

January 10, 2024

Mr. David Burhenn  
Burhenn & Gest, LLP  
12401 Wilshire Blvd., Suite 200  
Los Angeles, CA 90025

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Proposed Decision and Parameters and Guidelines**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2010-0016, 11-TC-03*

California Regional Water Quality Control Board, San Diego Region, Order No.  
R9-2010-0016, Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E.,  
Section II.E.2.-5, Adopted November 10, 2010

County of Riverside, Riverside County Flood Control and Water Conservation  
District, and Cities of Murrieta, Temecula, and Wildomar, Claimants

Dear Mr. Burhenn and Ms. Sidarous:

The Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **January 26, 2024, in person at 10:00 a.m., at Park Tower, 980 9th Street, Second Floor Conference Room, Sacramento, California, 95814.**

**Testimony at the Commission Hearing.** If you plan to address the Commission on an agenda item, please notify the Commission Office not later than noon on the Wednesday prior to the hearing. Please also include the names of the people who will be speaking for inclusion on the witness list. When calling or emailing, identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible. However, comments filed less than five days prior to a meeting or submitted at the meeting will not be included in the Commissioners' hearing binders and the commenter shall provide 12 paper copies of the comments to Commission staff at the meeting for such late filings. Commission staff shall provide copies of late comments submitted at the hearing to the Commission members and shall place a copy on a table for public review at the hearing (Cal. Code Regs., tit. 2, § 1181.10(b)(1)).

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Mr. Burhenn and Ms. Sidarous  
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Please also file the PDF document via the Commission's dropbox at <https://csm.ca.gov/dropbox.shtml> prior to the hearing.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with the first name being more prominent.

Heather Halsey  
Executive Director

## ITEM 6

### PROPOSED DECISION AND PARAMETERS AND GUIDELINES

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2010-0016*

*Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E.,  
Section II.E.2.-5., Adopted November 10, 2010*

11-TC-03

Period of reimbursement from November 10, 2010, through December 31, 2017

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### EXECUTIVE SUMMARY

#### I. Summary of the Mandate

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R9-2010-0016, adopted by the San Diego Regional Water Quality Control Board.

On September 22, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from November 10, 2010, through December 31, 2017. The Commission partially approved the Test Claim for the following reimbursable activities only:

#### A. SALs – Development and Submittal of Wet Weather MS4 Discharge Monitoring Program

1. Collaborate with all permittees to develop a year-round, watershed based, wet weather MS4 discharge monitoring program to sample a representative percentage of the major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6) and Attachment E. of the test claim permit, within each hydrologic subarea. (Order No. R9-2010-0016, Section D.2.)
2. The principal copermitttee shall submit to the Regional Board for review and approval, a detailed draft of the wet weather MS4 discharge monitoring program to be implemented. (Order No. R9-2010-0016, Section D.2., which incorporates by reference Attachment E., Section II.B.3.)

#### B. Watershed Workplan

1. The watershed BMP implementation strategy shall include a map of any implemented and proposed BMPs. (Order No. R9-2010-0016, Section G.1.d.)

2. The copermitees shall pursue efforts to obtain any interagency agreements, or other coordination efforts, with non-copermittee owners of the MS4 (such as Caltrans, Native American tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4. (Order No. R9-2010-0016, Section G.3.)
3. The watershed workplan must include the identification of the persons or entities anticipated to be involved during the development and implementation of the Watershed Workplan. (Order No. R9-2010-0016, Section G.4.)
4. The annual watershed review meetings shall be open to the public and adequately noticed. (Order No. R9-2010-0016, Section G.5.)
5. Each permittee shall review and modify jurisdictional programs and JRMP annual reports, as necessary, so they are consistent with the updated watershed workplan. (Order No. R9-2010-0016, Section G.5.)

### **C. Annual JRMP Report**

1. Include in the annual fiscal analysis a narrative description of circumstances resulting in a 25 percent or greater annual change for any budget line items. (Order No. R9-2010-0016, Section K.3.c.1.)
2. Provide in the annual report an updated timeframe for attainment of a desired outcome level in the annual report when an assessment indicates that the desired outcome level has not been achieved at the end of the projected timeframe, but the review of the existing activities and BMPs are adequate, or that the projected timeframe should be extended. (Order No. R9-2010-0016, Section K.3.c.2.)
3. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement),* provide the following information in the Checklist pursuant to Section K.3.c.3.:
  - a. Construction:
    - 1) Number of Active Sites
    - 2) Number of Inactive Sites
    - 3) Number of Sites Inspected
    - 4) Number of Violations
  - b. New Development:
    - 1) Number of Development Plan Reviews
    - 2) Number of Projects Exempted from Interim/Final Hydromodification Requirements
  - c. Post Construction Development:
    - 1) Number of Priority Development Projects
    - 2) Number of SUSMP Required Post-Construction BMP Inspections

