BMP maintenance approaches. Again, none of this supports a finding that *federal law* compelled the "particular implementing requirements" at issue in the Permit.

7. Employee Training Programs

As set forth more fully in the Narrative Statement at 33-34, Section XV.C of the Permit required detailed formal training requirements for permittee staff, including training programs for the review of WQMPs and the requirements of the California Environmental Quality Act in Section XII.C of the Permit. As the Narrative Statement noted, there was no CWA statutory or regulatory requirement for such training. Under *Dept. of Finance,* the test that the "particular implementing requirements" be compelled by federal law is not met here. The SAWB made a "true choice" to impose them.

The SAWB Comments (at 42-43) cite no CWA requirements, other than to contend that it made "logical sense" to the Board that "additional training" should be required, training that is "consistent with the federal minimum MEP standard." This language reflects the true choice of the SAWB to require the training (with its numerous specific requirements). The requirements were not federally compelled under the *Dept. of Finance* test and the record is bereft of any fact specific determination that the training was the only means by which the MEP standard could be met.

8. Program Management Assessment

As set forth in the Narrative Statement (at 34-35), relevant portions of Section XVII of the Permit required the permittees to develop and submit a proposal for assessment of their urban runoff management program effectiveness using specific guidance, and then to implement that assessment. The Commission has already determined that similar requirements in the 2007 San Diego County MS4 permit constituted a state mandate, due to the fact that federal regulations did not specify the detailed assessment set forth in that permit. San Diego County Statement of Decision at 83-86.

The Commission's analysis is supported by *Dept. of Finance,* where the Supreme Court rejected arguments that general regulatory inspection requirements mandated the scope and detail of permit requirements in the Los Angeles County stormwater permit. 1 Cal. 5th at 771. The SWAB Comments (at 44) indicate that these provisions were "consistent" with the post-facto, non-binding Permit Improvement Guide "and the federal minimum MEP standard." Again, such statements do not reflect the existence of federally compelled requirements or of a fact specific determination by the SWAB that the required assessment represented the only means by which the MEP standard could be achieved.

* * *

The Joint Test Claimants appreciate this opportunity to provide this Supplemental Brief on the impact of the California Supreme Court's decision in *Dept. of Finance* on the Test Claim.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and complete to the bet of my personal knowledge or information or belief. I further declare that the document attached hereto is a true copy of a document obtained from publicly available sources.

5/31/17

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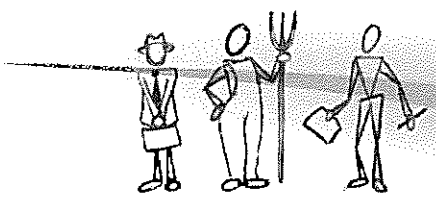
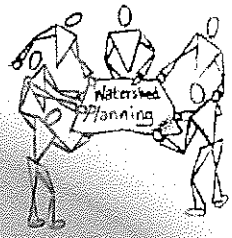
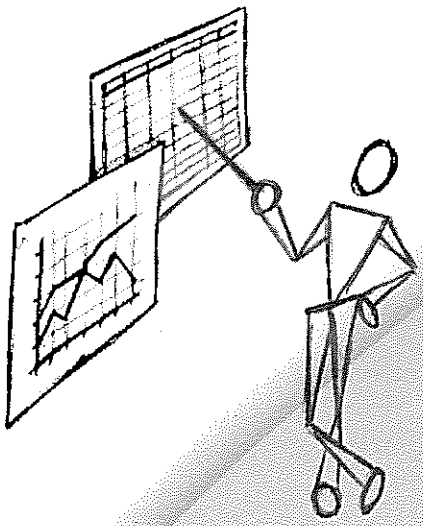
ATTACHMENT 1

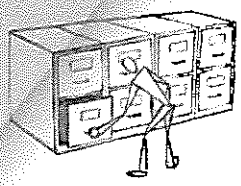
Excerpt, U.S. EPA, Handbook for Developing Watershed Plans to Restore and Protect Our Waters, March 2008

