



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

AGENDA

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY

REGULAR MEETING OF THE POLICY BOARD

**CITY OF WHITTIER
EMERGENCY OPERATIONS CENTER
13200 PENN STREET
WHITTIER, CA 90602**

**THURSDAY, JUNE 6, 2019
6:30 P.M.**

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**
- 3. PUBLIC COMMENTS**
- 4. CONSENT CALENDAR**

****Consent Calendar items will be considered and approved in one motion unless removed by a Board Member for discussion.****

- a. SEWC BOARD OF DIRECTORS MINUTES OF APRIL 4, 2019**
Recommendation: Approve minutes as submitted.
- b. WARRANT REGISTER**
Recommendation: Approve Warrant Register.

****End of Consent Calendar****

5. CITY OF GARDENA VS. REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

Kyle Cason, Chair, Administrative Entity
Nicholas Ghirelli, Richards, Watson & Gershon

Recommendation: That the Board take the following action:

Receive and file an update on the Superior Court ruling on *City of Gardena vs. Regional Water Quality Board, Los Angeles Region* from Nicholas Ghirelli of Richards, Watson & Gershon.

6. RECEIVE AND FILE AN UPDATE ON THE CENTRAL BASIN MUNICIPAL WATER DISTRICT (CBMWD) BOARD OF DIRECTORS MEETING ON MAY 28, 2019, REGARDING PROPOSED WATER RATES AND CHARGES

Kyle Cason, Chair, Administrative Entity
John Oskoui, Director at Large, Central Basin Municipal Water District
Board of Directors

Recommendation: That the Board take the following actions:

Receive and file an update on the Central Basin Municipal Water District (CBMWD) Board of Directors meeting on May 28, 2019, regarding proposed water rates and charges.

7. RECEIVE AND FILE AN UPDATE ON THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA (WRD) REPLENISHMENT ASSESSMENT (RA) FOR FISCAL YEAR (FY) 2019-2020

Kyle Cason, Chair, Administrative Entity

Recommendation: That the Board take the following action:

Receive and file an update on the Water Replenishment District of Southern California (WRD) Replenishment Assessment (RA) for Fiscal Year (FY) 2019-2020.

8. REVIEW AND APPROVE SOUTHEAST WATER COALITION (SEWC) JOINT POWERS AUTHORITY (JPA) FISCAL YEAR 2019/2020 DRAFT BUDGET

Kyle Cason, Chair, Administrative Entity

Recommendation: That the Board take the following action:

Review and approve the Southeast Water Coalition (SEWC) Joint Powers Authority (JPA) Fiscal Year 2019/2020 Draft Budget.

9. SUPPORT SB 200 (MONNING) AND SENATE’S CONTINUOUS GENERAL FUND APPROPRIATIONS PROPOSAL FOR SAFE AND AFFORDABLE DRINKING WATER (SADW) FUND

Kyle Cason, Chair, Administrative Entity

Recommendation: That the Board take the following action:

Authorize SEWC send a letter supporting SB 200 (Monning) Safe and Affordable Drinking Water (SADW) Fund, and send a letter supporting the Senate’s continuous General Fund appropriations proposal for SADW Fund.

10. ADOPT RESOLUTION NO. 2019-02 CHANGING THE LOCATION OF SOUTHEAST WATER COALITION (SEWC) ADMINISTRATIVE ENTITY (AE) MEETINGS TO PALM PARK AQUATICS CENTER

Kyle Cason, Chair, Administrative Entity

Recommendation: That the Board take the following action:

Adopt Resolution No. 2019-02 changing the location of Southeast Water Coalition (SEWC) Administrative Entity (AE) Meetings to the Palm Park Aquatics Center.

11. AWARD SOUTHEAST WATER COALITION (SEWC) PROGRAM MANAGEMENT SERVICES CONTRACT TO KJSERVICES ENVIRONMENTAL CONSULTING (KJS)

Kyle Cason, Chair, Administrative Entity

Recommendation: That the Board take the following action:

Award the Program Management Services Agreement to KJServices Environmental Consulting (KJS) of Santa Fe Springs, CA in the amount not to exceed \$20,000 per year.

12. BOARD OF DIRECTORS COMMENTS

13. ADMINISTRATIVE ENTITY CHAIR / LEAD AGENCY COMMENTS

14. ADJOURNMENT

AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act of 1990, the City of Whittier is committed to providing reasonable accommodations for a person with a disability. Please call Veronica Barrios with the City of Whittier at (562) 567-9501, if special accommodations are necessary and/or if information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

The next meeting of the Southeast Water Coalition Joint Powers Authority Board of Directors is Thursday, August 1, 2019 at 6:30 p.m., at the Emergency Operations Center, 13200 Penn Street, Whittier, CA 90602.

I, Veronica Barrios, City of Whittier, do hereby certify, under penalty of perjury under the laws of the State of California that the foregoing agenda was posted pursuant to Government Code Section 54950 Et. Seq. and City of Whittier Ordinance at the following locations: Whittier City Hall, Whittier Public Library, and Whittwood Branch Library.

Dated: June 3, 2019

A handwritten signature in blue ink that reads "Veronica Barrios". The signature is written in a cursive style with a large, stylized "V" and "B".

Veronica Barrios
Administrative Secretary
Public Works Department

**MINUTES OF THE
SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY**

REGULAR MEETING OF THE POLICY BOARD

**CITY OF WHITTIER
EMERGENCY OPERATIONS CENTER
13200 PENN STREET
WHITTIER, CA 90602**

**THURSDAY, APRIL 4, 2019
6:30 P.M.**

The regular meeting of the Southeast Water Coalition Joint Powers Authority Policy Board was called to order at 6:31 p.m. by Policy Board Chair Fernando Dutra.

1. PLEDGE OF ALLEGIANCE

Policy Board Chair, Fernando Dutra, asked Margarita L. Rios, City of Norwalk Board Member, to lead the Pledge of Allegiance.

2. ROLL CALL

Grace Hu	City of Cerritos (arrived at 6:40pm)
Oralia Rebollo	City of Commerce
Alex Saab	City of Downey (arrived at 6:49pm)
Todd Rogers	City of Lakewood (arrived at 6:35pm)
Margarita L. Rios	City of Norwalk
Laurie Guillen	City of Paramount
Gustavo Camacho	City of Pico Rivera
Juanita Trujillo	City of Santa Fe Springs
Maria Davila	City of South Gate
Melissa Ybarra	City of Vernon
Fernando Dutra	City of Whittier, Board Chair

Also Present:

Bob Ortega	City of Cerritos
Jason Wen	City of Lakewood
Julian Lee	City of Norwalk
Sarah Ho	City of Paramount
Todd Dusenberry	City of Vernon
Wendell Wall	City of Vernon
Kyle Cason	City of Whittier, AE Chair

Ted Johnson	WRD
Kevin Hunt	CBMWD

Leticia Vasquez
Kristen Sales
Kevin Sales

CBMWD
KJServices Environmental Consulting
KJServices Environmental Consulting

3. PUBLIC COMMENTS

No Public Comments were received.

4. CONSENT CALENDAR

Board Member Trujillo (Santa Fe Springs) made a motion to approve the Consent Calendar, and Board Member Davila (South Gate) seconded the motion. With abstentions from Board Member Ybarra (Vernon) and Board Member Guillen (Paramount), the Consent Calendar was approved by a unanimous voice vote of the Policy Board.

5. STATE OF THE BASIN UPDATE FROM WATER REPLENISHMENT DISTRICT (WRD)

Administrative Entity (AE) Chair, Kyle Cason (Whittier), introduced Ted Johnson, Chief Hydrogeologist from WRD, to provide an overview of this item.

Mr. Johnson summarized the past water year (WY), stating that last WY, 77% of the State was classified as “abnormally dry,” and 13% of L.A. County was in “severe drought.” This WY, groundwater reserves are 133% of normal and as of April 2, 2019, the snowpack levels are 162% of normal. Additionally, 0% of the State is in drought conditions. Mr. Johnson stated that locally, L.A. County had received 19 inches of rain, and the region had captured 150,000 acre feet of rainwater into storage. Now, basins are at 69% of optimum quantities.

Mr. Johnson then provided an update on the status of WRD’s Albert Robles Center (formally GRIP project). Mr. Johnson stated that the ARC is up and running as a recycled water facility, and the ARC Learning Center is scheduled to be open by mid-August, 2019. ARC has a capacity of 10 million gallons of water per day. The goal of the ARC is to increase the replenishment reliability of WRD, and decrease dependency on water imported from Northern California. Mr. Johnson stated WRD is working with the Hyperion Treatment Plant to use waste water for recharge.

Policy Board Chair Dutra (Whittier) asked how long WRD’s precipitation records go back. Mr. Johnson stated that WRD has records as far back as the 1930s. Mr. Johnson explained that they usually see dry cycles lasting 10-20 years each, and currently, the State is in a 20-year dry cycle. Mr. Johnson added that the recycled water from the ARC will be comparable in cost to the water purveyors purchase from the Metropolitan Water District currently.

Policy Board Chair Dutra (Whittier) called for a motion to receive and file the item. The motion was made by Board Member Ybarra (Vernon) and seconded by Board Member Davila (South Gate). The motion was approved by a unanimous voice vote of the Policy Board.

6. UPDATE FROM CENTRAL BASIN MUNICIPAL WATER DISTRICT (CBMWD)

Administrative Entity (AE) Chair, Kyle Cason (Whittier), introduced CBMWD General Manager, Kevin Hunt, to provide an overview of this item to the Policy Board.

General Manager Kevin Hunt provided an overview of several of Central Basin's service area and services provided. CBMWD provides representation for the region on the Metropolitan Water District Board.

Mr. Hunt then summarized the status of Central Basin's budget process. Mr. Hunt stated Central Basin has refinanced its bonds, leased out its office space, and conducting polling to determine the viability of implementing a parcel charge. They have cut 5 full-time employees and \$2 million in expenditures. Mr. Hunt stated even with these cuts, CBMWD is still shy of reaching its budget goals. Mr. Hunt stated that they conducted a Water Rate Study in March to determine a plan to stabilize rates. Mr. Hunt said the choices were a parcel charge or a fixed meter charge, and Central Basin has been holding purveyor workshops to receive input from the water purveyors.

Mr. Hunt then summarized several pieces of current legislation that is relevant to the Central Basin. AB 591 (Cristina Garcia) would further define AB 1794, which would clarify the definition of "consultant" and "contractor" in addition to current inclusion of Central Basin employees. AB 1220 (Cristina Garcia) would prohibit a member of the Metropolitan Water District Board public agency from having fewer than the number of representatives it had on January 1, 2019. This would prevent Central Basin's representative power on the Met Board from decreasing due to shifting demographics.