- 3) Number of SUSMP Required Post-Construction BMP Violations
  - 4) Number of SUSMP Required Post-Construction BMP Enforcement Actions Taken
- d. Illicit Discharges and Connections:
    - 1) Number of IC/ID Eliminations
    - 2) Number of IC/ID Violations
  - e. MS4 Maintenance:
    - 1) Total Miles of MS4 Inspected
  - f. Municipal/Commercial/Industrial:
    - 1) Number of Facilities
    - 2) Number of Violations (Order No. R9-2010-0016, Section K.3.c.3., Attachment D.)
4. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement), report the following information contained in Table 5 pursuant to Section K.3.c.4.:*
- a. New Development:
    - 1) All revisions to the SSMP, including where applicable: (b) updated procedures for identifying pollutants of concern for each priority development project; (c) updated treatment BMP ranking matrix; (d) updated site design and treatment control BMP design standards. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 2.)
    - 2) Brief description of BMPs required at approved priority development projects. Verification that site design, source control, and treatment BMPs were required on all applicable priority development projects. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 3.)
    - 3) Name and location of all priority development projects that were granted a waiver from implementing LID BMPs pursuant to Section F.1.d.4. during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 4.)
    - 4) Updated watershed-based BMP maintenance tracking database of approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction, including updates to the list of high-priority priority development projects; and verification that the requirements of this Order were met during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 5.)
    - 5) Name and brief description of all approved priority development projects required to implement hydrologic control measures in compliance with Section F.1.h. including a brief description of the management measures planned to protect downstream beneficial uses and prevent adverse

physical changes to downstream stream channels. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 6.)

b. Construction:

- 1) A description of planned ordinance updates within the next annual reporting period, if applicable. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 1.)
- 2) A description of any changes to procedures used for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 2.)
- 3) Any changes to the designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 3.)
- 4) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility; (b) date of enforcement actions by facility; (c) brief description of the effectiveness of each high-level enforcement action at construction sites. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
- 5) Supporting files must include a record of inspection dates, the results of each inspection, photographs (if any), and a summary of any enforcement actions taken. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)

c. Municipal (*other than a claimant's own development*):

- 1) Updated source inventory. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 1.)
- 2) All changes to the designated municipal BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 2.)
- 3) Descriptions of any changes to procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 3.)
- 4) Summary and assessment of BMP retrofits implemented at flood control structures, including: (a) List of projects retrofitted; (b) List and description of structures evaluated for retrofitting; (c) List of structures still needing to be evaluated and the schedule for evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 4.)
- 5) Include in the summary of the MS4 and MS4 facilities operations and maintenance activities, the (a) Number and types of facilities maintained. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.a.)

- 6) Include (a) types of facilities and (b) summary of the inspection findings in the summary of the municipal structural treatment control operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.)
  - 7) Include a list of facilities planned for bi-annual inspections and the justification in the summary of the MS4 and MS4 facilities operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 6.c.)
  - 8) Include in the summary of the municipal areas/programs inspection activities: (a) date of inspections conducted at each facility; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 7.a.-c.)
  - 9) Description of activities implemented to address sewage infiltration into the MS4. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 8.)
  - 10) Description of BMPs and their implementation for unpaved roads construction and maintenance. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 9.)
- d. Commercial/Industrial:
- 1) Updated inventory of commercial/industrial sources of discharges. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 1.)
  - 2) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility or mobile business; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility or mobile business; (d) brief description of the effectiveness each high-level enforcement actions at commercial/industrial sites including the follow-up activities for each facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 2.)
  - 3) All changes to designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 3.)
- e. Residential:
- 1) All updated minimum BMPs required for residential areas and activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 1.)
  - 2) Description of efforts to manage runoff and storm water pollution in common interest areas and mobile home parks. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 3.)

- f. Retrofitting Existing Development:
  - 1) Updated inventory and prioritization of existing development identified as candidates for retrofitting. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 1.)
  - 2) Description of efforts to retrofit existing developments during the reporting year. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 2.)
  - 3) Description of efforts taken to encourage private landowners to retrofit existing development. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 3.)
  - 4) A list of all retrofit projects that have been implemented, including site location, a description of the retrofit project, pollutants expected to be treated, and the tributary acreage of runoff that will be treated. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 4.)
  - 5) Any proposed retrofit or regional mitigation projects and time lines for future implementation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 5.)
- g. Workplans:
  - 1) Updated workplans including priorities, strategy, implementation schedule, and effectiveness evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Workplans)

#### **D. Special Studies**

- 1. Sediment Toxicity Study
  - a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate the toxicity of sediment in streams and its potential impact on benthic macroinvertebrate IBI scores. The study must be implemented in conjunction with the stream assessment monitoring in Attachment E. The study must include the following elements:
    - 1) At least four stream assessment locations must be sampled, including one reference site and one mass loading site. The selection of sites must be done with consideration of subjectivity of receiving waters to discharges from residential and agricultural land uses.
    - 2) At a minimum, sampling must occur once per year at each site for at least two years.
    - 3) At a minimum, sediment toxicity analysis must include the measurement of metals, pyrethroids, and organochlorine pesticides. The analysis must include estimates of bioavailability based upon sediment grain size, organic carbon, and receiving water temperature at the sampling site. Acute and chronic toxicity testing must be done using *Hyalella azteca*.



- b. Include the results and a discussion in the monitoring annual report including an assessment of the relationship between observed IBI scores and all variables measured. (Order No. R9-2010-0016, Attachment E, Section II.E.2.)

## 2. Trash and Litter Investigation

- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to assess trash (including litter) as a pollutant within receiving waters on a watershed based scale. The copermitees must select a lead copermitee. The study must include the following elements:
  - 1) The lead copermitee must identify suitable sampling locations within the Santa Margarita HU.
  - 2) Trash at each location must be monitored a minimum of twice during the wet season following a qualified monitoring storm event<sup>1</sup> and twice during the dry season.
  - 3) The lead copermitee must use the “Final Monitoring Workplan for the Assessment of Trash in San Diego County Watersheds” and “A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region” to develop a monitoring protocol.
- b. Include the results and a discussion in the monitoring annual report and must, at a minimum, include source identification, an evaluation of BMPs for trash reduction and prevention, and a description of any BMPs implemented in response to study results. (Order No. R9-2010-0016, Attachment E, Section II.E.3.)

