



San Gabriel Valley Council of Governments

AGENDA AND NOTICE

OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Wednesday, February 15, 2017, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

Water Policy Committee Chair

Diana Mahmud
City of South Pasadena

Vice-Chair

Judy Nelson
City of Glendora

Members

*Claremont
Diamond Bar
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena*

Water TAC

Members

*Alhambra
Arcadia
Covina
Monrovia
Sierra Madre
LA County DPW
Upper San Gabriel
Valley MWD*

Ex-Officio Members

*Foothill MWD
LA County Sanitation
Districts
SG Basin Watermaster*

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvco.org. Copies are available via email upon request (sgv@sgvco.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

CITIZEN PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*)

CONSENT CALENDAR (*It is anticipated that the Water Committee/TAC may take action on the following matters*)

4. Water Committee/TAC Meeting Minutes – 1/18/2017
Recommended Action: Approve.

PRESENTATION

5. Upper LA River EWMP: Presentation by Dawn Petschauer, Water Biologist, City of Los Angeles
Recommended Action: For Information.

ACTION ITEMS (*It is anticipated that the Water Committee/TAC may take action on the following matters*)

6. Letter of Support for Appointment of Ms. Irma Munoz to the State Water Resources Control Board
Recommended Action: Recommend to the Governing Board a positive endorsement and letter of support.

DISCUSSION ITEMS (*It is anticipated that the Water Committee/TAC may take action on the following matters*)

7. Proposed Revisions to the Clean Water Act Section 303(d) List
Recommended Action: For discussion.

INFORMATION ITEMS

8. Water Boards Update:
 - State Water Resources Control Board
 - LA Regional Water Quality Control Board*Recommended Action: For information.*
9. Stormwater Outreach Updates
 - February, April 2017: Sacramento Legislative Tour
 - South Bay Cities COG*Recommended Action: For information.*
10. Litigation Update
 - City of Gardena v. RWQCB
 - City of Duarte v. SWRCB
 - NRDC v. SWRCB*Recommended Action: For information.*
11. Legislative Updates
 - SB 231 (Hertzberg)
 - HR 465 (Gibbs)*Recommended Action: For information.*
12. Regulatory Updates
 - WOTUS*Recommended Action: For information.*
13. E/WMP Updates
Recommended Action: For information.
14. WELL Stormwater Collection Workshop update

- Recommended Action: For information.*
- 15.** Report on Wates Discharge/MS4 Permit update.
Recommended Action: For information.
- 16.** Watermaster Rate Increases update
Recommended Action: For information.

CHAIR'S REPORT

ANNOUNCEMENTS

- April 3, [Stormwater Finance Forum](#). Sponsored by USEPA Region 9. The forum will be held at LACDPW, Alhambra.
- March 2, LARWQCB meeting

ADJOURN



SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: January 18, 2017
Time: 10:00 AM
Location: Upper San Gabriel Valley Municipal Water District
602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:04 AM.
2. Roll Call

Water Policy Committee Members Present

S. Pedroza, Claremont
J. Nelson, Glendora
G. Crudgington, Monrovia
M. Clark, Rosemead
J. Capoccia, Sierra Madre
D. Mahmud, South Pasadena

Water Policy Committee Members Absent

Diamond Bar

Water TAC Members Present

D. Dolphin, Alhambra
A. Tachiki, Monrovia
J. Carlson, Sierra Madre
M. Adhami, B. Hamamoto LACDPW
M. Gouveia, USGVMWD

Water TAC Members Absent

Arcadia
Covina

Ex Officio Members Present

R. Serna, K. Gardner, SG Basin Watermaster

Ex Officio Members Absent

Foothill Muni Water Dist
LACSD

Guests

R. Tahir, TECS Environmental
B. Inman, Bradbury
K. Maya-Aviles, Assembly Member Holden
J. Carver, Pomona
R. Gastelum, WELL
L. Mustafa, Claremont

M. Cansino, Pomona
D. Dian, Day One
M. Lyons, Assembly Member Holden
V. Griego, WELL
J. Shimmin, South Pasadena
O. Chi, Monrovia

SGVCOG Staff

P. Hawkey
E. Wolf

3. Public Comment. There were no public comments.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 11/16/2016, 12/21/2016
There was a motion to approve all minutes. (M/S: J. Nelson/G. Crudgington).

AYES:	Claremont, Glendora, Monrovia, Rosemead, Sierra Madre, South Pasadena, Alhambra, Monrovia, Sierra Madre, LACDPW, USGVMWD, Watermaster
NOES:	
ABSTAIN:	
ABSENT:	Diamond Bar, Arcadia, Covina, Foothill Municipal Water Dist, LACSD

PRESENTATION

5. Rio Hondo/San Gabriel River EWMP Regional Project: Presentation by Oliver Chi, City Manager, City of Monrovia
- O. Chi discussed efforts by the Rio Hondo/San Gabriel River EWMP group to engage with the Regional Board in order to rework the previously approved EWMP. The proposed changes include the addition of five downstream, regional projects in place of numerous city-by-city water capture sites, including numerous green streets. One of those regional projects involves buying land that is currently an auto junk yard, and turning this site into engineered wetlands. The Regional Board has been supportive of the group’s plan but much will depend on the Reasonable Assurance Analysis modeling, which will determine the quantity of stormwater captured and infiltrated relative to the TMDL targets. The committee thanked Chi for the EWMP’s work and noted that the ground this group is breaking may open up opportunities for other EWMPs to use a similar, more cost effective, downstream approach to meeting MS4 requirements.

ACTION ITEMS

6. Stormwater Legislative Priorities for 2017
- The committee approved the Stormwater Legislative Priorities list with the following change based on discussions with state legislators suggesting that the new wording stands a better chance of gaining support.

CURRENT: 1. **Redirect a portion of** tire fees to address stormwater pollution.
NEW: 1. **Establish a new** tire fee to address stormwater pollution.

There was a motion to approve the Stormwater Legislative Priorities and forward to the Governing Board recommending approval. (M/S: G. Crudgington/J. Nelson).

AYES:	Claremont, Glendora, Monrovia, Rosemead, Sierra Madre, South Pasadena, Alhambra, Monrovia, Sierra Madre, LACDPW, USGVMWD, Watermaster
NOES:	
ABSTAIN:	
ABSENT:	Diamond Bar, Arcadia, Covina, Foothill Municipal Water Dist, LACSD

DISCUSSION ITEMS

INFORMATION ITEMS

7. SWRCB Open Seats:
R. Gastelum reported that the Governor’s office has interviewed four or five candidates and intends to make a selection as soon as possible.
8. Water Education for Latino Leaders (WELL).

- R. Gastelum gave an overview of the February 4th WELL conference.
9. CA Natural Resources: Urban Greening Program
E. Wolf provided an overview of the grant program, calling attention to key dates. Final guidelines will be released on March 1st after which, the CA Natural Resources Division will hold workshops to explain the program and submission criteria. The Urban Greening grant will provide \$80 million for projects that reduce greenhouse gases by “greening” the built up environment. Wolf encouraged EWMPs to apply for funding for regional, multi-benefit projects.
10. Stormwater Outreach Updates
Contract Cities/Independent Cities Association Jan. 9-10 Sacramento Legislative Tour. J. Nelson informed the committee about the Sacramento Legislative Tour, noting that the SGVCOG Stormwater Policy was widely distributed and discussed with state legislators. S. Pedroza recommended that a group from SGVCOG return to Sacramento in the near future in order to reinforce our stormwater legislative agenda and continue outreach. One meeting of note was with Senator Hetzberg, author of SB1298 (2016). SB 1298 sought to include stormwater as one of the utilities exempt from Proposition 218 voting requirements. It was pulled from the agenda in 2016 owing to lack of support. The senator intends to reintroduce similar legislation in 2017.
Stormwater Funding Group’s Legislative Proposals.
D. Mahmud updated the committee on four of our legislative priorities that have been drafted and have initial sponsorship. Those include:
- A bill establishing a new fee on tires to help pay for zinc clean up in stormwater.
 - Inclusion of the Financial Capabilities Assessment criteria in all stormwater related regulation.
 - A bill requiring the State Architect to include stormwater capture in all school design/redesign.
 - Establishment of an insurance fund to pay for civil liability associated with stormwater capture and infiltration.
11. Litigation Update
- City of Gardena v. RWQCB. R. Tahir reported that there will be a case management hearing on Jan 20th.
 - R. Tahir reported that there will be a hearing on Jan 24th on the merits of the NRDC vs. LARWQCB case.
12. E/WMP Updates
B. Hamamoto, LACDPW, reported that the County will draft a baseline Report of Waste Discharge (ROWD). It is likely that E/WMPs will use this as their starting point and modify it to apply to their specific circumstances.
13. Watermaster Rate Increases.
K. Gardner reported that the Watermaster is continuing with the planned rate increase to help defray the cost of imported water needed to replenish the Main San Gabriel Basin. Regarding the heavy rains and the effect on the basin, Gardner stated that it is too early to tell how much impact the rains will have on the key well. It takes five weeks for water to percolate and raise the well level.

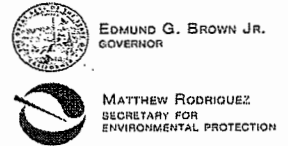
CHAIR’S REPORT

ANNOUNCEMENTS

- WELL. Water Education for Latino Leaders (WELL) Stormwater Collection Workshop, Sat, 4 February, 8:30 to 2:00, Pacific Palms Resort, City of Industry. Attendance is open to all interested parties. Registration is free.
- LA Regional Water Quality Control Board (Closed Session: No Public Comment). Jan 25, 10:00 A.M.
- LA Regional Water Quality Control Board (Open Meeting). Feb 2.

ADJOURN

The meeting was adjourned at 11:57 A.M.



Los Angeles Regional Water Quality Control Board

**NOTICE OF HEARING
AND OPPORTUNITY TO COMMENT**

To: Interested Persons

From: Renee Purdy, Section Chief *RAP*
Regional Programs

Date: February 8, 2017

Subject: Notice of Public Hearing and Opportunity to Comment on the Proposed Revisions to the Clean Water Act Section 303(d) List for the Los Angeles Region and the 2016 Integrated Report

The California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) will hold a public hearing to consider proposed revisions to the Clean Water Act Section 303(d) list of impaired waterbodies in the Los Angeles Region (303(d) list) on April 6, 2017.

The Los Angeles Water Board is expected to take formal action on proposed revisions to the 303(d) list and to hear further information on water quality assessments in the Los Angeles Region per Clean Water Act Section 305(b). Proposed revisions to the 303(d) list, supporting documentation, and a tentative Board Resolution, are available on the Los Angeles Water Board's website at:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/303d_list.shtml.

The federal Clean Water Act (CWA) gives states the primary responsibility for protecting and restoring water quality. Under CWA Section 305(b), states are required to report biennially to the United States Environmental Protection Agency (USEPA) on the water quality conditions of the state's surface waters. The USEPA then compiles these assessments into their biennial "National Water Quality Inventory Report" to Congress. Under CWA Section 303 (d), states are required to review, makes changes as necessary, and submit to the USEPA a list identifying water bodies not meeting water quality standards and identifying the water quality parameter (i.e., pollutant) not being met (303(d) list). Placement on this list generally triggers development of a pollution control plan called a total maximum daily load (TMDL) for each water body/pollutant pair on the list.

California reports the 305(b) water quality assessment and the 303(d) list of impaired waters in a single report called the Integrated Report. The Los Angeles Water Board is responsible for developing the 2016 Integrated Report for waters within the Los Angeles Region of California.

IRMA MUÑOZ, CHAIR | SAMUEL LINGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

♻️ RECYCLED PAPER

Item 7a
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Pursuant to section 6.2 of the "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List," waterbodies which make up the 303(d) list are subject to public review and approval by the Los Angeles Water Board. Other assessed waterbodies in the Integrated Report are provided to the public and to the Los Angeles Water Board as additional waterbody information.

Following adoption of the 303(d) list by the Los Angeles Water Board, the 2016 Integrated Report will be transmitted to the State Water Resources Control Board (State Water Board), where it will be considered by the State Water Board in combination with other Regional Water Boards' Integrated Reports.