Policy Board Member Rebollo (Commerce) asked if there were any options CBMWD had as alternatives for cutting their educational outreach programs. Mr. Hunt stated that saving the education programs receive no support from the CB Board. Leticia Vasquez (CBMWD) stated that increased conservation rates in the region were a direct result of the Central Basin's educational outreach, but ultimately, the job of Central Basin is to sell water, so the programs were cut during the budget process. Ms. Vasquez stated it was the appointed CBMWD Board Directors who pushed for cutting the education programs.

Policy Board Chair Dutra (Whittier) asked how much money CB Board of Directors make to serve on the Board. Mr. Hunt answered that CB Directors earn \$30,000/year. Ms. Vasquez added that yearly Central Basin compensation is

based on 10 meetings per month at \$250 per meeting, plus a \$350 car allowance, plus a \$100 communication allowance. Ms. Vasquez further added that Board compensation rates have been frozen for several years.

Mr. Hunt summarized that Central Basin's budget fixes included adding new projects, making lots of program cuts, and expanding recycled water projects. Mr. Hunt stated that they are reviewing implementing a fixed meter charge of perhaps \$5 per meter per year, and then implementing a parcel tax. Mr. Hunt stated CB would have the results of the rate study on these options by June. The goal of the Central Basin Board is to have \$10 million in reserve and \$80 million in equity. In order to achieve this goal, Mr. Hunt explained, they need a new source of fixed revenue.

Mr. Hunt stated that Central Basin had recently completed their elections for Board Directors. Dan Arrighi was appointed as the At-Large Director, Frank Heldman was appointed as the pumpers' representative, and Martha Camacho-Rodriguez was elected as the Division 1 Director.

Policy Board Member Trujillo (Santa Fe Springs) asked if the funds received from selling the Central Basin office building would be used to restore the education program. Mr. Hunt stated that selling the office building would only be a short-term solution, as the education program cost \$250,000 a year.

Policy Board Member Rebollo (Commerce) stated that the \$20,000/year cost for the bottled water program could be re-distributed to the educational outreach program. Board Member Rebollo stated, in her opinion, the education program was more beneficial than the bottled water program.

Ms. Vasquez stated that she recently sued the lawyers who advised Central Basin to hire some crooked contractors, and won that lawsuit, which will result in several million dollars back to the Central Basin region.

Policy Board Chair Dutra (Whittier) called for a motion to receive and file the item. The motion was made by Board Member Saab (Downey) and seconded by Board Member Rogers (Lakewood). The motion was approved by a unanimous voice vote of the Policy Board.

7. LETTER OF SUPPORT FOR SB 669 (CABALLERO) WATER QUALITY: SAFE DRINKING WATER FUND

Administrative Entity (AE) Chair, Kyle Cason (Whittier), provided an overview of this item to the Policy Board. AE Chair Cason asked Kristen Sales (KJServices Environmental Consulting) provide an overview of the SEWC Legislative Matrix. Ms. Sales summarized the bills, as written in the staff report for this item.

Policy Board Chair Dutra (Whittier) called for a motion to authorize SEWC send a

letter supporting SB 669 and opposing the Safe and Affordable Drinking Water proposal in the Governor's 2019-2020 draft budget. The motion was made by Board Member Saab (Downey) and seconded by Board Member Rogers (Lakewood). The motion was approved by a unanimous voice vote of the Policy Board.

8. DRAFT AUDIT REPORT - SOUTHEAST WATER COALITION (SEWC) FISCAL YEAR 2017/2018 FINANCIAL STATEMENTS

Administrative Entity (AE) Chair, Kyle Cason (Whittier), provided an overview of this item to the Policy Board. AE Chair Cason recommended the Board approve the Audit documents and asked if Board Members had any questions or comments on the Audit documents. No questions or comments were received.

Policy Board Chair Dutra (Whittier) called for a motion to approve the SEWC Fiscal Year 2017/2018 Financial Statements with Report on Audit, and authorize the draft audit be finalized and filed with the County. The motion was made by Board Member Rogers (Lakewood) and seconded by Board Member Saab (Downey). With abstentions from Board Member Rebollo (Commerce) and Board Member Guillen (Paramount), the motion was approved by a unanimous voice vote of the Policy Board.

9. ADOPT A RESOLUTION TO CHANGE SEWC MEETING SCHEDULE AND LOCATION

Administrative Entity (AE) Chair, Kyle Cason (Whittier), provided an overview of this item to the Policy Board.

AE Chair Cason stated that Policy Board Chair Fernando Dutra (Whittier) had suggested meeting less frequently to ensure full agendas for each meeting. The AE had discussed changing the meeting location for both the AE and Board meetings to the Palm Park Aquatics Center. AE Chair Cason stated that the Resolution and proposed meeting calendar were attached and opened up the item for discussion.

Board Member Rogers (Lakewood) expressed concern over the long interval between meetings, and suggested the Board establish an Executive Committee which would meet to act on urgent items. Board Member Rogers stated the Board establish email authority for voting items, or simply call a Special Meeting for any necessary legislative action.

Policy Board Chair Dutra (Whittier) stated that even though they would be going from six meetings a year to four, they were actually only losing one meeting, as the regularly scheduled December meeting is typically cancelled.

Board Member Rios (Norwalk) expressed concern about the traffic getting to

Palm Park for meetings. Board Member Trujillo (Santa Fe Springs) expressed concern about the safety of meeting at Palm Park at night.

Policy Board Chair Dutra asked for a voice vote of the Board Members on the issue of moving the meeting location to Palm Park. The majority of the Board Members voted "No," rejecting the proposal to move.

Policy Board Chair Dutra asked for a voice vote of the Board Members on the issue of changing the meeting schedule to four meetings a year. The majority of the Board Members voted "No," rejecting the proposal for fewer meetings.

Board Member Rogers suggested SEWC retain the current number of regularly scheduled meetings and simply cancel meetings due to lack of business, as necessary.

AE Chair Cason stated that the Administrative Entity still preferred to meeting at Palm Park for their meetings, and suggested the AE return with a revised Resolution to that effect at the next Board of Directors meeting.

Board Member Trujillo (Santa Fe Springs) made a motion to table the item until the next Board meeting. The motion was seconded by Board Member Rogers (Lakewood) and approved by a unanimous voice vote of the Policy Board.

10. BOARD OF DIRECTORS COMMENTS

Board Member Rios (Norwalk) asked for the PowerPoint presentations from the meeting to be emailed to all the Board Members. Ms. Sales (KJServices) responded she would email the presentations the next day. Board Member Trujillo (Santa Fe Springs) wished everyone a Happy Easter.

11. ADMINISTRATIVE ENTITY CHAIR / LEAD AGENCY COMMENTS

No comments were received.

12. ADJOURNMENT

Policy Board Chair Dutra (Whittier) adjourned the meeting at 7:52pm.

CHAIRMAN

ATTEST:



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY AGENDA REPORT

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity
Nicholas Ghirelli, Richards, Watson & Gershon

Subject: City of Gardena vs. Regional Water Quality Control Board, Los Angeles Region

Recommendation: That the Board take the following action:

Receive and file an update on the Superior Court ruling on *City of Gardena vs. Regional Water Quality Board, Los Angeles Region* from Nicholas Ghirelli of Richards, Watson & Gershon.

Background:

The Los Angeles Regional Water Quality Control Board (“Regional Board”) adopted the current MS4 permit in 2012 (“2012 Permit”), which was largely upheld on administrative appeal by the State Water Resources Control Board (SWRCB) in 2015. Among other things, this MS4 permit requires strict compliance with numeric Water Quality-Based Effluent Limitations (“WQBEL”) for municipal discharges. The Permit defines WQBEL as “Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. necessary to achieve a water quality standard.”

The 2012 Permit was issued pursuant to the federal Clean Water Act (“CWA”) and the California Water Code (“CWC”). The Permit regulates the L.A. County Flood Control District, L.A. County, and 84 incorporated cities within the coastal watershed of Los Angeles County.

Lawsuits:

On July 2, 2015, the Cities of Duarte and Huntington Park filed a Petition for Writ of Mandate challenging the 2012 Permit in L.A. County Superior Court. On July 24, 2015,

the City of Gardena filed *City of Gardena v. Regional Water Quality Control Board, et al.* in L.A. County Superior Court, also challenging the 2012. The two cases were transferred to the Orange County Superior Court and litigated concurrently.

The Natural Resources Defense Council and L.A. Waterkeeper separately filed a lawsuit challenging the Permit on different grounds.

Argument:

Among other things, both Duarte/Huntington Park and Gardena (“Petitioners”) contend that the numeric WQBELs required in the 2012 Permit are more stringent than what is mandated by the CWA. Petitioners further contend that any requirement beyond the federal law must comply with provisions of the state law that require the Regional Board to take into consideration factors outlined in the California Water Code, which include “economic considerations.”

Judge’s Findings:

Judge Sanders found that while the CWA requires industrial discharges to meet numeric effluent limitations, the CWA does not require municipal discharges to comply with such numeric effluent limitations. According to Section 402(p)(3)(B)(iii) of the CWA, municipal discharges “shall require controls to reduce the discharge of pollutants to the *maximum extent practicable*, including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” [Emphasis added.]

Because the CWA does not require municipal discharges to strictly comply with numeric effluent limitations, Judge Sanders found that the 2012 Permit’s inclusion of numeric WQBELs was “more stringent” than what is required in the CWA.

Because the numeric WQBELs are “more stringent” than the CWA, Judge SANDERS ruled that the Regional Board was required to consider certain factors found in the California Water Code, including “economic considerations” before issuing the 2012 Permit. Judge Sanders wrote that “[e]conomic considerations must begin with *some kind of estimate of cost*,” and but the administrative record did not provide a sufficient estimate of or projection of possible costs associated with the 2012 Permit. Therefore, the Regional Board did not comply with the requirement to consider economics before issuing the 2012 Permit with the numeric effluent limits.

Ruling

The Court’s ruling is not final until a judgment is entered and a writ of mandate is issued to the Regional Board. The Cities of Gardena and Duarte have each submitted proposed judgments in accordance with the Court’s ruling. In sum, Gardena’s proposed judgment would set aside the entire 2012 Permit and Duarte’s proposed judgment would strike the numeric effluent limits, and associated provisions, from the 2012 Permit

but leave the remainder of the Permit in place.

Impact

The Court's ruling impacts 84 incorporated cities in Los Angeles County--including all 11 SEWC member cities--plus Los Angeles County and the L.A. County Flood Control District.

Status:

A status conference is scheduled for June 17th, where the court will hear argument on Gardena's and Duarte's proposed judgments.