## 3. Agricultural, Federal and Tribal Input Study

- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to investigate the water quality of agricultural, federal, and tribal runoff that is discharged into their MS4. The study must include the following elements:
  - 1) The copermitees must identify a representative number of sampling stations within their MS4 that receive discharges of agricultural, federal, and tribal runoff that has not co-mingled with any other source. At least one station from each category must be identified.
  - 2) One storm event must be monitored at each sampling location each year for at least two years.
  - 3) At a minimum, analysis must include those constituents listed in Table 1 of the MRP. Grab samples may be utilized, though composite samples are preferred. The copermitees must also measure or estimate flow rates and volumes of discharges into the MS4.

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<sup>1</sup> A qualified monitoring storm event is defined as a minimum of 0.1 inches of precipitation preceded by 72 hours of dry weather.

- b. Include the results and a discussion from the study in the monitoring annual report. (Order No. R9-2010-0016, Attachment E, Section II.E.4.)

4. MS4 and Receiving Water Maintenance Study

- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate receiving waters that are considered part of the MS4 and that are subject to continual vegetative clearance activities, for example, mowing. The copermittees must assess the effects of the vegetation removal activities and water quality, including, but not limited to, modification of biogeochemical functions, in-stream temperatures, receiving water bed and bank erosion potential, and sediment transport. The study must include the following elements:
  - 1) The copermittees must identify suitable sampling locations, including at least one reference that is not subject to maintenance activities.
  - 2) At a minimum, the copermittees must monitor pre- and post-maintenance activities for indicator bacteria, turbidity, temperature, dissolved oxygen and nutrients (nitrite, nitrate, total Kjeldahl nitrogen, ammonia and total phosphorous). The copermittees must also measure or estimate flow rates and volumes.
- b. Include the results and a discussion from the study in the annual monitoring report including the relevance of findings to CWA section 303(d) listed impaired waters. (Order No. R9-2010-0016, Attachment E, Section II.E.5.)

Reimbursement is denied for some newly required activities with respect to a local agency's own *municipal* projects. These activities are not mandated by the state but rather are triggered by a local discretionary decision to pursue new municipal projects. Moreover, they do not impose a new program or higher level of service because they are not unique to government and do not provide a governmental service to the public.

Reimbursement is also denied for all activities beginning January 1, 2018 based on the *Paradise Irrigation District* case and Government Code sections 57350 and 57351 (which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351).<sup>2</sup> Beginning January 1, 2018, there are *no* costs mandated by the state because claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover the costs of the mandated activities pursuant to Government Code section 17556(d).<sup>3</sup>

In addition, reimbursement for the mandated activities from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the

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<sup>2</sup> *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

<sup>3</sup> *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

claimant's proceeds of taxes, shall be identified and deducted from any claim submitted for reimbursement.

In the Test Claim Decision, the Commission found that the new state-mandated activities did not result in costs mandated by the state for the Riverside County Flood and Water Conservation District (District). There was no evidence in the record that the District was forced to spend its "proceeds of taxes." Instead, the evidence demonstrated that the District used assessment revenue and contract funds from the County and cities.<sup>4</sup> Thus, the District is not an eligible claimant.

All other sections, activities, and costs pled in the Test Claim were denied.<sup>5</sup>

## **II. Procedural History**

On September 22, 2023, the Commission adopted the Test Claim Decision.<sup>6</sup> On October 3, 2023, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>7</sup> On October 23, 2023, the claimants requested an extension of time to file comments which was granted. On October 24, 2023, the State Controller (Controller) filed comments on the Draft Expedited Parameters and Guidelines, stating that no changes are recommended.<sup>8</sup> Neither the claimants nor the Department of Finance (Finance) filed comments on the Draft Expedited Parameters and Guidelines. Pursuant to section 1183.9(d) of the Commission's regulations,<sup>9</sup> Commission staff did not issue a Draft Proposed Decision and Parameters and Guidelines because no substantive comments were filed on the Draft Expedited Parameters and Guidelines.

## **III. Discussion**

### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

Only the following copermitees are required to comply with Order No. R9-2010-0016 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result

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<sup>4</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, pages 15, 367-376.

<sup>5</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 16.

<sup>6</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023.

<sup>7</sup> Exhibit B, Draft Expedited Parameters and Guidelines, issued October 3, 2023.

<sup>8</sup> Exhibit C, Controllers' Comments on the Draft Expedited Parameters and Guidelines, filed October 24, 2023, page 1.

<sup>9</sup> California Code of Regulations, title 2, section 1183.9(d) provides: "If no comments are filed on the draft expedited parameters and guidelines that raise substantive issues regarding any of the elements described in section 1183.7, a draft proposed decision in accordance with section 1183.13(a) of these regulations need not be prepared and the executive director may schedule the proposed decision and parameters and guidelines for adoption at the next regularly scheduled hearing in accordance with section 1183.13(d) of these regulations."

of this mandate that are paid from their local proceeds of taxes: The County of Riverside and the cities of Murrieta, Temecula, and Wildomar.<sup>10</sup>

**B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on November 10, 2011, establishing eligibility for reimbursement for the 2010-2011 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the permit's effective date, November 10, 2010.<sup>11</sup> Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, only costs incurred from November 10, 2010, through December 31, 2017, are reimbursable.

**C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

Section IV. of the proposed Parameters and Guidelines identifies the mandated activities approved by the Commission and specifies when reimbursement for that activity is not required, consistent with the Test Claim Decision.

**D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

**E. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)**

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant's proceeds of taxes), which are required to be identified and deducted from the costs claimed.