The California 303(d) list will require final approval by USEPA. If USEPA determines that changes are needed to the submitted report they will initiate further public review before finalizing and publishing the report.

I. HEARING DATE AND LOCATION

The Los Angeles Water Board will hold a public hearing to consider the proposed revisions to the 303(d) list. The Los Angeles Water Board is expected to take formal action. The Los Angeles Water Board is scheduled to consider this matter at its regularly scheduled board meeting on:

Date: Thursday, April 6, 2017
Time: 9:00 a.m.
Place: City of Simi Valley
Council Chambers
2929 Tapo Canyon Road
Simi Valley, CA 93063

Please check the Los Angeles Water Board's website (<http://www.waterboards.ca.gov/losangeles/>) for the most up-to-date public hearing date and location as they are subject to change.

II. AVAILABILITY OF DOCUMENTS

The tentative resolution, proposed 303(d) list changes and supporting documentation are available on the Los Angeles Water Board's website at:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/303d_list.shtml.

These documents are also available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for reviewing the documents at the Los Angeles Water Board offices may be made by calling the Los Angeles Water Board at (213) 576-6600. Comments and responses to comments and other subsequent relevant documents will be available online as they are generated.

III. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

Persons wishing to comment on the tentative resolution, proposed 303(d) list changes and supporting documentation, or submit evidence for the Los Angeles Water Board to consider, are invited to submit them in writing.

To be evaluated and responded to by Los Angeles Water Board staff, included in the Los Angeles Water Board's agenda binder, and fully considered by the Los Angeles Water Board members in advance of the hearing, all written comments and evidence must be *received* by the Los Angeles Water Board no later than **5:00 p.m. on March 9, 2017**. Written comments submitted untimely will not be accepted or responded to by the Los Angeles Water Board. Failure to comply with these requirements is grounds for the Los Angeles Water Board to refuse to admit the proposed written comment or evidence into the administrative record.

Interested persons are encouraged to submit comments electronically and in Microsoft Word format. Send comments by e-mail to: losangeles@waterboards.ca.gov. Please indicate in the subject line, "**Comment Letter – Revisions to the Los Angeles Region 303(d) list.**" Written comments sent by mail should be addressed to:

California Regional Water Quality Control Board
Los Angeles Region
ATTN: Jun Zhu
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Interested persons are also invited to attend the hearing and present oral comments. Oral comments should, to the extent possible, summarize written comments. Time limitations on oral comments will be imposed. At the discretion of the Los Angeles Water Board Chair, oral comments may be limited to three minutes each, depending on the number of persons wishing to be heard. Interested persons requesting more than three minutes should contact Los Angeles Water Board staff, as provided in Section V. below, no later than 5:00 p.m. on March 9, 2017 to state how much time they believe is necessary for their oral comments.

IV. FUTURE REVIEW BY STATE WATER BOARD

To request the State Water Resources Control Board (State Water Board) or Executive Director of the State Water Board review specific listing recommendations approved by the Los Angeles Water Board, the request must be submitted to the State Water Board within 30 days after the Los Angeles Water Board approval. Such requests may be submitted electronically, in pdf text format (if less than 15 megabytes in total size), to the Clerk to the State Water Board via email at commentletters@waterboards.ca.gov. If the file is greater than 15 megabytes in total size, then the comment letter may be submitted by fax at (916) 341-5620.

Written comment letters to the State Water Board may also be mailed to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Please also indicate in the subject line, "**Request for Review – Regional 303(d) Listing recommendations.**"

The State Water Board, when considering approval of a Regional Water Board's approval of a 303(d) list, may refuse to accept any comments that were not timely raised before the Regional Water Board. Therefore, interested persons are strongly encouraged to make all comments on this proposed action to the Los Angeles Water Board before or during the public hearing.

V. LOS ANGELES WATER BOARD STAFF CONTACTS

For additional information regarding these proposed actions, please contact Dr. Jun Zhu at Jun.Zhu@waterboards.ca.gov or (213) 576-6681 or Dr. L.B. Nye, at LB.Nye@waterboards.ca.gov or at (213) 576-6785.

LOS ANGELES REGIONAL
WATER QUALITY CONTROL BOARD

2016 CLEAN WATER ACT
SECTIONS 305(b) AND 303(d)
INTEGRATED REPORT
FOR THE LOS ANGELES REGION

STAFF REPORT

February 2017

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List of Acronyms and Abbreviations

Basin Plan	Water Quality Control Plan: Los Angeles Region
BPTCP	Bay Protection and Toxic Cleanup Program
BMI	Benthic Macro Invertebrates
CalWQA	California Water Quality Assessment (database)
CCC	Criteria Continuous Concentration
CCR	California Code of Regulations
CDPH	California Department of Public Health
CFR	Code of Federal Regulations
CMC	Criteria Maximum Concentration
CTR	California Toxics Rule
CWA	Clean Water Act
°C	degrees Celsius
°F	degrees Fahrenheit
FED	Functional Equivalent Document
DDE	Dichlorodiphenyldichloroethylene
DDT	Dichlorodiphenyltrichloroethane
DFW	Department of Fish and Wildlife, formerly Department of Fish and Game (DFG)
DO	Dissolved oxygen
dw	dry weight
ERM	Effects Range Median
HCH	Hexachlorocyclohexane
HSA	Hydrologic Sub Area
HU	Hydrologic Unit
IBI	Index of Biological Integrity
ILRP	Irrigated Lands Regulatory Program
IR	Integrated Report
kg	kilogram(s)
Listing Policy	Water Quality Control Policy for Developing California's Section 303(d) List
LOE	Line of Evidence
MCL	Maximum Contaminant Level
MDL	Method Detection Limit
mg/kg	milligrams per kilogram (parts per million)
mg/L	milligrams per liter (parts per million)
µg/g	micrograms per gram (parts per million)
µg/L	micrograms per liter (parts per billion)
MTBE	Methyl tertiary-butyl ether
MTRL	Maximum Tissue Residue Level
NAS	National Academy of Sciences
ng/g	nanograms per gram (parts per billion)
ng/L	nanograms per liter (parts per trillion)
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System

NTU	Nephelometric Turbidity Unit
oc	organic carbon
OEHHA	Office of Environmental Health Hazard Assessment
PAH	Polynuclear aromatic hydrocarbon
PBDE	Polybrominated diphenyl ethers
PCB	Polychlorinated biphenyl
PEL	Probable Effects Level
pg/L	picograms per liter
QA	Quality Assurance
QAPP	Quality Assurance Project Plan
QC	Quality Control
RBI	Relative Benthic Index
RL	Reporting Level
SCCWRP	Southern California Water Research Project
SMWP	State Mussel Watch Program
SQG	Sediment quality guideline
SWAMP	Surface Water Ambient Monitoring Program
TDS	Total Dissolved Solids
TIE	Toxicity Identification Evaluation
TMDL	Total Maximum Daily Load
TSMP	Toxic Substance Monitoring Program
TSS	Total Suspended Solids
U.S. EPA	U.S. Environmental Protection Agency
USGS	U.S. Geological Survey
WDR	Waste Discharge Requirement
WQO	Water quality objective
WQS	Water quality standard
ww	wet weight

1. Introduction

The federal Clean Water Act (CWA) gives states the primary responsibility for protecting and restoring water quality. Under CWA Section 305(b), states are required to report biennially to the United States Environmental Protection Agency (USEPA) on the water quality conditions of their surface waters. The USEPA then compiles these assessments into their biennial “National Water Quality Inventory Report” to Congress. Under CWA Section 303(d), states are required to review, makes changes as necessary, and submit to the USEPA a list identifying waterbodies not meeting water quality standards and identifying the water quality parameter (i.e., pollutant) not being met (303(d) list). Placement on this list generally triggers development of a pollution control plan called a total maximum daily load (TMDL) for each waterbody/pollutant pair on the list.

In 2002, the USEPA issued guidance to states requiring that the 305(b) water quality assessment and the 303(d) list of impaired waters be integrated into a single report. This report is called the Integrated Report, and it satisfies both the CWA Section 305(b) and Section 303(d) requirements. The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) is responsible for developing and adopting the 2016 Integrated Report for waters within the Los Angeles Region of California. Following adoption by the Los Angeles Water Board, the 2016 Integrated Report will be transmitted to the State Water Resources Control Board (State Water Board), where it will be considered by the State Water Board in combination with other Regional Water Board Integrated Reports.

The purpose of this staff report is to describe the assessment process (the procedures used by the State Water Board and Los Angeles Water Board staff to analyze data and information), provide a report of surface water quality in the Los Angeles Region as required by CWA Section 305(b), and provide Los Angeles Water Board staff recommendations for additions, deletions, and changes to the California CWA Section 303(d) List.

The results of the staff analysis are presented as staff recommendations in the form of fact sheets that contain a decision and supporting lines of evidence for each water body/pollutant pair assessed. A summary of staff recommendations can be found in Section 4. The fact sheets are available in Appendix G of this Staff Report.

2. Legal Requirements and Policy

This section provides a summary of the federal and state legal requirements and applicable policies for the 2016 Integrated Report.

2.1 Federal Requirements

2.1.1 CWA Section 303(d) – Impaired Waters

Section 303(d) of the Clean Water Act requires states to identify waters that do not meet applicable water quality standards after the application of certain technology-based controls.¹ The Section 303(d) List must include a description of the pollutants causing the violation of water quality standards (40 CFR §130.7(b)(iii)(4)) and a priority ranking of the water quality limited segments, taking into account the severity of the pollution and the uses to be made of the waters.

Water quality standards include the designated beneficial uses of a waterbody, the adopted water quality objectives to protect those uses (numeric and narrative), and the State’s Antidegradation Policy (State Water Board Resolution No. 68-16) (SWRCB 1968).

Federal regulation defines a “water quality limited segment” as “any segment [of a surface waterbody] where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after application of technology-based effluent limitations required by CWA Sections 301(b) or 306” (40 CFR 130.2(j)).

States are required to review the Section 303(d) List in even-numbered years, make changes as necessary, and submit the list to the USEPA for approval. A TMDL is generally developed for a water quality limited segment. A TMDL is the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, and natural background (40 CFR 130.2(i)).

2.1.2 CWA Section 305(b) – Water Quality Assessment

Under CWA Section 305(b), states are required to report biennially to the USEPA on the water quality conditions of their surface waters. The USEPA then compiles these assessments into their biennial “National Water Quality Inventory Report” to Congress.

2.1.3 The Integrated Report and Waterbody Categories

In 2002, the USEPA issued guidance to states requiring that the 305(b) water quality assessment and the 303(d) list of impaired waters be integrated into a single report. This report is called the Integrated Report, and it satisfies both the CWA Section 305(b) and Section 303(d) requirements.

To meet CWA Section 305(b) requirements of reporting on water quality conditions, the Integrated Report places each assessed waterbody segment into one of five non-overlapping

¹ Technology-based controls are defined in CWA Section 301. They include effluent limits (primary and secondary treatment requirements) for industrial discharges and discharges from publically owned treatment works.

categories based on the overall beneficial use support of the water segment and the need for a TMDL. Water segments are evaluated for at least one of six “core” beneficial uses including: municipal and domestic supply, aquatic life support, fish consumption, shellfish harvesting, contact recreation, and non-contact recreation.

Table 1. Integrated Report Categories

Category	Description
1	Evidence shows all core beneficial uses are supported.
2	Evidence is insufficient to make use support determinations.
3	Evidence shows some core uses are supported (at least one use is supported).
4a	Evidence shows at least one use is not supported, a TMDL has been developed and is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame, and the TMDL has been approved by the USEPA.
4b	Evidence shows at least one use is not supported, but a TMDL is not needed as an existing regulatory program is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame.
4c	Evidence shows at least one use is not supported, but a TMDL is not needed as the impairment is caused by non-pollutant sources.
5	Evidence shows at least one use is not supported and a TMDL is needed.

A waterbody will often have multiple pollutants impairing multiple beneficial uses. In these cases, when the waterbody has TMDLs for all the impaired uses, the waterbody is placed in category 4a; when the waterbody is lacking a TMDL for at least one impairment, the waterbody is placed in category 5.