Attachment(s):

1. Minute Order, dated 4/19/19, for *City of Gardena vs. Regional Water Control Board, Los Angeles Region*
2. Richards, Watson & Gershon PowerPoint

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: City of Gardena vs Regional Water Quality Control Board, Los Angeles Region**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE****CASE NUMBER:**
30-2016-00833722-CU-WM-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 04/18/19, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on April 18, 2019, at 2:21:22 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 04/18/2019

TIME: 02:12:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Glenda Sanders

CLERK: Antero Pagunsan

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2016-00833722-CU-WM-CJC** CASE INIT.DATE: 07/24/2015

CASE TITLE: **City of Gardena vs Regional Water Quality Control Board, Los Angeles Region**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73029081

EVENT TYPE: Chambers Work

APPEARANCES

Related case 30-2017-00833614 The Cities of Duarte vs State Water Resources Control Board

There are no appearances by any party.

The Court's Ruling on Petitions for Writ of Mandate is attached to this minute order.

Clerk is ordered to give notice to Petitioner/Plaintiff City of Gardena and Petitioner/Plaintiff City of Gardena is directed to give notice to all other parties.

APR 18 2019

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

**THE CITIES OF DUARTE AND
HUNTINGTON PARK, et al.**

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants,

CITY OF GARDENA, et al.

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants.

Case No. 30-2016-00833614-CU-WM-CJC

[Related Case No. 30-2016-00833722,
*City of Gardena v. Regional Water Quality
Control Board-Los Angeles Region, et al.*]

**RULING ON PETITIONS FOR WRIT OF
MANDATE**

1 RULING

2
3 No party has requested a Statement of Decision. The Court accordingly hereby orders that a
4 Statement of Decision has been waived pursuant to CRC, rule 3.1590 (i). The Court now adopts its
5 Tentative Decision with the following modifications: (i) the removal of the final two paragraphs
6 (entitled "Prayer for Relief"); and (2) the correction of the numeric displacement in references to CWC
7 § 13421.

8 The Petitions for Writ of Mandate are **granted**.

9
10 DISCUSSION AND ANALYSIS

11
12 **A. Overview of Applicable Statutory Schemes**

13
14 In 1949, California established nine California Regional Water Quality Control Boards. In
15 1967, California established the State Water Resources Control Board. Two years later, in 1969,
16 California enacted the Porter-Cologne Act, also known as the California Water Code (the "CWC").
17 Together, the state and nine regional boards are responsible for implementing and enforcing the CWC.
18 Among other things, the CWC governs water quality in California including the discharge of "waste."
19 *CWC, § 13000 et seq.* The "waste discharge requirements" under the CWC are the equivalent of the
20 "permits" issued under the federal Clean Water Act (*infra*). *CWC, § 13374.*

21
22 In 1972, three years after California enacted its clean water act, the Federal Water Pollution
23 Control Act (33 U.S.C. § 1251, *et seq.*) enacted in 1948 was significantly reorganized and expanded.
24 The revised act, now commonly known as the Clean Water Act (the "CWA"), established a basic
25 structure for regulating pollutant discharges into United States waters. Pollutants may not be
26 discharged except in compliance with: (i) established effluent limitations or standards (33 U.S.C. §§
27 1312, 1317); (ii) established national standards (33 U.S.C. § 1316); or (iii) a National Pollution
28

1 Discharge Elimination System (“NPDES”) permit (33 U.S.C. §§ 1328, 1342, 1344). NPDES permits
2 impose limits on what can be discharged and set monitoring and reporting requirements. Under the
3 CWA, a state may adopt and enforce its own standards, so long as they are not “less stringent” than
4 national standards. 33 U.S.C. § 1370.

5
6 The year after the CWA was enacted, California became the first state approved to issue NPDES
7 permits. The state board and the nine regional boards implement the CWA (as well as the CWC). To
8 obtain a NPDES permit in California, a discharger applies to the relevant regional or state board,
9 depending on the type of discharge. NPDES applications are processed according to federal NPDES
10 rules. (CCR, tit. 23 §§ 2235.1-2235.2.)

11
12 **B. The Challenged Permit**

13
14 An MS4 is a system owned by a public entity (or entities) which collects and/or conveys
15 stormwater. 40 C.F.R. § 122.26(b)(8). The Regional Board issued the first Los Angeles County MS4
16 permit in 1990. It governed the County of Los Angeles and the incorporated areas therein. *Permit at*
17 *page 13*. The permit was renewed in 1996, 2001 and 2012. The 2012 permit is entitled the National
18 Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System within
19 the Coastal Watersheds of Los Angeles County, except for discharges originating from the City of
20 Long Beach MS4, Order No. R4-2012-0175, NPDES No. CAS004001. It was amended on June 16,
21 2015, by State Board Order WQ 2015-0075. (The permit and its amendments are collectively referred
22 to as the “2012 Permit.”)

23
24 The 2012 Permit was issued pursuant to both the CWA and the CWC. *Permit at p. 20*. The
25 2012 Permit regulates the Los Angeles County Flood Control District, the County of Los Angeles, and
26 84 incorporated cities within the coastal watersheds of Los Angeles County (the “Permittees”). It is the
27 permit challenged by Petitioners in these related cases.

1
2 Unlike the earlier permits, the 2012 Permit requires the Permittees to “comply with applicable
3 WQBELs [Water Quality-Based Effluent Limitations].” *2012 Permit*, § IV.A.2.a. and § VI.E. (“Water
4 Quality-based Effluent Limitations” are defined in Attachment A to the 2012 Permit as “Any restriction
5 imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from
6 point sources to waters of the U.S. necessary to achieve a water quality standard.”) “The inclusion of
7 water quality-based effluent limitations and receiving water limitations to implement applicable WLAs
8 [Waste Load Allocations] provides a clear means of identifying required water quality outcomes within
9 the permit and ensures accountability by Permittees to implement actions necessary to achieve the
10 limitations.” *2012 Permit at p. 23.*

11
12 **C. Petitioners’ Claims**

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14 On July 2, 2015, Duarte and Huntington Park filed a Petition for Writ of Mandate challenging
15 the 2012 Permit in Los Angeles County Superior Court. On July 24, 2015, the city of Gardena filed
16 *City of Gardena v. Regional Water Quality Control Board, et al.* in Los Angeles County Superior
17 Court, also challenging the 2012 Permit. Although the organization and allegations of the Petitions
18 differ, the *Duarte* and *Gardena* writs both involve the 2012 Permit and raise overlapping issues. On
19 October 15, 2015, the cases were related and on May 9, 2016, they were transferred to the Orange
20 County Superior Court.

21
22 Among other things, Petitioners assert that numeric WQBEL compliance is more than what is
23 mandated by the CWA. They argue that to impose any requirement beyond that mandated by the
24 CWA, Respondents had to consider the factors listed in CWC §13421. *Writ*, ¶ 32. Section 13421
25 reads, in its entirety:
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Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

D. Findings

1. **Numeric WQBEL compliance is “more stringent” than the applicable CWA requirements.**

1 Petitioners argue that Respondents had to consider the factors set forth in CWC § 13241 because
2 numeric WQBEL compliance is not mandated by federal law but was an exercise of discretion.
3 *Proposed Statement of Decision of Real Parties in Interest West Covina, Santa Fe Springs and*
4 *Lakewood at 14:3-10; Petitioner/Plaintiff The City of Duarte’s Opening Brief in Support of Petition*
5 *for Writ of Mandate at 20:23-22:3; Proposed Outline of Statement of Decision of Petition, The City of*
6 *Gardena at 20:1-28:16.* While the issue of what is “mandated” may be relevant to reimbursement
7 (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 767-769), it is not the
8 governing standard for these matters. Here, the question that must be answered is whether numeric
9 WQBEL compliance is “more stringent” than the applicable federal requirement. *See City of Burbank*
10 *v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618; and *City of Rancho Cucamonga*
11 *v. Regional Water Quality Control Board-Santa Ana Region* (2006) 135 Cal.App.4th 1377. If so, then
12 Respondents were required to consider the § 13241 factors before issuing the 2012 Permit.
13 Although permits were not initially required for stormwater discharge, in 1987 Congress defined
14 industrial stormwater discharges and municipal separate storm sewer systems (commonly referred to
15 as “MS4”) as “point sources” and required them to obtain NPDES permits. 33 U.S.C. §1342
16 (p)(3)(B)(iii); 40 C.F.R. § 122.26(b)(8). Section 1342(p)(3) reads:

17
18 **(3) Permit requirements**

19
20 **(A) Industrial discharges.** Permits for discharges associated with industrial activity
21 shall meet all applicable provisions of this section and section 1311 of this title.

22 **(B) Municipal discharge** Permits for discharges from municipal storm sewers—

23 (i) may be issued on a system- or jurisdiction-wide basis;

24 (ii) shall include a requirement to effectively prohibit non-stormwater discharges
25 into the storm sewers; and

26 (iii) shall require controls to reduce the discharge of pollutants to the maximum
27 extent practicable, including management practices, control techniques and
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1 system, design and engineering methods, and such other provisions as the
2 Administrator or the State determines appropriate for the control of such
3 pollutants.
4

5 The statute sets forth two, separate standards. Permits for industrial discharges “shall meet all
6 applicable provisions of . . . section 1311 of this title.” 33 U.S.C. § 1311, entitled “Effluent
7 Limitations,” incorporates technology-based effluent limits and water quality standards. Permits for
8 *municipal* discharge, on the other hand, are *not* required to comply with the effluent limits of § 1311.
9 Instead, they “shall require controls to reduce the discharge of pollutants to the *maximum extent*
10 *practicable*, including *management practices, control techniques and system, design and engineering*
11 *methods*, and such other provisions as the Administrator or the State determines appropriate for the
12 control of such pollutants.”
13

14 Thus, while industrial discharges are required to meet numeric effluent limitations, municipal
15 discharges are not. 33 U.S.C. § 1342(p)(3).
16

17 The distinction between the two standards was addressed by the Ninth Circuit in *Defenders of*
18 *Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1165-1166:
19

20 “Applying that familiar and logical principle, we conclude that Congress’ choice to require
21 industrial storm-water discharges to comply with 33 U.S.C. § 1311, but not to include the same
22 requirement for municipal discharges, must be given effect. When we read the two related
23 sections together, we conclude that 33 U.S.C. § 1342(p)(3)(B)(iii) does not require municipal
24 storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).
25

26 Application of that principle is significantly strengthened here, because 33 U.S.C. §
27 1342(p)(3)(B) *is not merely silent* regarding whether municipal discharges must comply with
28

1 33 U.S.C. § 1311. Instead, § 1342(p)(3)(B)(iii) *replaces* the requirements of § 1311 with the
2 requirement that municipal storm-sewer dischargers "reduce the discharge of pollutants to the
3 maximum extent practicable, including management practices, control techniques and system,
4 design and engineering methods, and such other provisions as the Administrator . . . determines
5 appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). In the
6 circumstances, the statute unambiguously demonstrates that Congress did not require municipal
7 storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

8
9 Indeed, the EPA's and Petitioners' interpretation of 33 U.S.C. § 1342(p)(3)(B)(iii) would render
10 that provision superfluous, a result that we prefer to avoid so as to give effect to all provisions
11 that Congress has enacted. [Citation] As all parties concede, § 1342(p)(3)(B)(iii) creates a lesser
12 standard than § 1311. Thus, if § 1311 continues to apply to municipal storm-sewer discharges,
13 the *more stringent* requirements of that section always would control. (Emphasis in the
14 original.)