**F. Remaining Sections of the Parameters and Guidelines**

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

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<sup>10</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 422.

<sup>11</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 52.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES**

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E., Section II.E.2.-5., Adopted November 10, 2010

Period of reimbursement from November 10, 2010, through December 31, 2017

Case No.: 11-TC-03

*California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016*

DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

*(Adopted January 26, 2024)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on January 26, 2024. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote will be included in the adopted Decision and Parameters and Guidelines], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Spencer Walker, Representative of the State Treasurer	

**I. Summary of the Mandate**

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R9-2010-0016, adopted by the San Diego Regional Water Quality Control Board.

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1. Collaborate with all permittees to develop a year-round, watershed based, wet weather MS4 discharge monitoring program to sample a representative percentage of the major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6) and Attachment E. of the test claim permit, within each hydrologic subarea. (Order No. R9-2010-0016, Section D.2.)
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2. The copermitttees shall pursue efforts to obtain any interagency agreements, or other coordination efforts, with non-copermitttee owners of the MS4 (such as Caltrans, Native American tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4. (Order No. R9-2010-0016, Section G.3.)
3. The watershed workplan must include the identification of the persons or entities anticipated to be involved during the development and implementation of the Watershed Workplan. (Order No. R9-2010-0016, Section G.4.)
4. The annual watershed review meetings shall be open to the public and adequately noticed. (Order No. R9-2010-0016, Section G.5.)
5. Each permittee shall review and modify jurisdictional programs and JRMP annual reports, as necessary, so they are consistent with the updated watershed workplan. (Order No. R9-2010-0016, Section G.5.)

**C. Annual JRMP Report**

1. Include in the annual fiscal analysis a narrative description of circumstances resulting in a 25 percent or greater annual change for any budget line items. (Order No. R9-2010-0016, Section K.3.c.1.)
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that the projected timeframe should be extended. (Order No. R9-2010-0016, Section K.3.c.2.)

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  - b. New Development:
    - 1) Number of Development Plan Reviews
    - 2) Number of Projects Exempted from Interim/Final Hydromodification Requirements
  - c. Post Construction Development:
    - 1) Number of Priority Development Projects
    - 2) Number of SUSMP Required Post-Construction BMP Inspections
    - 3) Number of SUSMP Required Post-Construction BMP Violations
    - 4) Number of SUSMP Required Post-Construction BMP Enforcement Actions Taken
  - d. Illicit Discharges and Connections:
    - 1) Number of IC/ID Eliminations
    - 2) Number of IC/ID Violations
  - e. MS4 Maintenance:
    - 1) Total Miles of MS4 Inspected
  - f. Municipal/Commercial/Industrial:
    - 1) Number of Facilities
    - 2) Number of Violations (Order No. R9-2010-0016, Section K.3.c.3., Attachment D.)
4. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement)*, report the following information contained in Table 5 pursuant to Section K.3.c.4.:
  - a. New Development:
    - 1) All revisions to the SSMP, including where applicable: (b) updated procedures for identifying pollutants of concern for each priority

development project; (c) updated treatment BMP ranking matrix; (d) updated site design and treatment control BMP design standards. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 2.)

- 2) Brief description of BMPs required at approved priority development projects. Verification that site design, source control, and treatment BMPs were required on all applicable priority development projects. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 3.)
  - 3) Name and location of all priority development projects that were granted a waiver from implementing LID BMPs pursuant to Section F.1.d.4. during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 4.)
  - 4) Updated watershed-based BMP maintenance tracking database of approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction, including updates to the list of high-priority priority development projects; and verification that the requirements of this Order were met during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 5.)
  - 5) Name and brief description of all approved priority development projects required to implement hydrologic control measures in compliance with Section F.1.h. including a brief description of the management measures planned to protect downstream beneficial uses and prevent adverse physical changes to downstream stream channels. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 6.)
- b. Construction:
- 1) A description of planned ordinance updates within the next annual reporting period, if applicable. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 1.)
  - 2) A description of any changes to procedures used for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 2.)
  - 3) Any changes to the designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 3.)
  - 4) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility; (b) date of enforcement actions by facility; (c) brief description of the effectiveness of each high-level enforcement action at construction sites. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
  - 5) Supporting files must include a record of inspection dates, the results of each inspection, photographs (if any), and a summary of any enforcement



actions taken. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)

c. Municipal (*other than a claimant's own development*):

- 1) Updated source inventory. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 1.)
- 2) All changes to the designated municipal BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 2.)
- 3) Descriptions of any changes to procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 3.)
- 4) Summary and assessment of BMP retrofits implemented at flood control structures, including: (a) List of projects retrofitted; (b) List and description of structures evaluated for retrofitting; (c) List of structures still needing to be evaluated and the schedule for evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 4.)
- 5) Include in the summary of the MS4 and MS4 facilities operations and maintenance activities, the (a) Number and types of facilities maintained. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.a.)
- 6) Include (a) types of facilities and (b) summary of the inspection findings in the summary of the municipal structural treatment control operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.)
- 7) Include a list of facilities planned for bi-annual inspections and the justification in the summary of the MS4 and MS4 facilities operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 6.c.)
- 8) Include in the summary of the municipal areas/programs inspection activities: (a) date of inspections conducted at each facility; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 7.a.-c.)
- 9) Description of activities implemented to address sewage infiltration into the MS4. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 8.)
- 10) Description of BMPs and their implementation for unpaved roads construction and maintenance. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 9.)