2.2 California Requirements

On September 30, 2004, the State Water Board adopted the “Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List,” also known as the Listing Policy (SWRCB 2004a) in accordance with California Water Code Section 13191.3(a). The Listing Policy identifies the process by which the State Water Board and the Regional Water Quality Control Boards will comply with the listing requirements of CWA Section 303(d). The Listing Policy became effective in December 2004. Justification of each portion of the Listing Policy is presented in the Final Functional Equivalent Document (SWRCB, 2004b) that was developed to support the provisions of the Listing Policy.

The objective of the Listing Policy is to establish a standardized approach for developing California’s Section 303(d) List with the overall goal of achieving water quality standards and maintaining beneficial uses in all of California’s surface waters. TMDLs will generally be developed as needed for the waters identified under the provisions of the Listing Policy.

The Listing Policy outlines a “weight of evidence” approach that provides the rules for making decisions based upon different kinds of data, an approach for analyzing data statistically, and requirements for data quality, data quantity, and the administration of the listing process. Decision rules for listing and delisting are provided for chemical-specific water quality standards; bacterial water quality standards; health advisories; bioaccumulation of chemicals in aquatic life tissues; nuisance such as trash, odor, and foam; nutrients; water and sediment toxicity; adverse biological response; and degradation of aquatic life populations and communities. The Listing Policy also requires that situation specific weight of evidence listing or delisting factors be used if available information indicates water quality standards are attained or not attained and the other decision rules do not support listing or delisting.

The Listing Policy also provides direction related to:

- The definition of readily available data and information.
- Administration of the listing process including data solicitation and fact sheet preparation.
- Interpretation of narrative water quality objectives using numeric evaluation guidelines.
- Data quality assessments.
- Data quantity assessments including waterbody specific information, data spatial and temporal representation, aggregation of data by reach/area, quantitation of chemical concentrations, evaluation of data consistent with the expression of water quality objectives or criteria, binomial model statistical evaluation, evaluation of bioassessment data, and evaluation of temperature data.

The Listing Policy requires that *all* surface waters that do not meet water quality standards be placed on the Section 303(d) List. The Policy also states that the California 303(d) List includes (1) waters still requiring a TMDL under Category 5, and (2) waters where the water quality limited segment is being addressed under Category 4. Waterbodies in the “Water Quality Limited Segments Being Addressed” category must meet either of the following conditions:

1. A TMDL has been approved by USEPA and is expected to result in full attainment of the standard within a reasonable, specified time frame (Category 4a).
2. It has been determined that an existing regulatory program is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame (Category 4b).

Waterbodies that are impaired by a non-pollutant source (Category 4c) do not require a TMDL and the State Water Board, in accordance with the Listing Policy, does not consider waters in Category 4c as a part of the 303(d) List. This means that, for California, waters that fall into the Integrated Report Categories 4a, 4b, and 5 are considered part of the California 303(d) List. The USEPA considers Category 5 waterbodies as the only category that constitutes the 303(d) List.

2.3 TMDL Scheduling

In conformance with Section 5 of the Listing Policy, a TMDL completion schedule date is required for all waterbody-pollutant combinations placed on the 303(d) List. Water Board staff relied on guidance from the USEPA (1997), which states that “schedules should be expeditious and normally extend from eight to thirteen years in length, but could be shorter or slightly longer depending on State-specific factors.” Therefore, the timeline for completing TMDLs for waterbodies listed for the first time as part of the 2016 Integrated Report is estimated to be no longer than thirteen years, which equates to an estimated completion date of 2029. Expected TMDL completion dates are proposed by Los Angeles Water Board staff in the fact sheets of this report (Appendix G).

2.4 2010 303(d) List of Impaired Waters

The 2010 303(d) list was adopted by the Los Angeles Water Board on July 16, 2009, in Resolution No. R09-004; adopted by the State Water Board on August 4, 2010, in Resolution No. 2010-0040; and approved by the USEPA on October 11, 2011. The 2010 list included data submitted through February 28, 2007. The 2010 303(d) list is the most recent list which included updates from the Los Angeles Region.

2.5 Changes to California’s Integrated Report 303(d) and 305(b) Process

In February 2013, the State Water Board announced a new strategy for the development of the State’s Integrated Report including establishing three groups of Regional Water Boards and submitting an Integrated Report for one group per listing cycle (i.e. every two years). This strategy was formally described in an *Integrated Report Update Memo* in November 2013 (SWRCB, 2013). The Listing Policy was amended to reflect this and other changes on February 3, 2015.

Therefore, the 2012 Integrated Report consisted of data submitted for the North Coast Regional Water Quality Control Board (Region 1), the Lahontan Regional Water Quality Control Board (Region 6), and the Colorado River Basin Regional Water Quality Control Board (Region 7). On July 30, 2015, the USEPA issued its final decision this update to the 303(d) list and this 2012 303(d) list replaced the 2010 303(d) list as California’s current 303(d) list.

The Central Coast Regional Water Quality Control Board (Region 3), the Central Valley Regional Water Quality Control Board (Region 5), and the San Diego Regional Water Quality Control Board (Region 9) recently approved Integrated Reports including a 303(d) list for their respective regions. Region 9 approved its 303(d) list in October 2016 and Regions 3 and 5 approved their 303(d) lists in December 2016. These updates to the 303(d) list were to be approved by the State Water Board as the 2014 303(d) list.

The 2016 Integrated Report will consist of data for the San Francisco Bay Regional Water Quality Control Board (Region 2), the Los Angeles Water Board (Region 4), and the Santa Ana Regional Water Quality Control Board (Region 8). Each of these Regions is expected to approve their lists by April 2017. Until the 2014 and 2016 303(d) list updates are approved by the USEPA, the current list is the 2012 303(d) list.

Due to the volume of data received during the 2010 data solicitation period, the State Water Board determined that no additional data would be solicited or analyzed until all the 2010 data are assessed. Each of the 2012, 2014 and 2016 303(d) lists have assessed only data from the 2010 data solicitation.

In addition, changes to the procedures included in the February 2015 amendment to the Listing Policy, included a requirement that all data be submitted to the California Environmental Data Exchange Database (CEDEN); this change will significantly improve the efficiency of the listing and delisting process so that even with regional updates only once every six years, California will have a more comprehensive assessment and 303(d) list than in the past. The CEDEN website has a new page dedicated to the 303(d) list: http://www.ceden.org/303d_list.shtml.

The data solicitation for the 2018 303(d) list was released on November 3, 2016. The 2018 303(d) list will address Regions 1, 6, and 7.

The Los Angeles Water Board will develop its next Integrated Report, including an updated 303(d) list, in 2022. Los Angeles Water Board staff estimates that the 2022 303(d) list will include data submitted through 2021.

2.6 Public Review and Board Approval of the 2016 303(d) List

Pursuant to section 6.2 of the Listing Policy, waterbodies listed in Category 4a, 4b, or 5, which make up the 303(d) list, are subject to public review and approval by the Los Angeles Water Board. Waterbodies listed in Categories 1, 2, 3, or 4c are provided to the public and to the Los Angeles Water Board as additional waterbody information. All categories will be submitted to the State Water Board for inclusion into the California Integrated Report. Once compiled, the State Water Board will provide public notice of the California Integrated Report for additional public review prior to approval by the State Water Board, as outlined in section 6.3 of the Listing Policy. Waterbodies in Categories 4a, 4b, and 5 will be considered for inclusion in the California 303(d) list.

It is anticipated that the State Water Board will approve the 2014 list updates of Regional 3, 5 and 9 and the 2016 list updates of Regions 2, 4, and 8, during the same State Water Board hearing in 2017.

The California 303(d) list will require final approval by USEPA. If USEPA determines that changes are needed to the submitted report they will initiate further public review before finalizing and publishing the report.

3. Development of the 2016 Los Angeles Region 303(d) List

This section provides a review of the data analysis for the Los Angeles Region’s 2016 Integrated Report.

3.1 Data Solicitation for the 2016 303(d) List

In January of 2010, the State Water Board solicited data from the public with a formal “Notice of Public Solicitation of Water Quality Data and Information for the California Integrated Report” (Notice), which was sent to interested persons subscribed to the State Water Board’s Integrated Report e-mail distribution list. In addition, the Los Angeles Water Board sent the notice to persons subscribed to the Los Angeles Water Board’s Basin Plan Amendments and TMDL e-mail distribution lists. Data used as part of the 2016 Integrated Report were received through August 30, 2010. Data sources include government agencies, municipalities, environmental groups, citizen groups, receiving water data from the National Pollutant Discharge Elimination System (NPDES) dischargers and data collected by the Regional and State Water Boards under the Surface Water Ambient Monitoring Program (SWAMP).

All data and information submitted are available as part of the electronic administrative record (Appendix H). Data and information pertaining to specific waterbody-pollutant assessments are provided in the fact sheets (Appendix G) and link directly to the administrative record.

3.2 Data Processing and Analysis

All readily available data and information in the administrative record was considered in the development of the 2016 Integrated Report. However, only high-quality data supported by a Quality Assurance Project Plan was used to make determinations of water quality standards attainment. In the absence of quality assurance documentation, data is used only as supporting evidence and is not the basis of a listing decision.

Fact sheets and overall beneficial use support determinations were developed in the California Water Quality Assessment (CalWQA) database. Lines of evidence (LOE) summarize: water quality data, information pertaining to where and when the water quality monitoring took place, the pollutant sampled, the beneficial use affected, the water quality objective or guideline protective of the beneficial use, the number of samples collected, and how many samples exceeded the objective or guideline. Potential sources are identified in fact sheets in some cases, otherwise, the potential source was marked “Source Unknown”.

Data were aggregated by waterbody segment following the requirements of Section 6.1.5.4 of the Listing Policy, and assessments were performed on the individual segments. Waterbodies were segmented to account for hydrologic features.

Spatial and temporal representation of data was assessed using the requirements and guidance of the Listing Policy. The available data were used to represent concentrations during the averaging period associated with the particular pollutant and water quality objective, as required by Section 6.1.5.6 of the Listing Policy. For example, if only one data point was available during a 4-day period, it was used to represent the four-day average concentration for that period.

Following data assessment, Los Angeles Water Board staff determined whether or not the waterbody was attaining relevant water quality standards. Decision recommendations were completed to summarize all relevant LOEs for a waterbody-pollutant combination and, based on the statistical evaluation described in the Listing Policy, to state if the exceedances of water quality standards constituted an impairment of a beneficial use and, thus, necessitated a 303(d) listing.

3.3 Water Quality Standards Used in the Data Assessment

Beneficial uses for waters in the Los Angeles Region are identified in Table 2-1, 2.1a and 2.3 of the Los Angeles Regional Water Quality Control Plan (Basin Plan).

Water Board staff assessed data using regulatory limits when available. The most common regulatory limits used include water quality objectives in the Basin Plan or any statewide Water Quality Control Plans applicable to the waterbody, including objectives for toxic chemicals promulgated by the USEPA under the California Toxics Rule (40 CFR §131.38). When numeric regulatory limits were not available, evaluation guidelines were considered to interpret narrative water quality objectives. Evaluation guidelines are selected in conformance with section 6.1.3 of the Listing Policy.

3.4 Determination of Beneficial Use Support and Integrated Report Categories

To meet CWA Section 305(b) requirements of reporting on water quality conditions, the Integrated Report places each assessed waterbody segment into one of five non-overlapping categories based on the overall beneficial use support of the water segment and the need for a TMDL. Water segments were evaluated for at least one of six “core” beneficial uses including: municipal and domestic supply, aquatic life support, fish consumption, shellfish harvesting, contact recreation, and non-contact recreation. For each core beneficial use associated with each waterbody segment, a rating of fully supporting, not supporting, or insufficient information was assigned based on the assessment of readily available data and information.