15
16 As the Ninth Circuit recognized in the last sentence of that quote, the numeric WQBEL
17 requirements applied to industrial discharges are "more stringent" than the requirements applied, by
18 statute, to municipal discharges.

19
20 Respondents attempt to erase the distinction between the two standards by arguing that 33
21 U.S.C. § 1342 confers a discretion upon them to impose more stringent standards which means they
22 may impose numeric WQBELS, and may do so without complying with California law. *Respondents'*
23 *Proposed Statement of Decision, Proposed Finding 6 at pp.4-6.* Respondents rely on *Building Industry*
24 *Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866
25 ("*BLA*") to support this argument. *Respondents' Proposed Statement of Decision at 4:5-15.* While *BIA*
26 recognizes that a state agency may impose "a more stringent water quality standard," it did not
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1 determine that such a standard could be imposed without compliance with § 13241. In arriving at the
2 decision, the *BIA* court looked to the *Defenders of Wildlife* decision and stated:

3
4 The only other court that has interpreted the "such other provisions" language of section
5 1342(p)(3)(B)(iii) has reached a similar conclusion. In *Defenders of Wildlife*, environmental
6 organizations brought an action against the EPA, challenging provisions in an NPDES permit
7 requiring several Arizona localities to adhere to various best management practice controls
8 without requiring numeric effluent limitations. (*Id.* at p. 1161.) The environmental
9 organizations argued that section 1342(p) did not allow the EPA to issue NPDES permits
10 without requiring strict compliance with effluent limitations. Rejecting this argument, the Ninth
11 Circuit found section 1342(p)(3)(B)(iii)'s statutory language "unambiguously demonstrates that
12 Congress did not require municipal storm-sewer discharges to comply strictly" with effluent
13 limitations.

14
15 But in a separate part of the opinion, the *Defenders of Wildlife* court additionally rejected the
16 reverse argument made by the affected municipalities (who were the interveners in the action)
17 that "the EPA may not, under the [Clean Water Act], require strict compliance with *state* water-
18 quality standards, through numerical limits or otherwise."

19 (Emphasis added; internal citations omitted)

20
21 The "maximum extent practicable" standard set forth in § 1342 is "a highly flexible concept
22 that depends on balancing numerous factors, including the particular control's technical feasibility, *cost*,
23 public acceptance, regulatory compliance, and effectiveness." *BIA*, 124 Cal.App.4th at 889. Although
24 it is a flexible standard, it is less stringent than the numeric WQBEL compliance applied to industrial
25 discharges and Respondents were required to consider the § 13241 factors. Respondents argue that
26 whether numeric WQBEL compliance is "more stringent" than the requirements of the CWA, is a
27 question of fact. In support of that proposition, they cite *City of Burbank*, 35 Cal.4th at 628, While
28

1 *City of Burbank* remanded the issue for determination by the trial court, it is apparent from the decision
2 that the distinctly different standards for industrial and municipal discharges set forth in 33 U.S.C. §
3 1342 had not been briefed. Eleven years later, the California Supreme Court recognized that the
4 requirements of the CWA are “largely a question of law.” *DOF*, 1 Cal.5th at 767 (“*DOF*”).
5 Accordingly, the Court is not required to defer to Respondents’ findings on whether numeric WQBEL
6 compliance is “more stringent” than the “maximum extent practicable” standard applied to municipal
7 discharges. (*See Permit at Finding II.S. and Attachment F, Section IV.B.*),

8
9 **2. Respondents failed to comply with the CWC in adopting the NEL requirements.**

10
11 The 2012 Permit includes a “finding” that Respondents were not required to comply with CWC §
12 13241 in issuing the numeric WQBELs. Hedging their bets, Respondents alternatively “find” that they
13 looked at “economic considerations” as required by CWC § 13241. *2012 Permit, Attachment F at F-*
14 *147 to F-155*. But the “economic considerations” section does not, at any point, include any reference
15 to or estimate of the possible cost or range of costs of compliance with numeric WQBELs. Respondents
16 do, however, acknowledge, that the cost of compliance will be “above and beyond” the cost of
17 complying with prior permits. The first sentence of the economic consideration section reads: “The
18 Regional Water Board recognizes that Permittees will incur costs in implementing this Order *above*
19 *and beyond* the costs from the Permittee’s prior permit.” *See SB-AR-013719 at § D.*

20
21 According to the Fact Sheet which is Attachment F to the 2012 Permit, the economic consideration
22 given to Permittees consisted of a review of the cost of compliance with the 2001 Permit and 2004
23 study. *See SB-AR-013721-722*. This Court finds that a consideration of economics of the 2001 permit
24 does not amount to economic consideration of the 2012 Permit, particularly as Respondents
25 acknowledge that compliance with the 2012 Permit will entail costs “above and beyond” those resulting
26 from the prior permit.

1 During this proceeding, Respondents did not identify any additional economic consideration in
2 connection with the 2012 Permit. Their opening brief referenced funding sources submitted under the
3 2001 permit and a 2004 study on the cost to the public of MS4 pollution. *Respondents' Opposition to*
4 *Petitioners' Opening Briefs at 33:19-34:15*. Further, Respondents admitted that they did not consider
5 the cost of compliance: "The Regional Board recognized that significant costs would be associated
6 with the Permit. However, when issuing the Permit, the Regional Board had to rely on currently
7 available cost data, including information reported by the permittees themselves during the *prior* permit
8 term and provided to the Board *prior* to issuance of the Permit. (SB-AR-013721-723.) Given the
9 significant flexibility afforded to permittees on how to comply with the standards in the Permit and the
10 variability of permittees' chosen individual or joint compliance paths, it was impossible for the Board
11 to predict 86 permittees' exact methods of compliance and fully consider those future associated long-
12 term costs. Petitioners' efforts to point to extra-record evidence not in existence at the time of Permit
13 issuance as evidence [that] costs were not considered is thus misleading." *Respondents' Opposition to*
14 *Petitioners' Opening Briefs at 34:16-35:2*. (Emphasis added).

15
16 Respondents also argued that they addressed "economic considerations" by *phasing in the*
17 *requirements and allowing the Permittees to join with other Permittees in the development and*
18 *implementation of watershed management programs* and enhanced watershed management programs
19 to "*share the cost of controls*." (Emphasis added) *Respondents' Opposition to Petitioners' Opening*
20 *Briefs at 17:3-18:10*. While those mechanisms *may* relieve the burden of the additional costs of
21 implementation, they do not address those costs at all, and so do not deal with "economic
22 considerations". Economic considerations must begin with *some kind of estimate of cost*.

23
24 Respondents' Proposed Statement of Decision continues the theme, identifying numerous pages
25 of the record which they assert establish compliance with § 13241. Those pages do not include any
26 kind of estimate or projection of possible costs associated with the 2012 Permit. *See Findings 10-16*
27 *at 9:14—13:9*.

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The pages of the record cited in support of these assertions are identified and summarized, below.

SB-AR-011550	First page of a slide show consisting of a photograph and the words "Environmental Groups' Proposal."
SB-AR-01372-73	Slide show referring to <i>2015</i> written comments. As the comments were made in 2015, they could not have been considered in connection with issuance of the 2012 Permit.
SB-AR-13209-13211 & 13230-13232	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
SB-AR-013313-14; 19; 43-47; 54; 59-60	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
SB-AR-013439-13443	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
SB-AR-013612-613	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
SB-AR-013678-80	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.

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SB-AR-013712-013730	SB-AR-013719-730 include the Permit's recitation of "Economic considerations" which are addressed, above.
SB-AR-015813-15820	The cited pages are a portion of an undated transcript which includes, among other things, the following comment: "[MR. WYELS]: From my perspective, it's sort of the flip side of what the environmental petitioners want us to do is to look at the actual implementation of the permit now. We don't have these numbers, we don't know what the projects are the numbers are estimated for. I expect that those -- you know, these are SB-AR-015813 Government Contracts Page: 78 EWMPs so they're not yet even due to the Regional Board yet, but as the next phase, as the next step of implementing the project goes forward then I very much expect we'll be hearing about specific projects and actual cost estimates, as well as what those -- how those cost estimates are really raising hurdles for the cities. Again, we don't have any of this information ourselves, it's not currently in front of the board."
RB-AR-18119	A page of an undated slideshow entitled: "Tentative Order and Adoption Process

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Issues” presented by the cities of Baldwin Park, Compton, Duarte, Claremont, Duarte, Gardena, Irwindale, San Fernando, South El Monte, and West Covina. Page 18119 sets forth some provisional costs which would be incurred if the tentative [undefined] order were adopted as of the date of the slideshow. The remainder of the slideshow references that the water boards have not identified or considered costs. For example, RB-AR-18113 reads, in part: “Revised order permit should not be issued until: Staff provides a compliance cost-estimate – especially regarding TMDLs . . .” RB-AR-18116 asks: “How do we know what the costs will be in the final analysis without seeing the final order?” RB-AR-18117 reads, in its entirety: “Let’s Talk Cost Issues • In response to Board Member Camacho’s question about compliance costs staff (at the USC workshop) was unable to provide a dollar amount • Staff response (per Rene Purdy) is that permittees have no difficulty paying for permit costs based on annual reports • Rene did not answer the question which was pegged to the proposed new permit – not the existing one • The budgets do not contain TMDL compliance costs except for those cities subject