- d. Commercial/Industrial:
- 1) Updated inventory of commercial/industrial sources of discharges. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 1.)
  - 2) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility or mobile business; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility or mobile business; (d) brief description of the effectiveness each high-level enforcement actions at commercial/industrial sites including the follow-up activities for each facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 2.)
  - 3) All changes to designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 3.)
- e. Residential:
- 1) All updated minimum BMPs required for residential areas and activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 1.)
  - 2) Description of efforts to manage runoff and storm water pollution in common interest areas and mobile home parks. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 3.)
- f. Retrofitting Existing Development:
- 1) Updated inventory and prioritization of existing development identified as candidates for retrofitting. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 1.)
  - 2) Description of efforts to retrofit existing developments during the reporting year. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 2.)
  - 3) Description of efforts taken to encourage private landowners to retrofit existing development. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 3.)
  - 4) A list of all retrofit projects that have been implemented, including site location, a description of the retrofit project, pollutants expected to be treated, and the tributary acreage of runoff that will be treated. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 4.)
  - 5) Any proposed retrofit or regional mitigation projects and time lines for future implementation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 5.)

g. Workplans:

- 1) Updated workplans including priorities, strategy, implementation schedule, and effectiveness evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Workplans)

**D. Special Studies**

1. Sediment Toxicity Study

- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate the toxicity of sediment in streams and its potential impact on benthic macroinvertebrate IBI scores. The study must be implemented in conjunction with the stream assessment monitoring in Attachment E. The study must include the following elements:
  - 1) At least four stream assessment locations must be sampled, including one reference site and one mass loading site. The selection of sites must be done with consideration of subjectivity of receiving waters to discharges from residential and agricultural land uses.
  - 2) At a minimum, sampling must occur once per year at each site for at least two years.
  - 3) At a minimum, sediment toxicity analysis must include the measurement of metals, pyrethroids, and organochlorine pesticides. The analysis must include estimates of bioavailability based upon sediment grain size, organic carbon, and receiving water temperature at the sampling site. Acute and chronic toxicity testing must be done using *Hyaella azteca*.
- b. Include the results and a discussion in the monitoring annual report including an assessment of the relationship between observed IBI scores and all variables measured. (Order No. R9-2010-0016, Attachment E, Section II.E.2.)

2. Trash and Litter Investigation

- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to assess trash (including litter) as a pollutant within receiving waters on a watershed based scale. The copermittees must select a lead copermittee. The study must include the following elements:
  - 1) The lead copermittee must identify suitable sampling locations within the Santa Margarita HU.
  - 2) Trash at each location must be monitored a minimum of twice during the wet season following a qualified monitoring storm event<sup>12</sup> and twice during the dry season.

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<sup>12</sup> A qualified monitoring storm event is defined as a minimum of 0.1 inches of precipitation preceded by 72 hours of dry weather.

- 3) The lead copermitee must use the “Final Monitoring Workplan for the Assessment of Trash in San Diego County Watersheds” and “A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region” to develop a monitoring protocol.
  - b. Include the results and a discussion in the monitoring annual report and must, at a minimum, include source identification, an evaluation of BMPs for trash reduction and prevention, and a description of any BMPs implemented in response to study results. (Order No. R9-2010-0016, Attachment E, Section II.E.3.)
3. Agricultural, Federal and Tribal Input Study
- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to investigate the water quality of agricultural, federal, and tribal runoff that is discharged into their MS4. The study must include the following elements:
    - 1) The copermitees must identify a representative number of sampling stations within their MS4 that receive discharges of agricultural, federal, and tribal runoff that has not co-mingled with any other source. At least one station from each category must be identified.
    - 2) One storm event must be monitored at each sampling location each year for at least two years.
    - 3) At a minimum, analysis must include those constituents listed in Table 1 of the MRP. Grab samples may be utilized, though composite samples are preferred. The copermitees must also measure or estimate flow rates and volumes of discharges into the MS4.
  - b. Include the results and a discussion from the study in the monitoring annual report. (Order No. R9-2010-0016, Attachment E, Section II.E.4.)
4. MS4 and Receiving Water Maintenance Study
- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate receiving waters that are considered part of the MS4 and that are subject to continual vegetative clearance activities, for example, mowing. The copermitees must assess the effects of the vegetation removal activities and water quality, including, but not limited to, modification of biogeochemical functions, in-stream temperatures, receiving water bed and bank erosion potential, and sediment transport. The study must include the following elements:
    - 1) The copermitees must identify suitable sampling locations, including at least one reference that is not subject to maintenance activities.
    - 2) At a minimum, the copermitees must monitor pre- and post-maintenance activities for indicator bacteria, turbidity, temperature, dissolved oxygen and nutrients (nitrite, nitrate, total Kjeldahl nitrogen, ammonia and total phosphorous). The copermitees must also measure or estimate flow rates and volumes.

- b. Include the results and a discussion from the study in the annual monitoring report including the relevance of findings to CWA section 303(d) listed impaired waters. (Order No. R9-2010-0016, Attachment E, Section II.E.5.)

Reimbursement is denied for some newly required activities with respect to a local agency's own *municipal* projects. These activities are not mandated by the state but rather are triggered by a local discretionary decision to pursue new municipal projects. Moreover, they do not impose a new program or higher level of service because they are not unique to government and do not provide a governmental service to the public.

Reimbursement is also denied for all activities beginning January 1, 2018 based on the *Paradise Irrigation District* case and Government Code sections 57350 and 57351 (which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351).<sup>13</sup> Beginning January 1, 2018, there are *no* costs mandated by the state because claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover the costs of the mandated activities pursuant to Government Code section 17556(d).<sup>14</sup>

In addition, reimbursement for the mandated activities from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes, shall be identified and deducted from any claim submitted for reimbursement.