Table 2. Los Angeles Integrated Report Waterbody Categories, 2016 303(d) List

Category	Description	Waterbody Segments
1	Evidence shows at least one use is supported and there are no documented impairments.	34
2	Evidence is insufficient to make complete use support determinations, but some uses are supported.	56
3	Evidence is insufficient to make complete use support determinations but some uses may potentially be threatened. Waterbodies may be on this list when only one water quality sample has been analyzed and there is an exceedance in one or more pollutant of that single sample.	15
4	At least one beneficial use is not supported but a Total Maximum Daily Load (TMDL) is not needed.	
4a	Evidence shows at least one use is not supported, a TMDL has been developed and is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame, and the TMDL has been approved by the USEPA.	74
4b	Evidence shows at least one use is not supported, but a TMDL is not needed as an existing regulatory program is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame.	0
4c	Evidence shows at least one use is not supported, but a TMDL is not needed as the impairment is caused by non-pollutant sources.	0
5	Evidence shows at least one use is not supported and a TMDL is needed.	140
Total waterbodies assessed		319

Detailed Category Reports can be found in Appendices B-F.

Pursuant to Section 2 of the Listing Policy, waterbodies remain in Category 5 until all 303(d)-listed pollutants are addressed by USEPA-approved TMDLs or by another regulatory program that is expected to result in the reasonable attainment of the water quality standards, at which point the waterbody will be placed into Category 4a or 4b. Impaired waters are placed in Category 4c if the impairment is not caused by a pollutant but rather caused by pollution, such as flow alteration or habitat alteration. Waterbodies placed in Category 4c are not included as part of the 303(d) list and do not require the development of a TMDL.

Waterbody-pollutant combinations listed in Category 5 (Appendix B) show the TMDL requirement status. If a “TMDL is still needed” for the waterbody-pollutant combination, the TMDL requirement status is labeled 5A. If the waterbody-pollutant combination is “being addressed by a USEPA approved TMDL”, the TMDL requirement status is labeled 5B. If the waterbody-pollutant combination is “being addressed by an action other than a TMDL”, the

TMDL requirement status is labeled 5C. These labels were created for internal tracking and are not Integrated Report sub-categories required by the USEPA.

4. Proposed Changes to the Section 303(d) List

While, due to the changes to the 303(d) process described in Section 2.5, data review was restricted to data collected prior to September 2010, a significant number of changes to the Los Angeles Region's 303(d) list are proposed. The 200 proposed new listings include:

- Additional PCB and pesticide listings arising from California's Surface Water Ambient Monitoring Program (SWAMP) water quality sampling conducted in 2009 focusing on lakes and reservoirs. For example, staff has proposed new listings for Castaic Lake (PCBs), Pyramid Lake (chlordane, dieldrin, DDT and PCBs) and Echo Park Lake (dieldrin).
- Additional pesticide and other pollutant listings in Ventura County waters draining agricultural lands including the Santa Clara Drain, Tapo Canyon, Wheeler Canyon and Boulder Cove, arising from the Ventura County Agricultural Irrigated Lands Group water quality monitoring.
- Additional toxicity listings in the Los Angeles River arising from water quality sampling conducted the City of Los Angeles' Bureau of Sanitation, required pursuant to the City's NPDES permits.
- Various other proposed listings arising from special studies or ongoing water quality monitoring programs.

Most of the proposed new listings are new waterbody segment-pollutant combinations where a TMDL will be needed. These waterbodies would then be in Category 5. However, several of the proposed new listings identify additional impairments in watersheds already being addressed by a TMDL for that pollutant. For example, the proposed new listings for DDE and DDD in Calleguas Creek Reach 3 and the proposed chlordane, DDE and DDD listings in Hondo Barranca are being addressed by the Calleguas Creek Organochlorine Pesticides, PCBs and Siltation TMDL. In addition, the proposed Los Angeles River Reach 3 indicator bacteria listing is already being addressed by the Los Angeles River Bacteria TMDL. These waterbodies would then be in Category 4a unless another waterbody pollutant combination requires a TMDL such that the waterbody would remain in Category 5.

The proposed 40 delistings include:

- Several proposed delistings for indicator bacteria at Santa Monica Beaches, including Abalone Cove Beach, Bluff Cove Beach, Outer Cabrillo Beach, Manhattan Beach and Hermosa Beach. It is important to note that the Santa Monica Bay Bacteria TMDL remains in effect for those beaches even if the delistings are fully approved.

- Various other proposed delistings arising from special studies or ongoing water quality monitoring programs.

In a number of cases, in both fresh and marine waters, listings for “coliform bacteria” were renamed “indicator bacteria” based on USEPA’s recommendation and for statewide consistency.

In addition, because 21 TMDLs including 252 listings, have gone into effect since the development of the 2010 303(d) list, a number of Category changes are proposed to change waterbody-pollutant combinations from “requiring a TMDL” (Category 5A) to “being addressed by a USEPA approved TMDL” (Category 5B or, if all waterbody-pollutant combinations have been addressed for that waterbody, Category 4a).

For detailed information on proposed changes, refer to the waterbody-pollutant “fact sheets” in Appendix G.

As discussed in Section 2.6, it is anticipated that the State Water Board will approve the 2014 list updates of Regions 3, 5 and 9 and the 2016 list updates of Regions 2, 4, and 8, during the same State Water Board hearing in 2017. Table 3, below, shows the 303(d) list changes approved by Regional Water Boards 3, 5 and 9 and the 303(d) list changes proposed, at this time, for approval by the staff of Regional Water Boards 2, 4, and 8.

Table 3. Summary of 2014 and 2016 changes to the California 2012 303(d) List

2014-2016 INTEGRATED REPORT						
REGION	2012 303(d) LIST	2014 and 2016 303(d) List proposed changes				
	Total 303(d) Listings (Categories 4a, 4b and 5)	Regional Water Board 303(d) Listing Recommendations		Miscellaneous Changes		Total proposed 303(d) Listings (Categories 4a, 4b and 5)
		New Listings	New Delisting	Resulting in Listings*	Resulting in Delistings*	
1	159	0	0	0	0	159
2	333	42	8	0	6	361
3	712	269	48	0	23	910
4	823	200	40	0	0	983
5	730	269	45	0	0	954
6	155	0	0	0	0	155
7	68	0	0	0	0	68
8	132	33	13	0	0	152
9	445	244	14	0	0	675
TOTALS	3557	1057	168	0	29	4417

Miscellaneous changes include adjustments to the 303 (d) list when waterbody reaches are combined or split resulting in a decrease or increase in the number of listings.

5. References

For a complete list of references used in all the assessment fact sheets, see Appendix H.

SWRCB. (2004a). *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (amended February 3, 2015). Sacramento, CA.

SWRCB. (2004b). *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List, Final Functional Equivalent Document*. Sacramento, CA.

SWRCB. (2013). *California Integrated Report [Clean Water Act Sections 303(d) and 305(b)] Update* (Memorandum dated November 12, 2013). Sacramento, CA.

U.S. EPA. (2001). *2002 Integrated Water Quality Monitoring and Assessment Report Guidance* (Memorandum dated November 19, 2001). Washington, D.C.

U.S. EPA. (2015). *Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Report and Listing Decisions* (Memorandum dated August 13, 2015). Washington, D.C.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NATURAL RESOURCES DEFENSE
COUNCIL, INC. AND LOS ANGELES
WATERKEEPER,

Petitioners,

vs.

STATE WATER RESOURCES CONTROL
BOARD and CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION,

Respondents.

Case No. BS159495

[TENTATIVE] ORDER DENYING
PETITION FOR WRIT OF MANDAMUS

Dept.: 86
January 23, 2017
9:30 a.m.

I. Introduction

At issue in this case is the 2012 NPDES permit issued by the California Regional Water Quality Board, Los Angeles Region for various municipalities' discharges of potentially contaminated storm water run-off transported via sewer systems to the various rivers, creeks, oceans and other water bodies located in watersheds throughout Los Angeles County. Petitioners

1 National Resource Defense Council, Inc. (“NRDC”) and Los Angeles Waterkeeper (collectively
2 “Petitioners”) filed this action against the State Water Resources Control Board (“SWB” or State
3 Board) and California Regional Water Quality Control Board, Los Angeles Region (“RWB” or
4 Regional Board”) seeking to invalidate the 2012 NPDES Permit (“2012 Permit”) by obtaining a
5 judicial writ of mandate.

6 The 2012 Permit marks a sea change in RWB’s approach to compliance with the Clean
7 Water Act (the “Act”). Whereas the prior NPDES permit (the “2001 Permit”) was structured to
8 enforce water quality standards, the 2012 Permit creates incentives for municipalities to construct
9 infrastructure improvements designed to retain polluted storm water *in situ* rather than piping it
10 via sewer system to the region’s various water bodies.

11 Although the 2001 Permit articulated water quality standards (measured as concentrations
12 of contaminants in receiving waters) for purposes of enforcement, environmental groups
13 challenged RWB’s efforts to enforce them. For example, NRDC accused the County of Los
14 Angeles and the County Flood Control District of violating the 2001 Permit, claiming that its
15 prohibition of “discharges from [municipal sewer systems (MS4s)] that cause or contribute to the
16 violation of Water Quality Standards or water quality objectives” was ineffectual. (*Natural*
17 *Resources Defense Council, Inc. v. County of Los Angeles* (9th Cir. 2013) 725 F.3d 1194, 1199.)
18 Although the 2001 Permit required permittees (including the County, the Flood Control District
19 and 88 municipalities) to monitor the impacts of the MS4 discharges and to publish the results on
20 an annual basis, the mechanism for monitoring impacts – collecting representative data from seven
21 mass monitoring stations positioned “downstream from a significant number of [county
22 defendants’] outfalls” (*id.* at 1209) – made it impossible to quantify the extent to which an
23 individual permittee’s discharges caused or contributed to any measured exceedance¹ and vitiated
24 RWB’s enforcement measures. Ultimately, the Ninth Circuit interpreted the 2001 Permit as
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28 ¹ An exceedance is a reading in excess of the acceptable percentage concentration of a particular contaminant
as defined in water quality standards.

1 imposing liability for every exceedance on all permittees who discharged into the affected
2 watershed, apportioning responsibility (fines or enforcement orders) based on the extent of each
3 permittee's individual discharge. (*Id.* at 1206-1209.)

4 By the time RWB adopted the 2012 Permit, its system for monitoring discharges and
5 identifying the sources of pollutants had been improved with the addition of numerous monitoring
6 devices placed in multiple outfall locations. The SWB also promulgated 33 new Total Maximum
7 Daily Limits ("TMDLs") for specified pollutants, placing caps on the total allowable discharges
8 of such pollutants into identified water bodies. The 2012 Permit establishes water quality-based
9 effluent limitations ("WQBELs") based on the TMDLs, allocating a share of each TMDL to each
10 municipality. As a result of these changes, RWB has the capacity to more effectively assign
11 accountability to dischargers who exceed effluent limitations thus enhancing its potential
12 enforcement of water quality standards.
13

14 Notwithstanding the ~~additional TMDLs and the~~ increased accountability the focus of the
15 2012 Permit is not enforcement of specified water quality standards. ~~The~~ 2012 Permit has an
16 entirely new regulatory structure designed to promote a long term goal of compliance by
17 encouraging cities to deploy find ways to retain polluted storm water run-off (prevent it from
18 reaching water bodies) in exchange for short term protection from enforcement of existing water
19 quality standards. The overall plan is for RWB to work closely with the numerous municipalities
20 under its jurisdiction, facilitating cooperation among them to allocate their public funds to
21 structural solutions designed to retain storm water and other contaminated run off in the originating
22 jurisdictions rather than pipe it via sewer systems into the regional water bodies. From RWB's
23 and SWB's point of view, this is an enlightened approach that allows RWB to hold municipalities
24 accountable for originating and implementing long term solutions that will solve the problem of
25 Southern California's contaminated water bodies rather than simply penalize dischargers. The
26 hope is that municipalities and other governmental entities will find ways to retain contaminated
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1 run off that will either halt or greatly reduce storm water discharge of contaminants into to the
2 County's water bodies.