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	<p>to the trash TMDL because it is in the current permit • They are not representative costs” RB-AR-18125 includes the following: “Recommendation - hold off on adopting a final order until: 1. Staff provides an estimate of how much permit/TMDL compliance will cost and how permittees will pay for it”</p>
RB-AR-18164-18202	<p>A 2007 slideshow entitled: “The Strategic BMP Prioritization Analysis Tool: Implementation of the Los Angeles County-Wide Structural BMP Prioritization Methodology.” The slideshow does not address cost or other economic considerations except to identify “cost” as a “basis for evaluation & prioritization” at SB-AR-18180-18181 and to identify a “Cost Estimation module-BMP cost estimation component” as a “Major Component” at SB-AR-18201.</p>
RB-AR-21006-21011	<p>A November 8, 2012 slideshow entitled re: “Los Angeles County MS4 Permit Cost Considerations” reflecting 2005 numbers for “cost per household annually” for cities outside of Los Angeles County. There is no information regarding the type of permit issued to those cities or whether they are required to comply with numeric WQBELs.</p>

1	RB-AR-29487-502	A December 6, 2007 slideshow entitled
2		“Concept Development: Design Storm for
3		Water Quality in the Los Angeles Region.” It
4		does not include or reference any review of
5		economic considerations in connection with
6		the 2012 Permit.
7	RB-AR-30065-30095	An undated slideshow entitled “Exceedance
8		Frequency and Load Reduction Simulation;
9		Evaluation of Three BMP Types as a Function
10		of BMP Size and Cost.” The “cost estimates”
11		included on RB-AR30088 demonstrates that
12		the costs (based on 2003, 2004 and 2007
13		information) do not relate to the 2012 Permit
14		as they arise out of three Best Management
15		Practices scenarios “for designs achieving 5%,
16		10% and 20% exceedance of the dissolved
17		copper CTR benchmark of 13.2 ug/L”
18	RB-AR-30659-30694	A duplicate of RB-AR-18164-18202 without
19		the last three pages.
20	RB-AR-32975	A single page document dated 9/18/2013 (after
21		the 2012 Permit was issued) entitled
22		“International Stormwater BMP Database
23		2007 Release Cost Data Available for Media
24		Filters & Green Roofs.”
25	RB-AR-36754-757	Part of a larger report which references the
26		costs of the “Ballona Creek Trash TMDL.” It
27		does not address the cost of compliance or
28		

	other economic considerations related to the 2012 Permit.
RB-AR-37202-212	Part of a larger report on the Los Angeles Watershed Trash TMDL regarding catchments for trash. The document does not address the cost of compliance or other economic considerations related to the 2012
RB-AR-42636-639	A table from a June 16, 2005 report regarding "Proposed Implementation Plan." The costs are for "potential BMP projects at public sites by subwatershed" and addresses projects such as the addition of cisterns and rain barrels at various public sites identified as being located in the Los Angeles, Santa Monica, El Segundo and the County of Los Angeles.

Respondents argue that their review of economic considerations was sufficient because § 13241 does not specify how the factors must be considered nor require specific findings. In support of this proposition, they rely on *California Assoc. of Sanitation Agencies v. State Water Res. Control Bd.* (2008) 208 Cal.App.4th 1438, 1464-1465 ("*Sanitation Agencies*"). The court in that case found that the record included "multiple instances in which economic considerations [we]re discussed" including an analysis of comparative costs. *California Association*, 208 Cal.App.4th at 1465. Respondents have not identified any such instance in their administrative record. Further, in *Sanitation Agencies*, the court specified that there was no threshold showing that adverse economic consequences would result from the board's action. Here, Respondents specifically acknowledged in the 2012 Permit that the cost of compliance would be "above and beyond" what had been required previously. They admit the adverse economic consequences.


1 Petitioners, the City of Duarte and the City of Gardena are ordered to prepare, serve and
2 submit Proposed Judgments pertaining to their respective Petitions, to the court within 10 days of the
3 date upon which this order is served pursuant to CRC, rule 3.1590 (i).

4
5 **Date Judge Signed: April 18, 2019**



6
7 **The Hon. Glenda Sanders**
8 **Superior Court of California,**
9 **Orange County**

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**Southeast Water Coalition
June 6, 2019
Los Angeles County Municipal
Stormwater Permit Update**

Presented by: Nicholas R. Ghirelli, Richards Watson & Gershon

Los Angeles County Permittee Goals

Common Goals for Operating and Maintaining Municipal Stormwater Systems:

- Improve Regional Water Quality
- Comply with Permit Obligations
- Accomplish Both at an Affordable Cost




Municipal Separate Storm Sewer Systems

MS4: "Conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) ... Owned or operated by a...public body...designed or used for collecting or conveying stormwater...." 40 CFR § 126.62(b)(8)

Distinct from sanitary sewer systems or combined sewer systems




Clean Water Act Background

▪ **Basic Rule:** The Clean Water Act prohibits the discharge of pollutants from a point source into jurisdictional waters of the United States except in compliance with the Act's exceptions. 33 U.S.C. § 1311(a)

• **Discharge of Pollutants:** "[A]ny addition of any pollutant to navigable waters from any point source . . . any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. § 1362(12)

• **Point Source:** "[A]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362 (14)

• **Navigable Waters:** Waters of the United States or "WOTUS." 33 U.S.C. § 1362(7). Subject of ongoing rulemaking process.



NPDES Permits

▪ **The NPDES Permit System = exception to pollutant discharge prohibition when discharges comply with permit requirements.** 33 U.S.C. § 1342

• **Permit Shield:** "Compliance with a permit...shall be deemed compliance...." 33 U.S.C. § 1342(k)

▪ **NPDES Permits regulate water quality via:**

- Water Quality Standards
- Effluent Limitations
- Monitoring and Reporting



Water Quality Standards

▪ **Promulgated by the State and establish desired condition of a waterbody**

▪ **General components**

• Designated "beneficial uses" of the waterbody (e.g., recreation, sport fishing, water supply, etc.)

• Water Quality Criteria sufficient to protect those uses:

- Narrative: "No discharge in toxic amounts"
- Numeric: Quantitative limitation on pollutant concentrations (e.g., 1 microgram per liter)



Effluent Limits

- Generally, effluent limits are “technology-based”
- When these fail, then the Clean Water Act requires States to implement “water-quality based effluent limits” (WQBEL)
- WQBELs must be consistent with the assumptions and requirements of applicable “total maximum daily loads” (TMDL)
 - States must identify waters that are impaired, rank them in order of priority, and calculate levels of permissible pollution called TMDLs



TMDL



- **TMDL:** “A TMDL defines the specified maximum amount of a pollutant which can be discharged or “loaded” into the waters of issue from all combined sources.” *Diary/Organizations Center v. Corps*, 31 F.3d 1517, 1520 (9th Cir. 1995).
- Assigns “waste load allocations” to point sources at levels necessary to implement water quality standards, including a margin of safety. 33 U.S.C. § 1315(d)(1)(C), *Communities for a Better Environment v. State Water Resources Control Bd.*, 109 Cal.App.4th 1089, 1095-1096 (2003).
- **Not self-executing; enforceable through NPDES permits.** *City of Arcadia v. U.S. Envtl. Prot. Agency*, 265 F. Supp.2d 1142, 1144-45 (N.D. Cal. 2003).
- Effluent Limitations in NPDES permits must be consistent with all TMDLs



Stormwater under the Clean Water Act

- Stormwater Systems are regulated point sources under the Clean Water Act. *Natural Resources Defense Council v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977)
 - Initial EPA regulations exempted stormwater systems from permit requirements: “conserve the [Environmental Protection] Agency’s enforcement resources for more significant point sources of pollution.” *Costle*, 568 F.2d at 1373.
- 1987 Water Quality Act: Amended Clean Water Act to require regulation
 - “Large MS4s,” such as LA County, subject to permitting and regulation by 1994



Regulation of Stormwater under CWA

Maximum Extent Practicable

- Municipal stormwater permits must include "controls to reduce the discharge of pollutants to the maximum extent practicable...." 33 U.S.C. § 1342(p)(3)(B)(ii)
- "[A] highly flexible concept that depends on balancing numerous factors, including the particular control's technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness." *Bldg. Indus. Ass'n of San Diego Cty. v. State Water Res. Control Bd.*, 124 Cal.App.4th 866, 889 (2004)

Municipal Stormwater Permits **not** required to meet water quality standards.

Defenders of Wildlife v. Browner, 191 F.3d 1159, 1155-56 (9th Cir. 1999)

Best Management Practices



Los Angeles Permit Background

Los Angeles Regional Water Quality Control Board (Region 4) delegated responsibility to issue NPDES permits in Los Angeles and Ventura Counties

LA Board issued first municipal stormwater permit for LA County in 1990, followed by renewed permits in 1996 and 2001.

Current permit issued in 2012 (largely upheld by State Water Board in 2015)

- Portions challenged by NRDC/LA Waterkeeper and Cities of Gardena and Duarte



Current Permit

33 TMDLs included in permit

Water Quality Based Effluent Limitations

Receiving Water Limitations

- Numeric limits subject of Duarte/Gardena cases)
- Fundamental shift from BMP-based "iterative process"

Watershed Management Programs/Enhanced Watershed Management Programs

- Deemed Compliance with interim/final limits (subject of NRDC/LA Waterkeeper case)

Monitoring and Reporting



Duarte/Gardena Litigation

- Cities of Duarte and Gardena filed separate challenges to 2012 Permit
- Generally overlapping arguments, with Gardena asserting additional procedural claims
- Basis of dispositive argument on compliance with numeric effluent limits/receiving water limits:
 - *City of Burbank v. State Water Resources Control Bd.*, 35 Cal.4th 613, 628 (2005): "The federal Clean Water Act reserves to the states significant aspects of water quality policy...and it specifically grants the states authority to 'enforce any effluent limitation' that is not 'less stringent' than the federal standard.... It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit a state—from imposing effluent limitations that are more stringent than required, by federal law—from taking into account the economic effects of doing so."



A Matter of State Law's Applicability to Permit

- Duarte/Gardena Argument:
 - The 2012 Permit's numeric limits were not required by the Clean Water Act under *Defenders of Wildlife* and its progeny;
 - The 2012 Permit's numeric limits were therefore included pursuant to State Law;
 - California Water Code requires consideration of numerous factors, include economics. Water Code §§ 13241 & 13263; and
 - 2012 Permit did not adequately consider permittees' cost of compliance
- Water Board Arguments:
 - Clean Water Act preempts State law; numeric limits included pursuant to Act; and
 - Even so, Water Boards still considered economics



Court's Decision

- 2012 Permit's numeric limits "more stringent" than Clean Water Act's MEP standard: "exercise of discretion"
- Water Board's findings admit that costs are above and beyond prior permit requirements
- Record omitted cost estimate and consideration of economic burden on permittees
- Water Board failed to make findings



What's Next?