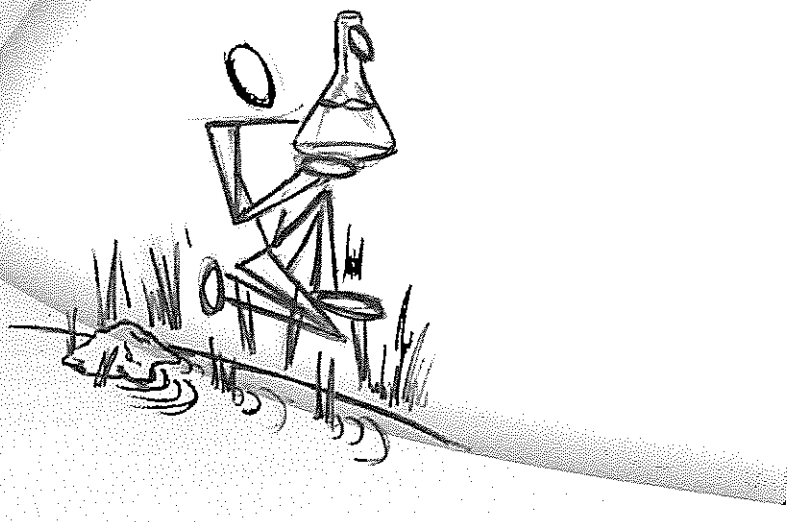


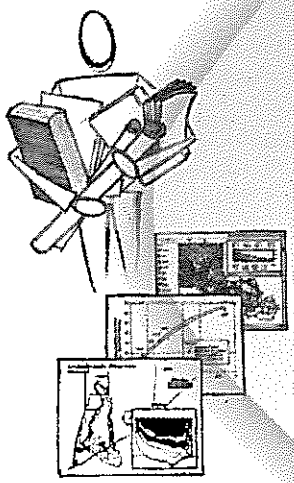


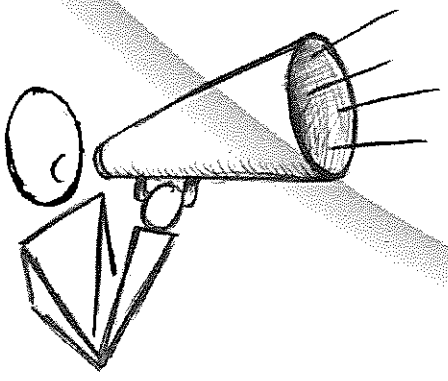
Handbook for Developing Watershed Plans to Restore and Protect Our Waters











This document is one chapter from the EPA "Handbook for Developing Watershed Plans to Restore and Protect Our Waters," published in March 2008. The reference number is EPA 841-B-08-002. You can find the entire document **http://www.epa.gov/owow/nps/watershed_handbook**.

Handbook for Developing Watershed Plans to Restore and Protect Our Waters

Cover, Contents, and Acronyms and Abbreviations

March 2008

Disclaimer

This document provides guidance to states, territories, authorized tribes, local governments, watershed organizations, and the public regarding technical tools and sources of information for developing watershed based plans to improve and protect water quality. This document refers to statutory and regulatory provisions that contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, territories, authorized tribes, local governments, watershed organizations, or the public and may not apply to a particular situation based upon the circumstances. EPA, state, territory, local government, and authorized tribe decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance. The use of non-mandatory words like "should," "could," "would," "may," "might," "recommend," "encourage," "expect," and "can" in this guidance means solely that something is suggested or recommended, and not that it is legally required, or that the suggestion or recommendation imposes legally binding requirements, or that following the suggestions or recommendations necessarily creates an expectation of EPA approval.

Interested parties are free to raise questions and objections about the appropriateness of the application of the guidance to a situation, and EPA will consider whether or not the recommendations in this guidance are appropriate in that situation. EPA may change this guidance in the future.

United States Environmental Protection Agency
Office of Water
Nonpoint Source Control Branch
Washington, DC 20460
EPA 841-B-08-002
March 2008

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.

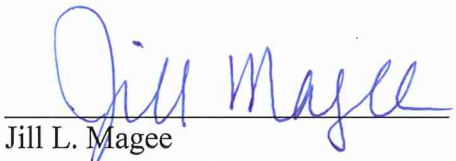
On June 5, 2017, I served the:

- **California Regional Water Quality Control Board (CRWQCB) Santa Ana Region's Response to the Request for Additional Briefing filed May 31, 2017**
- **California State Association of Counties (CSAC's) Response to the Request for Additional Briefing filed May 31, 2017**
- **Claimants' Response to the Request for Additional Briefing filed May 31, 2017**
- **Finance's Response to the Request for Additional Briefing filed May 31, 2017**

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
County of Riverside, Riverside County Flood Control and Water Conservation District, Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, Co-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 June 5, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/2/17

Claim Number: 10-TC-07

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033

Claimants: City of Beaumont
City of Corona
City of Hemet
City of Lake Elsinore
City of Moreno Valley
City of Perris
City of San Jacinto
County of Riverside
Riverside County Flood Control and Water Conservation 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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