3 From Petitioners' point of view, RWB's 2012 Permit indefinitely abrogates RWB's
4 enforcement of water quality standards (and the public's right to use litigation as a means of
5 enforcing those standards) in exchange for future promises (water management plans ("WMPs")
6 and enhanced water management plans ("EWMPs")) that may or may not culminate in public
7 construction of catch basins or other structural solutions for the retention of run off, let alone
8 ultimate compliance with water quality standards under the Act. In the meantime, Petitioners
9 complain RWB has relinquished all power to enforce water quality standards, "deeming" entities
10 preparing WMPs and EWMPs in compliance with existing standards, rather than enforcing those
11 standards.
12

13 According to Petitioners, the "deemed compliance" aspect of the 2012 Permit renders the
14 2012 Permit less stringent than the 2001 Permit in violation of the Act's antidegradation clause
15 and the California Toxic Rule ("CTR") forbidding toxic contamination of water bodies.
16 Petitioners therefore argue the Court should issue a Code of Civil Procedure Section 1094.5 writ
17 of mandate, countermanding the 2012 Permit as unlawful and as a prejudicial abuse of discretion.
18 They urge the Court to exercise its independent judgment to conclude the 2102 Permit is not
19 supported by the weight of the evidence.
20

21 Respondents, joined by intervenors comprised of twenty cities governed by the 2012
22 Permit, the County of Los Angeles and the Los Angeles County Flood Control District
23 (collectively "Intervenors"), make the case for denying the petition for writ of mandate.

24 As set forth below, the Court is persuaded the 2012 Permit is lawful and supported by the
25 weight of the evidence. To rule in Petitioners' favor would require the Court to substitute its
26 judgment for the judgment of SWB and RWB which is not permissible or appropriate in writ of
27 mandate proceedings prosecuted under California Code of Civil Procedure 1094.5. The Court
28 therefore denies the Petition.

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II. Background

A. The Clean Water Act

The Clean Water Act (33 U.S.C. §§ 1251-1387) originated in the Federal Water Pollution Control Act (“FWPCA”). Pursuant to 1972 amendments to that Act, EPA established limits for discharges from industrial sources and privately owned treatment plants into navigable waters of the United States. The 1972 Amendments introduced the National Pollution Discharge Elimination System (NPDES) permit program, a system generally delegating authority to state agencies (such as SWB and RWB) for issuing permits regulating industrial, municipal and agricultural point sources of pollution, based on water quality standards established by the State. It was unclear, however, whether the 1972 Amendments regulating storm water run-off from industrial sources also regulated run off from municipal storm drains because they were not specifically addressed.

To resolve challenges to EPA’s enforcement of the 1972 Amendments, EPA agreed in a 1976 consent decree (“Flannery Decree”) to take more specific measures to address industrial pollutants. Those measure were amended into the FWPCA in 1977 in legislation known as the Clean Water Act of 1977. Congress amended the Act again in 1987, passing the Water Quality Act of 1987. That legislation, known as the Clean Water Act (“CWA”), specifically addressed municipal storm water run-off, establishing “a timetable for regulation of storm water, strengthen[ing] requirements relating to water quality and . . . expand[ing] EPA’s enforcement tools.” (Sullivan et al., Environmental Law Handbook (22nd ed. 2014) p. 330 (“Sullivan”).)

1 As passed in 1972, the CWA stated various objectives, goals and policies, declaring an
2 “ultimate goal of eliminating the discharge of pollutants into the nation’s navigable waters” by
3 1985. (33 U.S.C. § 1251(a)(1).) Although this goal, and the goal of controlling both point and
4 non-point sources of pollution (§ 1251(a)(3), (7)), are not legal mandates per se, EPA and the
5 courts have relied on them as declarations of Congressional intent. (Sullivan at p. 300.)

6 As noted above, administration of Congress’s broad prohibition on discharges was largely
7 delegated to the States who are charged with establishing and enforcing an NPDES permit system.
8 The statutory language places the burden of proof on the discharger: “Except as in compliance
9 with . . . this title, the discharge of any pollutant [into navigable waters] by any person shall be
10 unlawful.” (U.S.C. 1342 1311(a).) The NPDES permits regulate discharges of “any addition of
11 any pollutant to navigable waters from any point source” (§ 1362(12)), defining “point source” as
12 any “discernable, confined and discrete conveyance . . . from which pollutants are or may be
13 discharged” (§ 1362(14)).

14
15 The EPA has memorialized its delegation of NPDES permit power to the States in five-year
16 memorandums of agreement, specifying the numerical limitations on permitted discharges from
17 specified outfalls (including industrially generated channeled storm run-off).² (Sullivan at pp.
18

19 ² California’s State Water Resources Control Board signed a June 1989 MOA with the Regional
20 Administrator of EPA superseding an MOA signed March 1973, and a 1986 Compliance and Enforcement
21 Agreement. (https://www.epa.gov/sites/production/files/2013-08/documents/ca-moa-npdes_0.pdf (as of
22 December 1, 2016) pp. 1-2 (the “MOA”).) The MOA gives California “primary authority for the issuance,
23 compliance monitoring, and enforcement of all NPDES permits” in California. (MOA p. 1.) The MOA
24 sets forth responsibilities for EPA’s Regional Board, SWB and RWB. Specifically, it gives RWB
25 “responsibilities” for managing the NPDES program including (a) regulating all discharge subject to the
26 NPDES programs; (b) maintaining administrative procedures and management control to ensure
27 implementation of the NPDES program in conformity with State laws, regulations and policies; (g)
28 comprehensively evaluating and assessing compliance with schedules, effluent limitations and other
conditions in permits; and (h) taking timely and appropriate enforcement action in accordance with the
CWA, federal regulations and State Law. (p. 6-7.) The MOA gives SWB and RWB “primary authority
for the issuance [and modification] of NPDES permits” and provides that EPA “may comment upon or
object to the issuance of a permit or the terms or conditions therein.” (p. 7.) It contemplates the State and
EPA will “coordinate permit review through frequent telephone contact” and resolve differences over
permit content “through telephone liaison” (*id.*), holding out the possibility of a public hearing in the event

1 335-36.) State programs have to be at least as stringent as the federal NPDES program but can be
2 more stringent. (Id., p. 336.) “The primary purpose of NPDES permits is to establish enforceable
3 effluent limitations,” but they may also “establish a number of other enforceable conditions.” (Id.,
4 p. 338.) Such limitations can be technology based limitations. The EPA establishes national
5 effluent guidelines through notices and rulemaking covering more than 50 industrial categories.
6 For industrial categories not yet covered by an EPA guideline, permit writers can rely on “best
7 professional judgment” to set guidelines so long as they do not run afoul of the EPA’s anti-
8 backsliding policy (codified in the 1987 amendments). (Id., p. 341.) Effluent limits may be water
9 quality-based limitations, usually a numeric level of a pollutant that cannot be exceeded, intended
10 to maintain the designated use of the water body (e.g., fishing, swimming, etc.). (Id., p. 344.) The
11 federal criteria are “guidelines” but a State is free to set site-specific criteria.
12

13 *B. California’s NPDES Permit Process*

14
15 Using delegated power, California issues NPDES permits to enforce the CWA’s
16 prohibition on discharges of pollutants into navigable waters that would otherwise be illegal. The
17 permits generally identify particular pollutants and specify limits on the amount or concentration
18 to be discharged (effluent limitations). California’s 1969 Porter-Cologne Water Quality Act
19

20
21 of disagreement (p. 19). For “a general permit,” the Regional Board “will collect sufficient data to develop
22 effluent limitations and prepare and draft the general permit.” (p. 8.) It contains extensive provisions for
23 giving notice of draft permits to EPA so that EPA can comment. The MOA requires the State Board “to
24 maintain compliance monitoring and enforcement procedures” and maintain an administrative procedures
25 manual (Enforcement Management System) for the NPDES program, which contains criteria for pre-
26 enforcement screenings and “formal enforcement action and follow-up wherever necessary.” (p. 34.) The
27 MOA notes that the various compliance and enforcement related provisions of the APM “shall constitute
28 the framework . . . for making NPDES enforcement decisions.” (p. 34.) It also requires the State to conduct
annual inspections of “all major dischargers” to determine compliance with permit requirements, including
“sampling and non-sampling inspections.” (p. 35.) Under the MOU, “The Regional Boards pursue
enforcement of NPDES permit requirements, and of all other provisions of the NPDES program under State
authority” (p. 38) and the State Board “shall assure that enforcement of the NPDES program is exercised
aggressively, fairly and consistently.” (p. 39.) EPA can also independently initiate enforcement action
under certain circumstances. (p. 39-40.)

1 similarly prohibits contaminated discharges from “point sources” and requires any discharger of
2 waste to obtain a permit. (Water Code §§ 13000 et seq.). That Act specifies waste discharge
3 restrictions (§13777 et seq.) and imposes substantial penalties for violations (§ 13385 et seq.)

4 Under the CWA and the Porter-Cologne Act, industrial entities and municipalities
5 (“MS4s”) are subject to the NPDES permitting process. In California, there are nine regional
6 boards, including Respondent RWB, responsible for issuing NPDES permits to municipalities
7 within their regions. The CWA requires states issuing NPDES permits to establish standards based
8 on Total Maximum Daily Limitations (TMDLs) for various pollutants based on the extent to which
9 a water body can assimilate them without degradation of water quality.

10
11 The EPA can review and has the power to veto NPDES permits if they fail to comply with
12 the CWA but has declined to take action in this case.³

13 An NPDES permit issued by RWB can also be challenged by appeal to the SWB. There
14 is no dispute Petitioners duly exhausted their administrative remedies by invoking review by the
15 State Board before filing a Petition.

16 The SWB’s June 16, 2015 Order upheld the RWB’s 2012 permit.

17
18 **III. Standard of Review**

19
20 Under Water Code § 13330(a), “any aggrieved party may file with the superior court a
21 petition for writ of mandate for review” of a decision by the State Water Board (“SWB”). The
22 Water Code specifies that Section 1094.5 of the Code of Civil Procedure governs such petitions
23 and that in reviewing an SWB decision or order, the Court “shall exercise its independent judgment
24 on the evidence.” (§ 13330(e).) This means that, pursuant to section 1094.5(c), the court decides
25 whether the weight of the evidence supports the administrative findings (rather than whether
26

27
28 ³ According to Respondents, the EPA has taken no action with respect to the 2012 NPDES permits at issue
in the petition and have approved a District of Columbia permit containing similar provisions.

1 substantial evidence supports the findings). “In exercising its independent judgment, a trial court
2 must afford a strong presumption of correctness concerning the administrative findings, and the
3 party challenging the administrative decision bears the burden of convincing the court that the
4 administrative findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels*
5 (1999) 20 Cal.4th 805, 817; see Evid. Code § 664 [“It is presumed that official duty has been
6 regularly performed.”].) “[W]hile interpretation of a statute or regulation is ultimately a question
7 of law, [courts] must . . . defer to an administrative agency's interpretation of a statute or regulation
8 involving its area of expertise, unless the interpretation flies in the face of the clear language and
9 purpose of the interpreted provision.” (*Communities for a Better Environment v. State Water*
10 *Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.)
11

12 13 14 **IV. Analysis**

15
16 Petitioners ask the court “to issue a writ of mandate directing Respondents to set aside the
17 unlawful provisions of the 2012 Permit and remand the 2012 Permit for proceedings consistent
18 with federal and state law” and to “issue a declaration that Respondents have violated the law.”
19 Petitioners identify three reasons why the 2012 Permit is unlawful. First, Petitioners contend the
20 2012 Permit violates the Clean Water Act (33 U.S.C. § 1342(o)(1)), which forbids the issuance of
21 an NPDES permit containing “effluent limitations which are less stringent” than limitations in a
22 prior permit. They argue the conditions in the 2012 Permit allowing municipalities to comply with
23 TMDL limitations by planning and implementing Watershed Management Programs (WMPs) or
24 Enhanced Watershed Management Programs (EWMPs) are less stringent than the required
25 compliance with effluent limitations under the 2001 Permit. Petitioners assert this “backsliding”
26 violates EPA regulations (40 C.F.R. § 122.44(l)) as well.
27
28

1 Second, Petitioners assert that the 2012 Permit violates antidegradation laws identifying
2 federal and state policies prohibiting further degradation of waters that are already impaired by
3 pollution. According to Petitioners, the Regional Board failed to conduct analyses required by
4 these laws and the State Board accepted the Regional Board's "conclusory" analysis on the
5 grounds that it lacked sufficient data to establish a baseline level of pollutants reaching back to
6 water quality levels as they existed in 1968. Petitioners argue that the Water Boards' conclusory
7 statements regarding anti-degradation fail to bridge the analytical gap between the data they relied
8 on and their conclusion that there is no degradation.