- Decision not final until final judgment entered and writ of mandate issued
- June 17th hearing for arguments on Gardena's and Duarte's alternative proposals for judgment/writ
 - Gardena: Set aside entire Permit
 - Duarte: Strike numeric effluent limits/TMDLs from Permit
- Water Board may appeal



Next Iteration of Permit?

- 2012 Permit expired in 2017 (5-year life cycle), but effective until new permit issued
- Draft Permit expected in Fall, Permit issued in 2020
- New regional Permit to include entire Region 4 permittees (LA County, including Long Beach, and Ventura County)
- Permit expected to look similar to 2012 Permit
- Litigation impact: Pressure on Water Boards to take cost of compliance seriously





Thank you. Questions?

Presented by: Nicholas R. Chirelli, Richards Watson & Gershon

**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity
John Oskoui, Director at Large, Central Basin Municipal Water District
Board of Directors

Subject: Receive and file an update on the Central Basin Municipal Water District (CBMWD) Board of Directors meeting on May 28, 2019, regarding proposed water rates and charges.

Recommendation: That the Board of Directors take the following action:

Receive and file an update on the Central Basin Municipal Water District (CBMWD) Board of Directors meeting on May 28, 2019, regarding proposed water rates and charges.

Background:

At the May 15, 2019 Central Basin Municipal Water District's Purveyors Meeting, CBMWD suggested establishing a fixed meter charge on purveyor retail meters. Central Basin recommended Option #2, which would establish the meter charge at \$4.68/per retail meter, per year, beginning in FY 2020. Option #2 would increase the meter charge gradually every year until 2024, when the charge would be \$5.29. Central Basin estimates the charge of \$4.68/per retail meter per year would generate \$1,485,614 in FY 2020.

The fixed rate meter charge was an action item at the CBMWD Board of Directors meeting on May 28, 2019. At this meeting, CBMWD General Manager Kevin Hunt stated Central Basin had received letters of protest from the cities of Cerritos, Bellflower, Lakewood, Norwalk, Paramount, and Santa Fe Springs. SEWC AE members Jason Wen (Lakewood), Adriana Figueroa (Paramount), and Julian Lee (Norwalk) gave comment opposing the meter charge.

The Central Basin Board voted to defer final vote on the item until their next regularly scheduled Board Meeting on June 24, 2019.



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY AGENDA REPORT

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity

Subject: Receive and file an update on the Water Replenishment District of Southern California (WRD) Replenishment Assessment (RA) for Fiscal Year (FY) 2019-2020

Recommendation: That the Board take the following action:

Receive and file an update on the Water Replenishment District of Southern California (WRD) Replenishment Assessment (RA) for Fiscal Year (FY) 2019-2020.

Background

At the May 7, 2019 Special Meeting of the Water Replenishment District Board of Directors meeting, the WRD Board voted to approve the Replenishment Assessment (RA) for Fiscal Year (FY) 2019-2020 at \$365/acre foot. The RA for FY 2018-19 was \$339/acre foot, reflecting a \$26 and 7.7% increase from the current fiscal year. The previous increase from FY 2017-18 to FY 2018-19 was 6.6%.

The RA is a pass-through rate to water purveyors based on how many acre feet of replenishment water they purchase from WRD. Funds generated from the RA are used for WRD operating expenses, financial reserve needs, purchasing and leasing supplies and equipment, and funding capital projects in existing service areas.

Attachment(s):

None

**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity
Subject: Review and Approve Southeast Water Coalition (SEWC) Joint Powers Authority (JPA) Fiscal Year 2019/2020 Draft Budget

Recommendation: That the Board take the following action:

Review and approve the Southeast Water Coalition (SEWC) Joint Powers Authority (JPA) Fiscal Year 2019/2020 Draft Budget.

Background

Each year, SEWC approves the Fiscal Year (FY) budget for the year that follows. Budgets commonly include revenue from memberships and anticipated expenditures for services such as program management, legal services, legislative advocacy services, financial audit, and Policy Board compensation.

At the March 21, 2019 Administrative Entity (AE) Special Meeting, the AE discussed issues related to the current FY 2018-2019 SEWC expenditures, and upcoming budget expenditures for the FY 2019-2020. The AE voted to continue the discussion at their next meeting on May 16, 2019.

The Fiscal Year 2019-2020 SEWC Draft Budget (attached) assumes a credit of \$5,000 off \$10,000 member agency annual dues, resulting in total annual dues of \$5,000. This credit is consistent with the previous two years' SEWC budgets.

Changes from FY 2018-2019 to FY 2019-2020 in the Draft Budget include increasing the Program Management Services line item from \$17,000 to \$20,000. The \$20,000 figure is contingent on the Board of Directors approving the Program Management Services Agreement with KJServices Environmental Consulting, which stipulates a not-to-exceed amount of \$20,000 per year. The Financial Audit line item increases from \$4,000 to \$6,000. Actual expenditures for the FY 2017-2018 Audit were \$5,300, of

which \$1,300 was deducted from the Consultant Services line item. Because the cost of the SEWC Audit has risen every year, the Administrative Entity believes \$6,000 is a reasonable allocation for this task.

The FY 2019-2020 Draft Budget would result in a projected total expenditure of \$128,500 and an ending balance of \$127,709.

The SEWC Budget for FY 2019-2020 should be approved prior to the beginning of the new Fiscal Year. As such, it is the recommendation of the Administrative Entity that the Board of Directors review and approve the Fiscal Year 2019-2020 SEWC Draft Budget.

Attachment(s):

1. Southeast Water Coalition Joint Powers Authority Fiscal Year 2019/2020 Budget - Draft

**SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY
FISCAL YEAR 2019-2020 DRAFT BUDGET - JUNE 6, 2019**

	FY 2018-2019		FY 2019-2020
	Approved Budget	Total Projected Expenditures	Draft Budget
Carryover Balance	\$191,157	\$181,709	\$200,209
Revenues:			
Annual Assessments for Member Agencies	\$110,000	\$110,000	\$110,000
Less Credits to Member Agencies	(\$55,000)	(\$55,000)	(\$55,000)
Interest Income	\$1,000	\$1,000	\$1,000
Total Revenues	\$56,000	\$56,000	\$56,000
Available Funds	\$247,157	\$237,709	\$256,209
Expenditures:			
Program Management Services	\$17,000	\$16,000	\$20,000
As Needed Government Relations	\$20,000	\$0	\$20,000
Legal Services	\$7,500	\$4,500	\$7,500
Board/Staff Travel/Meeting Expense	\$1,000	\$1,000	\$1,000
Financial Audit	\$4,000	\$4,000	\$6,000
Policy Board Compensation	\$9,900	\$6,600	\$9,900
Office Supplies	\$100	\$100	\$100
Policy Board Meetings	\$3,000	\$3,000	\$3,000
Administrative Entity Meetings	\$1,000	\$1,000	\$1,000
Consultant Services	\$60,000	\$1,300	\$60,000
Consultant Services Contingencies	\$0	\$0	\$0
Total Expenditures	\$123,500	\$37,500	\$128,500
Ending Balance	\$123,657	\$200,209	\$127,709

Notes:

1. Draft Budget (B) - Assumes credit of \$5,000 off of \$10,000 member agency annual dues resulting in total annual dues of \$5,000



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY AGENDA REPORT

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity
Subject: **Support SB 200 (Monning) and Senate's Continuous General Fund Appropriations Proposal for Safe and Affordable Drinking Water (SADW) Fund**

Recommendation: That the Board take the following action:

Authorize SEWC send a letter supporting SB 200 (Monning), the Safe and Affordable Drinking Water (SADW) Fund, and send a letter supporting the Senate's continuous General Fund appropriations proposal for SADW Fund.

Background

As part of Governor Newsom's Fiscal Year 2019-2020, the Budget Trailer Bill (BTB) includes a proposal for the funding of a Safe and Affordable Drinking Water (SADW) Program. The SEWC Board of Directors already sent a letter opposing this BTB after their April 4, 2019 meeting.

The Governor's May Revisions included more detail on the per meter tax for community water systems. The May BTB states the fee will vary between \$1/meter collection per year to \$10/meter connection per year. The estimated SADW fee on community water systems would generation between \$100 - \$110 million a year.

The other two fees in the SADW BTB are on dairy and fertilizer. The fertilizer fee is estimated to generate \$14 - \$17M/year. Dairy free estimated \$5M/year.

On May 15, the Senate Budget Subcommittee No. 2 reviewed the May Revisions and recommended the Governor's proposal be rejected, and the following adopted:

- \$150 million General Fund continuous appropriation for Safe and Affordable Drinking Water program
- Contingent on the passage of SB 200 (Monning) Safe and Affordable Drinking Water Fund

Senate Bill 200 would create the Safe and Affordable Drinking Water Fund in the State Treasury. The Senate Budget Subcommittee's proposal for continuous General Fund appropriation would act as the funding source for SB 200.

SB 200 passed out of Senate on May 22, 2019 with a vote of 37 Ayes, 1 No. It is currently in the Assembly.

The Fiscal Year 2019-2020 State Budget must be passed before midnight on June 15, 2019.

It is the recommendation of the Administrative Entity that the SEWC Board of Directors authorize SEWC send two letters supporting the Senate's efforts to establish a Fund that does not include a tax on water:

- Support -- SB 200 (Monning)
- Support -- Senate's General Fund Appropriations Proposal

Attachment(s):

1. Senate Budget Subcommittee's No. 2 TBL Revisions
2. SEWC Letters

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)
8570 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)**Issue 14: Safe and Affordable Drinking Water (SADW) (BCP) and (TBL) (GB)**

Governor's Proposal. The Governor's budget proposes the following BCP and TBL:

- BCP of \$4.8 million General Fund one-time as follows:
 - \$3.4 million to SWRCB for 23 positions to: (1) map high-risk aquifers and process water quality data from small water systems; (2) develop an assessment of the total annual funding needed to assist water systems in the state to deliver safe drinking water; (3) develop an implementation plan that includes funding priorities and guidelines; and, (4) process fees that will be deposited into a new fund and perform accounting work.
 - \$1.4 million to CDFA for seven positions to: (1) establish a new registration and fee collection system for dairies, farms, and ranches; and (2) administer the fertilizer materials mill assessments augmentation.
- TBL, which do the following:
 - Establish four charges, including:
 - A safe drinking water fee for confined animal facilities excluding dairies (amount generated not estimated).
 - A fertilizer safe drinking water fee (\$14 million to \$17 million).
 - A dairy safe drinking water fee (\$5 million).
 - A SADW fee for community water system customers (\$100 million to \$110 million).
 - Establish the SADW Fund to provide a source of funding to assist communities in paying for costs of obtaining access to SADW, such as operations and maintenance costs and capital costs associated with water system consolidation and service extensions.
 - Require SWRCB to administer a new SADW Program.
 - Require SWRCB to conduct a public review and assessment of the Safe Drinking Water Fund at least every 10 years.
 - Require SWRCB to prepare a report of expenditures annually, as specified.
 - Require SWRCB to make available a map of aquifers that are high-risk of containing contaminants and that exceed primary federal and state drinking water standards.
 - Exempt an agricultural operation from enforcement action for causing, contributing, creating, or threatening to create a condition of pollution or nuisance for nitrates in groundwater if the operation meets specified criteria.