In the Test Claim Decision, the Commission found that the new state-mandated activities did not result in costs mandated by the state for the Riverside County Flood and Water Conservation District (District). There was no evidence in the record that the District was forced to spend its "proceeds of taxes." Instead, the evidence demonstrated that the District used assessment revenue and contract funds from the County and cities.<sup>15</sup> Thus, the District is not an eligible claimant.

All other sections, activities, and costs pled in the Test Claim were denied.<sup>16</sup>

## **II. Procedural History**

On September 22, 2023, the Commission adopted the Test Claim Decision.<sup>17</sup> On October 3, 2023, Commission staff issued the Draft Expedited Parameters and

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<sup>13</sup> *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

<sup>14</sup> *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

<sup>15</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, pages 15, 367-376.

<sup>16</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 16.

<sup>17</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023.

Guidelines.<sup>18</sup> On October 23, 2023, the claimants requested an extension of time to file comments which was granted. On October 24, 2023, the State Controller (Controller) filed comments on the Draft Expedited Parameters and Guidelines.<sup>19</sup> Neither the claimants nor the Department of Finance (Finance) filed comments on the Draft Expedited Parameters and Guidelines. Pursuant to section 1183.9(d) of the Commission's regulations,<sup>20</sup> Commission staff did not issue a Draft Proposed Decision and Parameters and Guidelines for comment.

### **III. Positions of the Parties**

#### **A. State Controller**

The Controller filed comments on the Draft Expedited Parameters and Guidelines stating that no changes are recommended.<sup>21</sup>

### **IV. Discussion**

The Parameters and Guidelines contain the following information:

#### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

Only the following permittees are required to comply with Order No. R9-2010-0016 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes: The County of Riverside and the cities of Murrieta, Temecula, and Wildomar.<sup>22</sup>

#### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on November 10, 2011, establishing eligibility for reimbursement for the 2010-2011 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the

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<sup>18</sup> Exhibit B, Draft Expedited Parameters and Guidelines, issued October 3, 2023.

<sup>19</sup> Exhibit C, Controllers' Comments on the Draft Expedited Parameters and Guidelines, filed October 24, 2023.

<sup>20</sup> California Code of Regulations, title 2, section 1183.9(d) provides: "If no comments are filed on the draft expedited parameters and guidelines that raise substantive issues regarding any of the elements described in section 1183.7, a draft proposed decision in accordance with section 1183.13(a) of these regulations need not be prepared and the executive director may schedule the proposed decision and parameters and guidelines for adoption at the next regularly scheduled hearing in accordance with section 1183.13(d) of these regulations."

<sup>21</sup> Exhibit C, Controllers' Comments on the Draft Expedited Parameters and Guidelines, filed October 24, 2023, page 1.

<sup>22</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 422.

permit's effective date, November 10, 2010.<sup>23</sup> Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, only costs incurred from November 10, 2010, through December 31, 2017, are reimbursable.

**C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The Commission partially approved the Test Claim, authorizing reimbursement for the following mandated activities from November 10, 2010 through December 31, 2017:

**A. SALs – Development and Submittal of Wet Weather MS4 Discharge Monitoring Program**

1. Collaborate with all permittees to develop a year-round, watershed based, wet weather MS4 discharge monitoring program to sample a representative percentage of the major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6) and Attachment E. of the test claim permit, within each hydrologic subarea. (Order No. R9-2010-0016, Section D.2.)
2. The principal copermitttee shall submit to the Regional Board for review and approval, a detailed draft of the wet weather MS4 discharge monitoring program to be implemented. (Order No. R9-2010-0016, Section D.2., which incorporates by reference Attachment E., Section II.B.3.)

**B. Watershed Workplan**

1. The watershed BMP implementation strategy shall include a map of any implemented and proposed BMPs. (Order No. R9-2010-0016, Section G.1.d.)
2. The copermitttees shall pursue efforts to obtain any interagency agreements, or other coordination efforts, with non-copermitttee owners of the MS4 (such as Caltrans, Native American tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4. (Order No. R9-2010-0016, Section G.3.)
3. The watershed workplan must include the identification of the persons or entities anticipated to be involved during the development and implementation of the Watershed Workplan. (Order No. R9-2010-0016, Section G.4.)
4. The annual watershed review meetings shall be open to the public and adequately noticed. (Order No. R9-2010-0016, Section G.5.)
5. Each permittee shall review and modify jurisdictional programs and JRMP annual reports, as necessary, so they are consistent with the updated watershed workplan. (Order No. R9-2010-0016, Section G.5.)

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<sup>23</sup> Exhibit A, Test Claim Decision, adopted September 22, 2023, page 52.

### **C. Annual JRMP Report**

1. Include in the annual fiscal analysis a narrative description of circumstances resulting in a 25 percent or greater annual change for any budget line items. (Order No. R9-2010-0016, Section K.3.c.1.)
2. Provide in the annual report an updated timeframe for attainment of a desired outcome level in the annual report when an assessment indicates that the desired outcome level has not been achieved at the end of the projected timeframe, but the review of the existing activities and BMPs are adequate, or that the projected timeframe should be extended. (Order No. R9-2010-0016, Section K.3.c.2.)
3. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement),* provide the following information in the Checklist pursuant to Section K.3.c.3.:
  - a. Construction:
    - 1) Number of Active Sites
    - 2) Number of Inactive Sites
    - 3) Number of Sites Inspected
    - 4) Number of Violations
  - b. New Development:
    - 1) Number of Development Plan Reviews
    - 2) Number of Projects Exempted from Interim/Final Hydromodification Requirements
  - c. Post Construction Development:
    - 1) Number of Priority Development Projects
    - 2) Number of SUSMP Required Post-Construction BMP Inspections
    - 3) Number of SUSMP Required Post-Construction BMP Violations
    - 4) Number of SUSMP Required Post-Construction BMP Enforcement Actions Taken
  - d. Illicit Discharges and Connections:
    - 1) Number of IC/ID Eliminations
    - 2) Number of IC/ID Violations
  - e. MS4 Maintenance:
    - 1) Total Miles of MS4 Inspected
  - f. Municipal/Commercial/Industrial:
    - 1) Number of Facilities