9
10 Third, Petitioners contend the 2012 Permit is illegal because it sets schedules for future
11 compliance with toxic pollutant limitations. They argue the schedules, which apply to water
12 bodies such as Ballona Creek, the Marina del Rey Harbor, and the Los Angeles River violate EPA
13 regulations requiring full compliance with the toxic pollutant limitations by 2010 at the latest.
14 Petitioners also point out that the scheduled dates for compliance are outside the 2012 Permit's
15 five-year duration.

16 Respondents reject Petitioners' backsliding arguments on the grounds that the backsliding
17 provisions (§ 1342(o) and 40 C.F.R. 122.44(l)) do not apply to MS4s and that § 1342(p)(3) applies
18 instead. Respondents argue that the 2012 Permit, as written, is not "backsliding" and it is not
19 comparable to the 2001 Permit because instead of regulating only the body of water receiving
20 pollutant discharges by imposing receiving water limitations (RWLs), the 2012 Permit also
21 regulates the discharge of pollutants by setting limits on the amount of pollutants in the MS4
22 discharges themselves ("effluent limitations").⁴

23
24 Alternatively, they contend the 2012 Permit is not, in fact, more lenient. They also argue
25 the 2012 Permit is exempt from backsliding provisions because it is based on "new information"
26 including: (1) the Water Boards' experience regulating pollutants since 2001; (2) the increase in
27

28 ⁴ The 2001 Permit was reopened in 2009 to add effluent limitations based on a TMDL relating to trash in the Los Angeles River. The 2012 permit adds effluent limitations based on 33 additional TMDLs.

1 TMDLs from 4 in 2001 to 33 in 2012; (3) new studies (e.g., the 2008 National. Research Council
2 Study); and (4) a new paradigm recognizing polluted storm water run-off is a headwater problem
3 requiring municipal cooperation and significant investment in cross-border structural solutions
4 such as adopting measures to retain or infiltrate rainwater to counterbalance water shortages.

5 Respondents also argue SWB's and RWB's anti-degradation findings are supported by
6 substantial evidence notwithstanding the absence of early data to support a 1968 baseline level of
7 water quality in county water bodies. To the extent the 2012 Permit permits any degradation,
8 Respondents argue it is justified by the need for flood control and stream flow measures that
9 necessarily benefit the public.

10 With regard to schedules for compliance, Respondents contend that the California Toxic
11 Rule does not apply to MS4s and that their only obligation is to reduce toxins to the "maximum
12 extent possible."

13
14 C. The 2012 Permit Does Not Violate 33 USC § 1342(o) or 40 CFR 122.44(l)

15
16 Section 1311 of the CWA makes the discharge of any pollutant by any person unlawful.
17 Notwithstanding that section, EPA or a State, exercising powers delegated by EPA's administrator
18 may, under section 1342(b), issue permits for fixed terms of five years so long as the permits apply,
19 and ensure compliance with, requirements under the CWA.

20
21 As explained in *American Farm* (3d Cir. 2015) 792 F.3d 281, 289, cert. denied sub nom.
22 *American Farm Bureau Federation v. E.P.A.* (2016) 136 S. Ct. 1246:

23 "The Clean Water Act gives the EPA primary responsibility for regulating point sources
24 by establishing 'effluent limitations,' 33 U.S.C. § 1311(b)(1)(A), which are pollution caps
25 that by statutory definition apply only to point sources. *Id.* § 1362(11). States in turn
26 regulate nonpoint sources. There is significant input and oversight from the EPA, but it
27 does not regulate nonpoint sources directly. *Id.* § 1329(b) & (e)."

28 Section 1342(o) addresses backsliding in "effluent limitations" articulated in renewed permits:

1 In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this
2 section, a permit may not be renewed, reissued, or modified on the basis of effluent
3 guidelines promulgated under section 1314(b) of this title [empowering the EPA
4 Administrator to publish regulations with guidelines for effluent limitations] . . . which are
5 less stringent than the comparable **effluent limitations** in the previous permit. In the case
6 of effluent limitations established on the basis of section 1311(b)(1)(C)⁵ [setting timetables
7 for establishing effluent limitations] or section 1313(d) or (e) of this title [directing states
8 to establish and implement effluent limitations], a permit may not be renewed, reissued or
9 modified to contain **effluent limitations** which are less stringent than the comparable
10 effluent limitations in the previous permit except in compliance with 1313(d)(4) [allowing
11 revision of effluent limitations for below standard waters only under certain conditions or
12 in compliance with regulations].

13 (33 U.S.C. § 1342(o)(1) [emphasis added].)

14 Section 1342(p) articulates the relevant standard for municipalities. That provision makes
15 no reference to any “effluent limitations” in permits to be issued to municipalities for discharges
16 from municipal storm sewers. The only requirements for such permits is to “require controls to
17 reduce the discharge of pollutants to the maximum extent practicable, including management
18 practices, control techniques, and system design and engineering methods, and such other
19 provisions as the Administrator or the state determines appropriate for the control of such
20 pollutants.” Because the section regulating municipalities (§ 1342(p)(3)(B)(iii)) says nothing
21 about “effluent limitations,” the anti-backsliding statute does not apply to permits issued to
22 municipalities for storm water discharge.

23 The court in *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d. 1159, 1164-65
24 reached the same conclusion with regard to municipal storm sewer discharges. Citing section
25 1342(p)(3)(A), that court concluded that “Congress expressly required *industrial* storm-water
26 discharges to comply with the requirements of 33 U.S.C. § 1311,” but chose not to include a similar
27 provision for municipal storm sewer discharges electing instead to require municipalities “to

28 ⁵ Section 1311(a) makes “the discharge of any pollutant by any person” unlawful unless in compliance with
“this section and sections 1312 (directing EPA administrator to set effluent limitations when limitations
under 1311(b)(2) are insufficient), 1316, 1317, 1318, 1328, 1242, and 1344 of this title.”

1 reduce the discharge of pollutants to the maximum extent practicable, including management
2 practices, control techniques and system, design and engineering methods and such other
3 provisions as the Administrator . . . determines appropriate for the control of such pollutants”
4 pursuant to section 1342(p)(3)(B)(iii). As that court explained, section 1342(p)(3)(B)(iii)
5 “replaces the requirements of § 1311” with the language set forth in that section and “creates a
6 lesser standard.” (*Id.* at 1165.)

7
8 *D. Respondents Did Not Violate 40 CFR 122.44’s Backsliding Provision*

9
10 An EPA regulation, 40 C.F.R. § 122.44, likewise prohibits backsliding on any effluent
11 limitations:

12 “[W]hen a permit is renewed or reissued, interim effluent limitations, standards or
13 conditions must be at least as stringent as the final effluent limitations, standards or
14 conditions in the previous permit (unless the circumstances on which the previous permit
15 was based have materially and substantially changed since the time the permit was issued
16 and would constitute cause of permit modification or revocation and reissuance under §
17 122.62 [allowing modifications of permits for cause and identifying, in § 122.62(a)(2),
18 receipt of ‘new information . . . not available at the time of permit issuance . . . [that] would
19 have justified the application of different permit conditions at the time of issuance’ as such
20 cause]).”

21 For the reasons noted above, any purported backsliding on “effluent limitations” does not apply to
22 reissuances of municipal permits. To the extent the regulation prohibits less stringent standards or
23 conditions, the Court is not persuaded the regulation applies to MS4 permits for storm water run-
24 off. With respect to municipalities, SWB’s charter under the CWA is to “reduce the discharge of
25 pollutants to the maximum extent practicable, including management practices, control
26 techniques, and system design and engineering methods, and such other provisions as the
27 Administrator or the state determines appropriate for the control of such pollutants.” The Court
28 interprets the word “appropriate” as broad language delegating discretion to impose any practices,

1 techniques, methods or other provision that the State decides are “appropriate for control” of
2 pollutants. Congress’s use of the adjective “appropriate” (defined by Merriam Webster Dictionary
3 to mean suitable or compatible) underscores the discretionary nature of the determination and
4 communicates a subjective rather than objective standard. On the other hand, the “one-way
5 ratchet” articulated in the regulation contemplates a comparison of objective measures, i.e.,
6 “effluent limitations,” “standards” or “conditions.” (See *Natural Resources Defense Council, Inc.*
7 *v. U.S.E.P.A.* (D.C. Cir. 1988) 859 F.2d 156, 202.) The differences between the language of
8 section 1342(p)(3)(B)(iii) and the language in the regulation supports an interpretation that the
9 regulation does not apply to MS4s. NRDC’s argument the regulation says “any permit” and was
10 enacted after EPA assumed responsibility for regulating storm water run-off does not persuade the
11 Court to the contrary.
12

13 Even if the regulation did apply to MS4s, there is substantial evidence supporting an
14 exemption based on new information. As detailed in the State permit, modern studies have
15 precipitated a change in paradigm favoring cross-boundary cooperation as a means of tailoring
16 structural solutions to each geographical watershed not merely to bring water quality into
17 compliance with the CWA but also to alleviate water shortages. The weight of the evidence
18 supports this approach as “appropriate” under section 1342(p)(3)(B)(iii).
19
20

21 *E. The 2012 Permit Does Not Violate Anti-Degradation Policies*

22
23 The federal “Antidegradation policy and implementation methods” is set forth in 40
24 C.F.R. § 131.12. That regulation is included in a section of the regulations describing “the
25 requirements and procedures for developing, reviewing, revising, and approving water quality
26 standards by the States as authorized by Section 303(c) [33 U.S.C. § 1313] of the Clean Water
27 Act.” (40 C.F.R. § 131.1) Section 131.12 states:
28

1 (a) The State shall develop and adopt a statewide antidegradation policy. The
2 antidegradation policy shall, at a minimum be consistent with the following:

3 (1) Existing instream water uses and the level of water quality necessary to protect
4 the existing uses shall be maintained and protected.

5 (2) Where the quality of the waters exceeds levels necessary to support the
6 protection and propagation of fish, shellfish, and wildlife and recreation in and on
7 the water, that quality shall be maintained and protected unless the State finds . . .
8 that allowing lower water quality is necessary to accommodate important economic
9 or social development in the area in which the waters are located. In allowing such
10 degradation or lower water quality, the State shall assure water quality adequate to
11 protect existing uses fully. Further, the State shall assure that there shall be
12 achieved the highest statutory and regulatory requirements for all new and existing
13 point sources and all cost-effective and reasonable best management practices for
14 nonpoint source control.

15 * * *

16 (b) The State shall develop methods for implementing the antidegradation policy that are,
17 at a minimum, consistent with the State's policy and with paragraph (a) of this section. . . ."