Under a separate BCP, the Governor's budget proposes \$168.5 million in Proposition 68 funds for public water systems in disadvantaged communities for infrastructure improvements, including drinking water and wastewater treatment projects. This BCP was heard on March 7, 2019, in this subcommittee, as part of the Proposition 68 issue.

The Legislature and Governor enacted AB 72 (Committee on Budget), Chapter 1, Statutes of 2019, which does the following to address safe and affordable drinking water needs in the current budget year, 2018-19:

- \$10 million General Fund one-time to continue emergency funding for emergency drinking water and technical assistance.
- \$10 million General Fund one-time for grants and contracts to provide administrative, technical, operational, or managerial services to water systems – mainly in disadvantaged communities – to support compliance with current drinking water standards.

This proposal was discussed at the March 21, 2019 hearing.

May Revision. The Administration is proposing revised TBL in the May Revision. At the time of writing for this agenda, the proposed TBL was not available.

Staff Recommendation. Reject the Governor's proposal and adopt the following:

- **\$150 million General Fund continuous appropriation.**
- **TBL, as follows: Add Health and Safety Code Section 116773:**

Article 6. Funding Mechanism

116773. (a) Notwithstanding Section 13340 of the Government Code, the sum of one hundred fifty million dollars (\$150,000,000) is hereby continuously appropriated, without regard to fiscal year, from the General Fund to Safe and Affordable Drinking Water Fund for the purposes of implementing Chapter 4.6 (commencing with Section 116765) of Part 12 of Division 104 of the Health and Safety Code.

(b) The amount continuously appropriated pursuant to subdivision (a) shall be reduced by an amount equivalent to any new fees, taxes or other revenues enacted into law to fund the Safe and Affordable Drinking Water Fund.

(c) This section shall become operative only if Senate Bill No. 200 of the 2019-2020 Regular Session of the Legislature is enacted and takes effect.



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

June 6, 2019

The Honorable William Monning
State Capitol, Room 4040
Sacramento, CA 95814

Re: Safe and Affordable Drinking Water Fund - SUPPORT

Dear Senator Monning:

On behalf of the Southeast Water Coalition (SEWC), I am writing to express our support for your Senate Bill 200, as amended May 21, 2019, which would establish the Safe and Affordable Drinking Water Fund to ensure all Californians have access to clean drinking water.

The SEWC Joint Powers Authority (JPA) was established in 1991 and has a membership consisting of the cities of Cerritos, Commerce, Downey, Lakewood, Norwalk, Paramount, Pico Rivera, Santa Fe Springs, South Gate, Vernon and Whittier. SEWC's mission is to advocate for water policies that ensure the availability of reliable, quality, and affordable water for area residents. SEWC's water purveyors serve a population of 670,000 in a service area of over 93 square miles.

Senate Budget and Fiscal Review Subcommittee No. 2 on Resources, Environmental Protection, Energy and Transportation recently amended the Governor's budget trailer bill language proposing that the Legislature continuously appropriate \$150 million annually from the General Fund to the Safe and Affordable Drinking Water Fund. Senate Bill 200 would establish the Safe and Affordable Drinking Water Fund, but the funding will only become available if SB 200 becomes law.

As a representative body for local water purveyors, SEWC is committed to providing safe and reliable drinking water for area residents, and agrees with the intent of the Safe and Affordable Drinking Water Fund. We appreciate your efforts to establish a Fund that does not rely on a drinking water tax for its funding mechanism. SEWC believes the General Fund is an appropriate funding source for a SADW Fund that would benefit all Californians.

For these reasons, we support your bill, SB 200.

Sincerely,

Mr. Fernando Dutra
Board of Directors Chair
Southeast Water Coalition

Cc: Toni Atkins, Senate President Pro Tempore
Rachel Wagoner, Deputy Legislative Secretary, Governor Gavin Newsom



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

June 6, 2019

The Honorable Toni Atkins
Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

**RE: Budget Item 3940 State Water Resources Control Board
Budget Item 8570 California Department of Food and Agriculture**

Dear Senator Atkins:

On behalf of the Southeast Water Coalition (SEWC), I am writing to express our support for the action taken in the Senate Budget Subcommittee 2 on Resources, Environmental Protection, Energy and Transportation regarding Item 3940 and 8570 relating to Safe and Affordable Drinking Water. The proposal provides \$150 million continuously appropriated from the General Fund to address safe drinking water, contingent upon SB 200 (Monning) being enacted.

The SEWC Joint Powers Authority (JPA) was established in 1991 and has a membership consisting of the cities of Cerritos, Commerce, Downey, Lakewood, Norwalk, Paramount, Pico Rivera, Santa Fe Springs, South Gate, Vernon and Whittier. SEWC's mission is to advocate for water policies that ensure the availability of reliable, quality, and affordable water for area residents. SEWC's water purveyors serve a population of 670,000 in a service area of over 93 square miles.

As a representative body for local water purveyors, SEWC is committed to providing safe and reliable drinking water for area residents, and agrees with the intent of the Safe and Affordable Drinking Water Fund. We appreciate your hard work finding a solution that addresses access to safe, clean drinking water for all Californians, without including a tax on drinking water. SEWC believes the General Fund in the appropriate funding source for a SADW Fund that would benefit all Californians.

For these reasons, we appreciate the Senate's advocacy on the issue and support your General Fund appropriations proposal.

Sincerely,

Mr. Fernando Dutra
Board of Directors Chair
Southeast Water Coalition

CC: Senate Budget Members



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY AGENDA REPORT

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity

Subject: **Adopt Resolution No. 2019-02 Changing the Location of Southeast Water Coalition (SEWC) Administrative Entity (AE) Meetings to Palm Park Aquatics Center**

Recommendation: That the Board take the following action:

Adopt Resolution No. 2019-02 changing the location of Southeast Water Coalition (SEWC) Administrative Entity (AE) Meetings to the Palm Park Aquatics Center

Discussion:

On July 7, 2018, the Board of Directors adopted Resolution 2018-01, designating the City of Whittier as the SEWC Lead Agency for the period beginning July 1, 2018 through June 30, 2020 and providing for meetings of the Board of Directors and Administrative Entity.

At the April 4, 2019, the Board of Directors voted against Resolution 2019-01, which would change the frequency of SEWC meetings, move the location of Board and AE meetings to the Palm Park Aquatics Center. However, at that meeting, members of the Administrative Entity expressed support for changing the meeting location of AE meetings to Palm Park. Towards that end, attached is Resolution 2019-02, which designates all Administrative Entity meetings after June 6, 2019 take place at the Palm Park Aquatics Center. Board of Directors meetings will remain at at the City of Whittier Emergency Operations Center.

Attachment(s):

1. Resolution No. 2019-02

RESOLUTION NO. 2019-02

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY
CHANGING THE MEETING LOCATION OF THE ADMINISTRATIVE ENTITY

WHEREAS, On June 7, 2018, the Board of Director approved Resolution 2018-01 designating the City of Whittier to serve as Lead Agency for the period beginning July 1, 2018 through June 30, 2020.

WHEREAS, Resolution 2018-01, set the place and time of the Board of Directors and Administrative Entity meetings effective July 1, 2018.

WHEREAS, the Lead Agency desires to change the Administrative Entity meeting location.

THE BOARD OF DIRECTORS OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. ADMINISTRATIVE ENTITY MEETINGS. The Administrative Entity shall meet, as necessary, on the third Thursday of every odd numbered month at 11:30 A.M. at the City of Whittier, Palm Park Aquatics Center, 5703 Palm Ave., Whittier, CA 90601.

Section 2. This Resolution changes the location of regular meetings of the Administrative Entity effective June 6, 2019.

Section 3. The Chair of the Board of Directors and the Chair of the Administrative Entity shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED, and ADOPTED this 6th day of June 2019.

Chair, Board of Directors

ATTEST:

Administrative Entity Chair

**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: June 6, 2019
To: Southeast Water Coalition Board of Directors
From: Kyle Cason, Chair, Administrative Entity

Subject: Award Southeast Water Coalition (SEWC) Program Management Services Contract to KJServices Environmental Consulting (KJS)

Recommendation: That the Board of Directors take the following action:

Award the Program Management Services Agreement to KJServices Environmental Consulting (KJS) of Santa Fe Springs, CA in the amount not to exceed \$20,000 per year.

Background:

At their February 7, 2019 Board of Directors meeting, the SEWC Policy Board voted to approve the Request for Proposals for Program Management Services for the Southeast Water Coalition (attached), and authorized the Administrative Entity to begin informal bid process for Program Management Services.

The attached Consultant Agreement stipulates a two-year contract for Program Management Services, with an option for a mutual three-year extension at the discretion of the Administrative Entity. The agreement also includes the Scope of Work (Attachment A) and the SEWC Strategic Plan (Appendix C).

The RFP was sent out to prospective candidates on March 13, 2019. Proposals were due on April 10, 2019 by 5pm.

Discussion:

City of Whittier Staff received two proposals ranging from \$20,000 to \$21,475 from KJS and MNS Engineers. KJS is the current Program Management Services Consultant and has provided satisfactory service as the Program Manager. In the opinion of the Administrative Entity, KJServices' thorough understanding of the necessary commitments to the SEWC is evident in their proposal.

On April 23, 2019, City of Whittier Staff received a protest from MNS Engineers stating that they believe KJS could not fulfill the requires in the scope of work set forth in the

RFP and therefore their bid was non-responsive. See protest email attached. On May 1, 2019 AE Staff provided response to the protest stating that the AE would be recommending award to KJS and therefore rejecting MNS's protest. This decision was based upon KJS previous demonstrations of performance as the SEWC program manager. MNS was given the date of the May 16 AE meeting and was given the option to provide input during public comments or submit comments in writing. MNS has stated they have no further comment, and did not attend the AE meeting.

At their meeting on May 16, 2019, the Administrative Entity voted to recommend KJServices for the Program Management Services contract.