- 2) Number of Violations (Order No. R9-2010-0016, Section K.3.c.3., Attachment D.)
4. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement)*, report the following information contained in Table 5 pursuant to Section K.3.c.4.:
    - a. New Development:
      - 1) All revisions to the SSMP, including where applicable: (b) updated procedures for identifying pollutants of concern for each priority development project; (c) updated treatment BMP ranking matrix; (d) updated site design and treatment control BMP design standards. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 2.)
      - 2) Brief description of BMPs required at approved priority development projects. Verification that site design, source control, and treatment BMPs were required on all applicable priority development projects. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 3.)
      - 3) Name and location of all priority development projects that were granted a waiver from implementing LID BMPs pursuant to Section F.1.d.4. during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 4.)
      - 4) Updated watershed-based BMP maintenance tracking database of approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction, including updates to the list of high-priority priority development projects; and verification that the requirements of this Order were met during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 5.)
      - 5) Name and brief description of all approved priority development projects required to implement hydrologic control measures in compliance with Section F.1.h. including a brief description of the management measures planned to protect downstream beneficial uses and prevent adverse physical changes to downstream stream channels. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 6.)
    - b. Construction:
      - 1) A description of planned ordinance updates within the next annual reporting period, if applicable. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 1.)
      - 2) A description of any changes to procedures used for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 2.)

- 3) Any changes to the designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 3.)
  - 4) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility; (b) date of enforcement actions by facility; (c) brief description of the effectiveness of each high-level enforcement action at construction sites. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
  - 5) Supporting files must include a record of inspection dates, the results of each inspection, photographs (if any), and a summary of any enforcement actions taken. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
- c. Municipal (*other than a claimant's own development*):
- 1) Updated source inventory. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 1.)
  - 2) All changes to the designated municipal BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 2.)
  - 3) Descriptions of any changes to procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 3.)
  - 4) Summary and assessment of BMP retrofits implemented at flood control structures, including: (a) List of projects retrofitted; (b) List and description of structures evaluated for retrofitting; (c) List of structures still needing to be evaluated and the schedule for evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 4.)
  - 5) Include in the summary of the MS4 and MS4 facilities operations and maintenance activities, the (a) Number and types of facilities maintained. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.a.)
  - 6) Include (a) types of facilities and (b) summary of the inspection findings in the summary of the municipal structural treatment control operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.)
  - 7) Include a list of facilities planned for bi-annual inspections and the justification in the summary of the MS4 and MS4 facilities operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 6.c.)
  - 8) Include in the summary of the municipal areas/programs inspection activities: (a) date of inspections conducted at each facility; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 7.a.-c.)

- 9) Description of activities implemented to address sewage infiltration into the MS4. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 8.)
  - 10) Description of BMPs and their implementation for unpaved roads construction and maintenance. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 9.)
- d. Commercial/Industrial:
- 1) Updated inventory of commercial/industrial sources of discharges. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 1.)
  - 2) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility or mobile business; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility or mobile business; (d) brief description of the effectiveness each high-level enforcement actions at commercial/industrial sites including the follow-up activities for each facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 2.)
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- 5) Any proposed retrofit or regional mitigation projects and time lines for future implementation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 5.)
- g. Workplans:
- 1) Updated workplans including priorities, strategy, implementation schedule, and effectiveness evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Workplans)

#### **D. Special Studies**

##### 1. Sediment Toxicity Study

- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate the toxicity of sediment in streams and its potential impact on benthic macroinvertebrate IBI scores. The study must be implemented in conjunction with the stream assessment monitoring in Attachment E. The study must include the following elements:
  - 1) At least four stream assessment locations must be sampled, including one reference site and one mass loading site. The selection of sites must be done with consideration of subjectivity of receiving waters to discharges from residential and agricultural land uses.
  - 2) At a minimum, sampling must occur once per year at each site for at least two years.
  - 3) At a minimum, sediment toxicity analysis must include the measurement of metals, pyrethroids, and organochlorine pesticides. The analysis must include estimates of bioavailability based upon sediment grain size, organic carbon, and receiving water temperature at the sampling site. Acute and chronic toxicity testing must be done using *Hyaella azteca*.
- b. Include the results and a discussion in the monitoring annual report including an assessment of the relationship between observed IBI scores and all variables measured. (Order No. R9-2010-0016, Attachment E, Section II.E.2.)

##### 2. Trash and Litter Investigation

- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to assess trash (including litter) as a pollutant within receiving waters on a watershed based scale. The copermittees must select a lead copermittee. The study must include the following elements:
  - 1) The lead copermittee must identify suitable sampling locations within the Santa Margarita HU.