18 As noted in the *Water Board's* resolution No. 68-16, entitled "Statement of Policy with
19 Respect to Maintaining High Quality of Waters in California," "[t]he federal antidegradation
20 regulation 40 CFR 131.12, initially adopted in 1975, establishes requirements for protection of
21 high quality waters." (SB-AR-14340.) Resolution 68-16 likewise resolves to preserve high quality
22 waters requiring that any change deleterious to that quality "will be consistent with maximum
23 benefit to the people of the State, will not unreasonably affect present and anticipated beneficial
24 use of such water, and will not result in water quality less than that prescribed in the policies."
25 (SB-AR-14338.) It also requires the "best practicable treatment or control of the discharge" in
26 order to assure the highest water quality "consistent with maximum benefit to the people of the
27 State." (*Id.*)

28 An Administrative Procedures Update from the Board issued in 1990 (the "APU")
addresses how the Regional Boards should implement Resolution 68-16. The Update states, "the

1 Regional Boards must consider the need to include a finding that specifies that water quality
2 degradation is permissible when balanced against benefit to the public of the activity in question.
3 The determination as to whether a finding is needed must be made when issuing, reissuing,
4 amending or revising an NPDES permit. . . . The findings should specifically state that the
5 Regional Board has considered antidegradation pursuant to 40 CFR 131.12 and State Board
6 Resolution No. 68016 and find that the permitted discharge is consistent with those provisions,”
7 making findings, if applicable, identifying the pollutants that will lower water quality, the
8 socioeconomic and public benefits from lowered water quality, and the beneficial uses that will be
9 affected. The Update sets forth a “Procedure for Complete Antidegradation Analysis” that requires
10 a comparison of receiving water quality to the water quality objectives established to protect
11 designated beneficial uses using a baseline of quality “defined as the best quality of the receiving
12 water that has existed since 1968 . . . or, “if poorer water quality was permitted, the most recent
13 water quality resulting from permitted action.” It also provides that the “Regional Board may
14 determine that it is not necessary to do a complete antidegradation analysis . . . if using its best
15 professional judgment and all available pertinent information, the Regional Board decides that the
16 discharge will not be adverse to the intent and purpose of the State and federal antidegradation
17 policies.” (SB-AR-14331.)
18

19 The RWB addresses antidegradation on pages 57 and 58 of its Response to Petitions
20 Challenging the 2012 Permit. (SB-AR-9859.) The RWB concludes “the terms and conditions of
21 the Permit will prevent degradation of existing high quality waters” and identifies four major
22 supports for its conclusion: (1) the receiving waters of discharges regulated by the Permit “have
23 long been heavily impacted by storm water;” “most . . . are impaired for multiple constituents”
24 [citing the EPA’s 1998 and 2010 lists of impaired waterbodies]; the “receiving waters are not high
25 quality” [citing a statement from the transcript of the October 4-5 hearing before the RWB⁶]; and
26

27 _____
28 ⁶ “Despite years of storm water program implementation, many, if not most, of the waterbodies in Los Angeles County
have been listed as impaired.” (RB-AR-18328.)

1 [t]o the extent that data is available from 1968, there were few high quality receiving waters in Los
2 Angeles County even at that time” [citing various studies addressing data collected since 1978];
3 (2) that the terms of the 2012 Permit are at least as stringent or more stringent than the prior permit
4 because it “does not authorize any new practices that would increase the amount of pollutant
5 loading from the MS4 and continues to require implementation of control measures to the
6 maximum extent practicable . . . ;” (3) measures controlling impacts from storm water discharges
7 are typically effective for multiple pollutants because, for example, retention basins and
8 development controls prevent storm water from ever reaching the receiving water bodies
9 (including high quality receiving bodies); and (4) “the Permit includes an extensive monitoring
10 program and reopener provisions to identify changes in water quality and to allow amendment of
11 the Permit as necessary to add preventative provisions if a threat of degradation is suspected.”
12

13 Petitioners argue the State Board failed to identify which waters covered by the 2012
14 Permit qualify as high quality and that the Regional Board’s apparent lack of data as to the quality
15 of waters back in 1968 is no excuse for failing to conduct an analysis. Petitioners fail, however to
16 identify any studies or data specifying the water quality in 1968 that the State Board overlooked
17 or disregarded. Their argument that the Board “admitted” that such data is available (citing SB-
18 AR-13224) is not supported by the record. The Court is therefore not persuaded that such data
19 exists, let alone that the failure to analyze such data was an abuse of discretion.
20

21 Petitioners compare the State Board’s conclusion that no degradation will occur to a similar
22 statement by the Board in *Asociacion de Gente Unida por el Agua v. Central Valley Regional*
23 *Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1266 (“Agua”). As the court noted in
24 that case, “the State Board’s antidegradation policy applies whenever: (a) there is existing high
25 quality water, and (b) an activity which produces or may produce waste or an increased volume or
26 concentration of waste that will discharge into such high quality water.” (*Id.* at 1268.) That court
27 explained “when undertaking an antidegradation analysis, the Regional Board must compare the
28 baseline water quality (the best quality that has existed since 1968) to the water quality

1 objectives. . . . [and] if the baseline water quality is better than the water quality objectives, the
2 baseline water quality must be maintained in the absence of findings required by the
3 antidegradation policy.” In that case, there was evidence that, even in 1986, the nitrate measured
4 in certain ground water was 2.4 mg/L, significantly less than the water quality objective for nitrate
5 (10mg/L). Based on that data, the court concluded the water was “high quality” for purposes of
6 antidegradation:

7
8 “The important point . . . is that the water quality objective for nitrate is 10 mg/L, and in
9 1986, the concentration was 2.4 mg/L. Although there is some evidence the concentration
10 was even less in 1968, it is certain that the water quality of the existing groundwater is
11 better than the water quality objective, making the ground water high quality water for
12 antidegradation purposes. Water can be considered high quality for purposes of the
13 antidegradation policy if it is determined to be so for any one constituent because the
14 determination is made on a constituent by constituent basis.”

15 (*Id.* at 1271.) The *Agua* court also rejected the Regional Board’s assertion the Order’s prohibition
16 of degradation was sufficient and no further analysis was necessary. The court noted the order
17 failed to explain whether there would be no degradation because there would be no discharge or
18 because any discharge would not degrade the quality of the groundwater. As that court interpreted
19 Resolution 68-16, “all that is required for the antidegradation policy to apply is a determination
20 that the receiving water is high quality water and that an activity will discharge waste into the
21 receiving water. The policy presumes from those two facts that the quality of the receiving water
22 will be degraded by the discharge of waste.” (*Id.* at 1272.) The court concluded that, for the Board
23 to sustain its claim that no degradation analysis was necessary because it declared that no
24 degradation would be allowed, “the Order’s monitoring program must be sufficient to alert the
25 Regional Board if a dairy is degrading the groundwater.” (*Id.* at 1274.) Because the record
26 identified various gaps and defects in monitoring and there was no contrary evidence, the court
27 concluded the monitoring program was inadequate. (*Id.* at 1275.) The court also found there was
28

1 insufficient enforcement mechanism to ensure that any groundwater contamination would be
2 stopped. (*Id.* at 1279.)

3 In this case, by contrast, the Regional Board’s assertion that “discharges permitted in [the
4 2012 permit] are consistent with the antidegradation provisions” is not without support. First, the
5 2012 permit is more stringent than the 2001 Permit: while the 2012 Permit imposes the same RWLs
6 as the 2001 Permit, it regulates the discharge of pollutants by imposing effluent limitations based
7 on 33 new watershed-based TMDLs. Second, rather than “allow[ing] historic practices to continue
8 without change” (*Agua* at 1273), the 2012 Permit incentivizes municipalities to implement long-
9 term structural solutions to polluted storm water runoff by participating in WMPs and EWMPs.
10 While it is true the municipalities may be “deemed” in compliance while planning and
11 implementing WMPs and EWMPs, the 2012 Permit requires municipalities to implement these
12 programs on a strict schedule. This is consistent with the *Agua* court’s approval of a “phased
13 approach” to implementing measures necessary to maintain water quality. (*Agua* at 1277 [citing
14 Water Code § 13263].) Moreover, during the planning phase, the 2012 Permit requires permittees
15 to “[c]ontinue to implement watershed control measures in their existing storm water management
16 programs”; continue to eliminate any non-storm water discharges through MS4s; and ensure that
17 MS4 discharges meet applicable compliance deadlines occurring prior to approval of a WMP or
18 EWMP. (2012 Permit pp. 58-59.) Third, the 2012 Permit establishes an “extensive new
19 monitoring program” designed to identify any changes in water quality. While the 2001 Permit
20 required monitoring only at seven mass emission stations located in the receiving waters, the 2012
21 Permit requires monitoring at hundreds of outfall monitoring sites, enhancing the accountability
22 of the various municipal dischargers. Based on this evidence, the Court finds the weight of the
23 evidence supports RWB’s finding the discharges permitted by the 2012 Permit “are consistent with
24 the antidegradation provisions of 40 CFR section 131.12 and Resolution 68-16.” (2012 Permit p.
25 F-20-21.)
26
27
28

1 Petitioners also complain other findings are conclusory and lack a rational basis including,
2 for example, the finding that degradation is necessary to accommodate important economic or
3 social development and is therefore of maximum benefit to the people of the State. The 2012
4 Permit’s fact sheet explains “the discharge of storm water in certain circumstances is to the
5 maximum benefit to the people of the state because it can assist with maintaining instream flows
6 that support beneficial uses, may spur the development of multiple-benefit projects, and may be
7 necessary for flood control, and public safety as well as to accommodate development in the area.”
8 (2012 Permit p. F-20.) According to the fact sheet, the 2012 Permit ensures the best possible
9 treatment or control of necessary discharges by requiring permittees to either “implement
10 extensive minimum control measures in a storm water management program” or “implement
11 WMPs or EWMPs.” (*Id.* at F-21.)

12 This Court accepts these findings as sufficient to justify any degradation that may occur as
13 a result of the 2012 Permit’s regulatory scheme. As discussed, the weight of the evidence supports
14 the Regional Board’s assertion that “discharges permitted in [the 2012 Permit] are consistent with
15 the antidegradation provisions.” Under these circumstances, a complete antidegradation analysis
16 is not needed. A “simple antidegradation analysis” is sufficient where, as here, “[a] Regional
17 Board determines the reduction in water quality is temporally limited and will not result in any
18 long-term deleterious effects on water quality.” (SB-AR-14331.)⁷

19
20
21
22 F. *The 2012 Permit’s Compliance Schedules Are Legal*

23
24
25 ⁷ Indeed, the 2012 Permit includes measures ensuring that any degradation that may occur during the implementation
26 of WMPs and EWMPs will be temporary. The 2012 Permit requires permittees choosing to implement WMPs or
27 EWMPs to conduct a “Reasonable Assurance Analysis” using a peer-reviewed model to show that proposed WMPs
28 or EWMPs will “achieve applicable water quality based effluent limitations” and will not “cause or contribute to
exceedances of receiving water limitations.” (2012 Permit p. 65.) In addition, once WMPs or EWMPs have been
implemented, the 2012 Permit requires a comprehensive program evaluation every 2 years to ensure progress toward
achieving effluent and receiving water limitations. (*Id.* p. 68.)

1 The California Toxics Rule (“CTR”), codified at 40 C.F.R. § 131.38, establishes “numeric
2 criteria for priority toxic pollutants for the State of California.” Section 131.38 includes a table
3 listing various toxic pollutants and the maximum permissible concentrations of those pollutants
4 (“water quality criteria”). For permits issued after May 18, 2000 containing Water Quality Based
5 Effluent Limitations (“WQBELs”) based on those water quality criteria, Section 131.38(e)(2)
6 requires new dischargers to comply with any WQBEL “upon commencement of discharge.”
7 Although Section 131.38(e)(3) allowed existing dischargers to seek an alternative schedule of
8 compliance, the authorization for such schedules expired on May 18, 2005. (Section 131.38(e)(8).)
9

10 Petitioners contend that because the CTR itself no longer authorizes compliance schedules
11 for existing dischargers, the compliance schedules in the 2012 Permit violate the CTR. As
12 authority for their contention, Petitioners cite EPA’s final rule promulgating the CTR (65 Fed.
13 Reg. 31682 (May 18, 2000)) which states:

14 The rule allows all compliance schedules to extend up to a maximum duration of five years,
15 which is the maximum term of any NPDES permit. . . . Such compliance schedules,
16 however, cannot be extended to any indefinite point of time in the future because the
17 compliance schedule provision in this rule will sunset on May 18, 2005.

18 (*Id.* at 31704.)

19 Respondents counter that the CTR does not apply because an EPA compliance schedule is
20 not required for an MS4 permit. The Court agrees with Respondents. The section of the final rule
21 immediately preceding the section cited by Petitioners (titled “Wet Weather Flows”) specifically
22 addresses EPA’s approach to municipal separate storm sewer systems. (*Id.* at 31703.) That section
23 discusses the Ninth Circuit’s decision in *Defenders, supra*, 191 F.3d 1159 and acknowledges that
24 while “the CWA does not require ‘strict compliance’ with State water quality standards for
25 municipal storm sewer permits under section 301(b)(1)(C) . . . the CWA does give EPA discretion
26 to incorporate appropriate water quality-based effluent limitations under another provision, CWA
27 section 402(p)(3)(B)(iii).” (*Id.* at 31703.) The *Defenders* court held that “33 U.S.C. §
28

1 1342(p)(3)(B)(iii) does not require municipal storm-sewer discharges to comply strictly with 33
2 U.S.C. § 1311(b)(1)(C).” (191 F.3d at 1165.) Based on that holding, the final rule states:

3 EPA believes that compliance with water quality standards through the use of Best
4 Management Practices (BMPs) is appropriate. . . . The [EPA’s] policy affirms the use of
5 BMPs as a means to attain water quality standards in municipal storm water permits, and
6 embraces BMPs as an interim permitting approach.