Attachment(s):

1. Program Management Services Agreement
2. MNS Engineers Protest Email

**SOUTHEAST WATER COALITION
PROFESSIONAL SERVICES AGREEMENT
WITH MEANS CONSULTING, LLC
FOR STRATEGIC PLANNING SERVICES**

THIS AGREEMENT is made and entered into as of the ___ day of _____ by and between the **Southeast Water Coalition**, a California joint powers entity, (hereinafter referred to as “SEWC”) and **KJServices Environmental Consulting, LLC**, (“Consultant”). SEWC and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

R E C I T A L S

A. Consultant desires to assist SEWC in providing administrative support for the SEWC’s Administrative Entity and Policy Board on the terms and conditions set forth in this Agreement; and

B. Consultant represents that it has demonstrated competence and experience in providing professional consulting services for the specific services described in Exhibit “B” (Consultant’s Proposal); and

C. SEWC desires to retain Consultant to render such services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the Parties hereto agree as follows:

1. Consultant’s Services.

1.1 Scope of Services. Consultant shall provide the professional services described in the Consultant’s Proposal (“Proposal”), attached hereto as Exhibit “B” and incorporated herein by this reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

1.2 Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the Services. All of the Services will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such work.

1.3 Party Representatives. For the purposes of this Agreement, SEWC Representative shall be the Chair of the Administrative Entity or such other person designated by the SEWC Policy Board (the “SEWC Representative”). For the purposes

of this Agreement, the Consultant Representative shall be Mr. Ed Means (the "Consultant Representative").

1.4 Time of Performance. Consultant shall commence the Services upon receipt of a Notice to Proceed and shall perform and complete the Services within the time required in Exhibit B.

2. Term of Agreement. This Agreement shall commence on the Effective Date and continue for a period of twenty-four (24) months, ending on June 30, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the discretion of the Administrative Entity, the term of this Agreement may be extended up to three (3) years.

3. Compensation. Subject to the maximum sum hereafter provided, SEWC shall pay Consultant at the rate of _____ (\$_____.00) per hour. The maximum amount of compensation which Consultant shall be entitled to receive pursuant to this Agreement is \$_____ for the term set forth in Section 2. SEWC shall not withhold applicable federal or state payroll and other required taxes, or other deductions from payments made to the Consultant. No claims for additional services performed by Consultant will be allowed unless such additional work is authorized by the SEWC Policy Board in writing prior to the performance of such services or the incurrence of such expenses. Any additional services authorized by the SEWC Policy Board shall be compensated at a rate mutually agreed to by the parties.

4. Method of Payment.

4.1 Invoices. Not later than the fifteenth (15th) day, Consultant shall submit to SEWC an invoice for all services performed. The invoices shall describe in detail the services rendered during the period and shall show the hours worked and services provided each day, SEWC Administrative Entity and Policy Board meetings attended, and expenses incurred since the last bill. SEWC shall review each invoice and notify Consultant in writing within ten (10) business days of any disputed amounts.

4.2 Payment. SEWC shall pay all undisputed portions of each invoice within thirty (30) calendar days after receipt of the invoice up to the maximum amount set forth in Exhibit B.

4.3 Audit of Records. Upon SEWC providing 24-hour prior notice, Consultant shall make all records, invoices, time cards, cost control sheets and other records created or maintained by Consultant in connection with this Agreement available to SEWC for review and audit by SEWC. SEWC shall conduct any such review and audit at any time during Consultant's regular working hours.

5. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to SEWC.

6. Ownership of Work Product. All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of SEWC without restriction or limitation upon its use or dissemination by SEWC. Such material shall not be the subject of a copyright application by Consultant. Any alteration or reuse by SEWC of any such materials on any project other than the project for which they were prepared shall be at the sole risk of SEWC unless SEWC compensates Consultant for such reuse.

7. Status as Independent Contractor. Consultant is, and shall at all times remain as to SEWC, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of SEWC. Neither SEWC nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of SEWC, provided, however, that nothing contained in this provision shall be construed or interpreted so as to deprive Consultant of any and all defenses or immunities available to public officials acting in their official capacities. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold SEWC harmless from any and all taxes, assessments, penalties, and interest asserted against SEWC by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold SEWC harmless from any failure of Consultant to comply with applicable workers' compensation laws. SEWC shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to SEWC from Consultant as a result of Consultant's failure to promptly pay to SEWC any reimbursement or indemnification arising under this Section 7.

8. Confidentiality. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant to any person or entity without prior written authorization by SEWC. SEWC shall grant such authorization if disclosure is required by law. All SEWC data shall be returned to SEWC upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

9. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant shall retain the right to perform similar services for other clients, but Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the SEWC Administrative Entity Chair, perform work for another person or entity for whom Consultant is not currently performing work that would require

Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

10. Indemnification. Consultant agrees to indemnify, defend and hold harmless SEWC, and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors and assigns in accordance with the Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution attached hereto as Exhibit A and incorporated herein by this reference. Consultant's covenant under this Section 10 shall survive the termination of this Agreement.

11. Insurance. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California, rated "A" or better in the most recent Best's Key Insurance Rating Guide, and approved by SEWC, workers' compensation insurance with a minimum limit of \$1,000,000 or the amount required by law, whichever is greater.

12. Cooperation. In the event any claim or action is brought against SEWC relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation, which SEWC might require.

13. Termination. Either party may terminate this Agreement for any reason without penalty or obligation on thirty (30) calendar days' written notice to the other party. Consultant shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and Consultant shall deliver all materials, reports, documents, notes, or other written materials compiled through the last working day the Agreement is in effect. Neither party shall have any other claim against the other party by reason of such termination.

14. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be given by first class U.S. mail or by personal service. Notices shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Consultant's and SEWC's regular business hours or by facsimile before or during Consultant's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section. All notices shall be delivered to the parties at the following addresses:

If to SEWC: City of Whittier (SEWC Lead Agency)
 13230 Penn St
 Whittier, CA 90602
 Phone: (562) 904-9500
 Attn: Kyle Cason, P.E., Assistant Director of Public Works

If to Consultant: KJ Services Environmental Consulting
12025 Florence Ave., Suite 201
Santa Fe Springs, CA 90670
Phone: (562) 944-4766
Attn: Kevin Sales

15. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

16. Non-Assignability; Subcontracting. Consultant shall not assign or subcontract all or any portion of this Agreement. Any attempted or purported assignment or sub-contracting by Consultant shall be null, void and of no effect.

17. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in the performance of this Agreement.

18. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by SEWC of any payment to Consultant constitute or be construed as a waiver by SEWC of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by SEWC shall in no way impair or prejudice any right or remedy available to SEWC with regard to such breach or default.

19. Attorney's Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees.

20. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

21. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and SEWC. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be

amended, nor any provision or breach hereof waived, except if approved by the SEWC Policy Board in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

Southeast Water Coalition

By: _____
Fernando Dutra, Chair
SEWC Policy Board

ATTEST:

By: _____
Kyle Cason, Administrative Entity Chair

APPROVED AS TO FORM:

By: _____
Steve Dorsey
SEWC Attorney

_____ (Consultant)

By: _____
Name:
Title:

By: _____
Name:
Title:

(Please note, two signatures required for corporations pursuant to California Corporations Code Section 313.)

**INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
AND WAIVER OF SUBROGATION AND CONTRIBUTION**

**Contract/Agreement/License/Permit No. or description: SOUTHEAST WATER
COALITION PROFESSIONAL SERVICES AGREEMENT WITH MEANS
CONSULTING, LLC. FOR STRATEGIC PLANNING SERVICES**

Indemnitor(s) *(list all names)*:

To the fullest extent permitted by law, Indemnitor hereby agrees, at its sole cost and expense, to protect, defend, indemnify, and hold harmless the Southeast Water Coalition and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), resulting from any negligent act, failure to act, error, or omission of Indemnitor or any of its officers, agents, servants, employees, subcontractors, materialmen, suppliers or their officers, agents, servants or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to the above-referenced contract, agreement, license, or permit (the "Agreement") or the performance or failure to perform any term, provision, covenant, or condition of the Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Indemnitor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision. Indemnitor shall pay Indemnitees for any attorneys fees and costs incurred in enforcing this indemnification provision. Notwithstanding the foregoing, nothing in this instrument shall be construed to encompass (a) Indemnitees' active negligence or willful misconduct to the limited extent that the underlying Agreement is subject to Civil Code § 2782(a), or (b) the contracting public agency's active negligence to the limited extent that the underlying Agreement is subject to Civil Code § 2782(b). This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under the Agreement or any additional insured endorsements which may extend to Indemnitees.

SEWC agrees to promptly inform Indemnitor in writing of any claim that SEWC believes to be subject to this Indemnification Agreement.

EXHIBIT A

Indemnitor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the

scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor regardless of any prior, concurrent, or subsequent non-active negligence by the Indemnitees.

In the event there is more than one person or entity named in the Agreement as an Indemnitor, then all obligations, liabilities, covenants and conditions under this instrument shall be joint and several.

“Indemnitor”

Name _____

Name _____

By: _____
Its

By: _____
Its

Hello, Phuong.

I've given our discussion some thought and I have decided I am hereby officially protesting the consultant selection decision which would award the contract to KJ Services. I am firmly convinced that their not-to-exceed fee of \$20,000 for one year (12 months) is non-responsive to the requirements in the scope of work set forth in the Request for Proposals. The qualifications and the level of effort required if all listed tasks were to be carried out on monthly basis could not possibly be delivered for \$1,667/month. The tasks related to preparation of position letters and monitoring of legislation require the sort of experience and background that alone would command a substantial professional service rate and fee. The entire list of tasks as a whole require a substantial number of hours and I challenge how KJ Services could possibly demonstrate an hourly by position breakdown of their costs that would be sufficiently be covered by \$1,667/month. I've attached a recent proposal from Koa Consulting to provide program management services to the Gateway Water Management Authority (GWMA) for which GWMA selected to award Koa a contract. Note there is a great deal of similarity in the scope of services and Koa's proposal is for a monthly fee of \$33,000/month.

I respectfully request the City of Whittier, as lead agency for the Southeast Water Coalition (SEWC), to reject the proposals, even if it requires retraction of an informal notice of award, and request resubmittal of proposals. I also request the selection committee to re-read both proposals with the thoughts and information I offer here in mind. I believe a resubmittal of proposals will bear a more clear and accurate representation of the costs associated with the scope of work and the qualifications required to deliver the scope. Rejection of the proposals might also allow for reconsideration of the scope of work in order to align it with the budget initially contemplated or possibly increase the budget. As much as my comments here seek to afford our firm another opportunity to serve SEWC, I truly believe they provide a frame a reference valuable to SEWC's consideration of what it needs to carry its program forward.

Thank you and I look forward to your response.

Greg Jaquez, PE
Principal Project Manager
MNS Engineers, Inc.
(323) 797-1498 Mobile