7 The interim permitting approach uses BMPs in first-round storm water permits, and
8 expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for
9 the attainment of water quality standards. **In cases where adequate information exists to
10 develop more specific conditions or limitations to meet water quality standards, these
11 conditions or limitations are to be incorporated into storm water permits, as
12 necessary and appropriate.**

13 (*Id.* at 31703.) This language in the final rule promulgating the CTR is evidence EPA did not
14 intend to apply the compliance schedule in CTR (40 C.F.R. § 131.38(e)) to MS4 permits. Rather,
15 EPA recognized municipalities would use BMPs to attain water quality standards and, where
16 appropriate, would be subject to permits with “more specific conditions or limitations to meet
17 water quality standards.” The compliance schedules in the 2012 Permit are “conditions or
18 limitations . . . to be incorporated into storm water permits, as necessary and appropriate.” Thus,
19 the Court finds the compliance schedules are not subject to section 131.38(e)’s compliance
20 schedule provisions.

21 Further supporting this interpretation of the CTR is the fact that the State Board’s policy
22 establishing “implementation provisions for priority pollutant criteria promulgated by the [EPA]
23 through the [CTR],” expressly states that “[the] Policy does not apply to regulation of storm water
24 discharges.” (SB-AR-14897 fn. 1.)⁸

25
26 ⁸ In oral argument, Petitioners expressed concern the 2012 Permit effectively abrogates their ability to use
27 litigation as a means of compelling RWB and SWB to comply with the CWA. They contend that with dischargers
28 “deemed in compliance,” Petitioners’ ability to challenge Respondents’ enforcement measures is greatly
compromised. While the Court recognizes the importance of private actions to enforce CWA and other environmental
laws, the Court is not persuaded the 2012 Permit runs afoul of those rights. To the contrary, it appears to the Court

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V. Conclusion

For the foregoing reasons, the Court DENIES Petitioners' motion for a writ of mandate.

Dated: _____

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT

_____ that the right to challenge enforcement remains in place but the nature of the potential challenges has changed. Instead of policing RWB's enforcement (or failure to enforce) quantitative water quality levels, environmental groups like Petitioners must monitor RWB's progress with municipalities' compliance with promises and commitments made in MWP's and EMWP's and, if appropriate, sue to compel compliance.

Introduced by Senator Hertzberg

February 2, 2017

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL’S DIGEST

SB 231, as introduced, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the term “sewer” for these purposes. The bill would also make findings and declarations relating to the definition of the term “sewer” for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53750 of the Government Code is
2 amended to read:
3 53750. For purposes of Article XIII C and Article XIII D of
4 the California Constitution and this ~~article~~: *article, the following*
5 *words have the following meanings, and shall be read and*

1 *interpreted in light of the findings and declarations contained in*
2 *Section 53751:*

3 (a) “Agency” means any local government as defined in
4 subdivision (b) of Section 1 of Article XIII C of the California
5 Constitution.

6 (b) “Assessment” means any levy or charge by an agency upon
7 real property that is based upon the special benefit conferred upon
8 the real property by a public improvement or service, that is
9 imposed to pay the capital cost of the public improvement, the
10 maintenance and operation expenses of the public improvement,
11 or the cost of the service being provided. “Assessment” includes,
12 but is not limited to, “special assessment,” “benefit assessment,”
13 “maintenance assessment,” and “special assessment tax.”

14 (c) “District” means an area that is determined by an agency to
15 contain all of the parcels that will receive a special benefit from a
16 proposed public improvement or service.

17 (d) “Drainage system” means any system of public
18 improvements that is intended to provide for erosion control, for
19 landslide abatement, or for other types of water drainage.

20 (e) “Extended,” when applied to an existing tax or fee or charge,
21 means a decision by an agency to extend the stated effective period
22 for the tax or fee or charge, including, but not limited to,
23 amendment or removal of a sunset provision or expiration date.

24 (f) “Flood control” means any system of public improvements
25 that is intended to protect property from overflow by water.

26 (g) “Identified parcel” means a parcel of real property that an
27 agency has identified as having a special benefit conferred upon
28 it and upon which a proposed assessment is to be imposed, or a
29 parcel of real property upon which a proposed property-related
30 fee or charge is proposed to be imposed.

31 (h) (1) “Increased,” when applied to a tax, assessment, or
32 property-related fee or charge, means a decision by an agency that
33 does either of the following:

34 (A) Increases any applicable rate used to calculate the tax,
35 assessment, fee, or charge.

36 (B) Revises the methodology by which the tax, assessment, fee,
37 or charge is calculated, if that revision results in an increased
38 amount being levied on any person or parcel.

39 (2) A tax, fee, or charge is not deemed to be “increased” by an
40 agency action that does either or both of the following:

1 (A) Adjusts the amount of a tax, fee, or charge in accordance
2 with a schedule of adjustments, including a clearly defined formula
3 for inflation adjustment that was adopted by the agency prior to
4 November 6, 1996.

5 (B) Implements or collects a previously approved tax, fee, or
6 charge, so long as the rate is not increased beyond the level
7 previously approved by the agency, and the methodology
8 previously approved by the agency is not revised so as to result in
9 an increase in the amount being levied on any person or parcel.

10 (3) A tax, assessment, fee, or charge is not deemed to be
11 “increased” in the case in which the actual payments from a person
12 or property are higher than would have resulted when the agency
13 approved the tax, assessment, fee, or charge, if those higher
14 payments are attributable to events other than an increased rate or
15 revised methodology, such as a change in the density, intensity,
16 or nature of the use of land.

17 (i) “Notice by mail” means any notice required by Article XIII C
18 or XIII D of the California Constitution that is accomplished
19 through a mailing, postage prepaid, deposited in the United States
20 Postal Service and is deemed given when so deposited. Notice by
21 mail may be included in any other mailing to the record owner
22 that otherwise complies with Article XIII C or XIII D of the
23 California Constitution and this article, including, but not limited
24 to, the mailing of a bill for the collection of an assessment or a
25 property-related fee or charge.

26 (j) “Record owner” means the owner of a parcel whose name
27 and address appears on the last equalized secured property tax
28 assessment roll, or in the case of any public entity, the State of
29 California, or the United States, means the representative of that
30 public entity at the address of that entity known to the agency.

31 (k) *“Sewer” means services and systems provided by all real*
32 *estate, fixtures, and personal property owned, controlled, operated,*
33 *or managed in connection with or to facilitate sewage collection,*
34 *treatment, or disposition for sanitary or drainage purposes,*
35 *including lateral and connecting sewers, interceptors, trunk and*
36 *outfall lines, sanitary sewage treatment or disposal plants or works,*
37 *drains, conduits, outlets for surface or storm waters, and any and*
38 *all other works, property, or structures necessary or convenient*
39 *for the collection or disposal of sewage, industrial waste, or surface*

1 *or storm waters. “Sewer system” shall not include a sewer system*
 2 *that merely collects sewage on the property of a single owner.*

3 ~~(k)~~

4 (l) “Registered professional engineer” means an engineer
 5 registered pursuant to the Professional Engineers Act (Chapter 7
 6 commencing with Section 6700) of Division 3 of the Business
 7 and Professions Code).

8 ~~(t)~~

9 (m) “Vector control” means any system of public improvements
 10 or services that is intended to provide for the surveillance,
 11 prevention, abatement, and control of vectors as defined in
 12 subdivision (k) of Section 2002 of the Health and Safety Code and
 13 a pest as defined in Section 5006 of the Food and Agricultural
 14 Code.

15 ~~(m)~~

16 (n) “Water” means any system of public improvements intended
 17 to provide for the production, storage, supply, treatment, or
 18 distribution of water from any source.

19 SEC. 2. Section 53751 is added to the Government Code, to
 20 read:

21 53751. The Legislature finds and declares all of the following:

22 (a) The ongoing, historic drought has made clear that California
 23 must invest in a 21st century water management system capable
 24 of effectively meeting the economic, social, and environmental
 25 needs of the state.

26 (b) Sufficient and reliable funding to pay for local water projects
 27 is necessary to improve the state’s water infrastructure.

28 (c) Proposition 218 was approved by the voters at the November
 29 5, 1996, statewide General Election. Some court interpretations
 30 of the law have constrained important tools that local governments
 31 need to manage storm water and drainage runoff.

32 (d) Storm waters are carried off in storm sewers, and careful
 33 management is necessary to reduce pollution. But a court decision
 34 has excluded storm water from those provisions of Proposition
 35 218 that apply to property-related fees for sewer and water,
 36 preventing many important projects from being built.

37 (e) The court of appeal in *Howard Jarvis Taxpayers Ass’n v.*
 38 *City of Salinas* (2002) 98 Cal.App.4th 1351 concluded that the
 39 term “sewer,” as used in Proposition 218, is “ambiguous” and
 40 declined to use the statutory definition of the term “sewer system”

1 which was part of the then-existing law as Section 230.5 of the
2 Public Utilities Code.

3 (f) The court in *Howard Jarvis Taxpayers Ass’n v. City of*
4 *Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing
5 principles of statutory construction by disregarding the plain
6 meaning of the term “sewer.” Courts have long held that statutory
7 construction rules apply to initiative measures, including in cases
8 that apply specifically to Proposition 218 (see *People v. Bustamante*
9 (1996) 57 Cal.App.4th 693, *Keller v. Chowchilla Water Dist.*
10 (2000) 80 Cal.App.4th 1006). When construing statutes, courts
11 look first to the words of the statute, which should be given their
12 usual, ordinary, and commonsense meaning (*People v. Mejia*
13 (2012) 211 Cal.App.4th 586, 611). The purpose of utilizing the
14 plain meaning of statutory language is to spare the courts the
15 necessity of trying to divine the voters’ intent by resorting to
16 secondary or subjective indicators. The court in *Howard Jarvis*
17 *Taxpayers Ass’n v. City of Salinas* (2002) 98 Cal.App.4th 1351
18 asserted its belief as to what most voters thought when voting for
19 Proposition 218, but did not cite the voter pamphlet or other
20 accepted sources for determining legislative intent. Instead, the
21 court substituted its own judgment for the judgment of voters.

22 (g) Numerous sources predating Proposition 218 reject the
23 notion that the term “sewer” applies only to sanitary sewers,
24 including, but not limited to:

25 (1) Section 230.5 of the Public Utilities Code.

26 (2) Section 23010.3, which was first added by Chapter 1193 of
27 the Statutes of 1963.

28 (3) The Street Improvement Act of 1913 (repealed by Chapter
29 346 of the Statutes of 1963).

30 (4) The California Supreme Court stated in *Los Angeles County*
31 *Flood Control District v. Southern California Edison Co.* (1958)
32 51 Cal.2d 331, that “no distinction has been made between sanitary
33 sewers and storm drains or sewers.”

34 (5) The term, “sewer” has been used interchangeably to refer
35 to both sanitary and storm sewers in many other cases, including,
36 but not limited to, *County of Riverside v. Whitlock* (1972) 22
37 Cal.App.3d 863, *Ramseier v. Oakley Sanitary Dist.* (1961) 197
38 Cal.App.2d 722, and *Torson v. Fleming* (1928) 91 Cal.App. 168.

39 (6) Dictionary definitions of sewer, which courts have found to
40 be an objective source for determining common or ordinary

1 meaning, including Websters (1976), American Heritage (1969),
2 and Oxford English Dictionary (1971).

3 (h) Prior legislation has affirmed particular interpretations of
4 words in Proposition 218, specifically Assembly Bill 2403 of the
5 2013–14 Regular Session (Chapter 78 of the Statutes of 2014).

6 (i) The Legislature reaffirms and reiterates that the definition
7 found in Section 230.5 of the Public Utilities Code is the definition
8 of “sewer” or “sewer service” that should be used in the Proposition
9 218 Omnibus Implementation Act.

O