- 2) Trash at each location must be monitored a minimum of twice during the wet season following a qualified monitoring storm event<sup>24</sup> and twice during the dry season.
  - 3) The lead copermitee must use the “Final Monitoring Workplan for the Assessment of Trash in San Diego County Watersheds” and “A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region” to develop a monitoring protocol.
- b. Include the results and a discussion in the monitoring annual report and must, at a minimum, include source identification, an evaluation of BMPs for trash reduction and prevention, and a description of any BMPs implemented in response to study results. (Order No. R9-2010-0016, Attachment E, Section II.E.3.)
3. Agricultural, Federal and Tribal Input Study
- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to investigate the water quality of agricultural, federal, and tribal runoff that is discharged into their MS4. The study must include the following elements:
    - 1) The copermitees must identify a representative number of sampling stations within their MS4 that receive discharges of agricultural, federal, and tribal runoff that has not co-mingled with any other source. At least one station from each category must be identified.
    - 2) One storm event must be monitored at each sampling location each year for at least two years.
    - 3) At a minimum, analysis must include those constituents listed in Table 1 of the MRP. Grab samples may be utilized, though composite samples are preferred. The copermitees must also measure or estimate flow rates and volumes of discharges into the MS4.
  - b. Include the results and a discussion from the study in the monitoring annual report. (Order No. R9-2010-0016, Attachment E, Section II.E.4.)
4. MS4 and Receiving Water Maintenance Study
- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate receiving waters that are considered part of the MS4 and that are subject to continual vegetative clearance activities, for example, mowing. The copermitees must assess the effects of the vegetation removal activities and water quality, including, but not limited to, modification of biogeochemical functions, in-stream temperatures, receiving water bed and bank erosion potential, and sediment transport. The study must include the following elements:

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<sup>24</sup> A qualified monitoring storm event is defined as a minimum of 0.1 inches of precipitation preceded by 72 hours of dry weather.

- 1) The copermittees must identify suitable sampling locations, including at least one reference that is not subject to maintenance activities.
  - 2) At a minimum, the copermittees must monitor pre- and post-maintenance activities for indicator bacteria, turbidity, temperature, dissolved oxygen and nutrients (nitrite, nitrate, total Kjeldahl nitrogen, ammonia and total phosphorous). The copermittees must also measure or estimate flow rates and volumes.
- b. Include the results and a discussion from the study in the annual monitoring report including the relevance of findings to CWA section 303(d) listed impaired waters. (Order No. R9-2010-0016, Attachment E, Section II.E.5.)

**D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

**E. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)**

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant's proceeds of taxes), which are required to be identified and deducted from the costs claimed.

**F. Remaining Sections of the Parameters and Guidelines**

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**V. Conclusion**

Based on the foregoing analysis, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

**PARAMETERS AND GUIDELINES<sup>25</sup>**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2010-0016*

*Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E., Section II.E.2.-5.,  
Adopted November 10, 2010*

11-TC-03

Period of reimbursement from November 10, 2010, through December 31, 2017

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<sup>25</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

## **I. SUMMARY OF THE MANDATE**

These Parameters and Guidelines address state-mandated activities arising from National Pollutant Discharge Elimination System Program (NPDES) permit, Order No. R9-2010-0016 (test claim permit), adopted by the San Diego Regional Water Quality Control Board on November 10, 2010.

On September 22, 2023, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the activities described below under I. REIMBURSABLE ACTIVITIES only.

Any fee revenues received must be identified as offsetting revenue. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, other state funds, and other funds that are not the claimant's proceeds of taxes shall be identified and deducted from this claim.

The Test Claim was denied for the Riverside County Flood Control and Water Conservation District because there was no evidence that the District incurred costs mandated by the state from its proceeds of taxes.

All other activities and sections of the test claim permit and costs pled by the claimants were denied.

## **II. ELIGIBLE CLAIMANTS**

Only the following permittees are required to comply with Order No. R9-2010-0016 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

The County of Riverside and the cities of Murrieta, Temecula, and Wildomar.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on November 10, 2011, establishing eligibility for reimbursement for the 2010-2011 fiscal year. However, the test claim permit has a later effective date and therefore, the period of reimbursement for this program begins on the permit's effective date, November 10, 2010. Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, increased costs incurred from November 10, 2010 through December 31, 2017 are reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.

2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

##### **A. SALs – Development and Submittal of Wet Weather MS4 Discharge Monitoring Program**



1. Collaborate with all permittees to develop a year-round, watershed based, wet weather MS4 discharge monitoring program to sample a representative percentage of the major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6) and Attachment E. of the test claim permit, within each hydrologic subarea. (Order No. R9-2010-0016, Section D.2.)
2. The principal copermitttee shall submit to the Regional Board for review and approval, a detailed draft of the wet weather MS4 discharge monitoring program to be implemented. (Order No. R9-2010-0016, Section D.2., which incorporates by reference Attachment E., Section II.B.3.)

#### **B. Watershed Workplan**

1. The watershed BMP implementation strategy shall include a map of any implemented and proposed BMPs. (Order No. R9-2010-0016, Section G.1.d.)
2. The copermitttees shall pursue efforts to obtain any interagency agreements, or other coordination efforts, with non-copermitttee owners of the MS4 (such as Caltrans, Native American tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4. (Order No. R9-2010-0016, Section G.3.)
3. The watershed workplan must include the identification of the persons or entities anticipated to be involved during the development and implementation of the Watershed Workplan. (Order No. R9-2010-0016, Section G.4.)
4. The annual watershed review meetings shall be open to the public and adequately noticed. (Order No. R9-2010-0016, Section G.5.)
5. Each permittee shall review and modify jurisdictional programs and JRMP annual reports, as necessary, so they are consistent with the updated watershed workplan. (Order No. R9-2010-0016, Section G.5.)

#### **C. Annual JRMP Report**

1. Include in the annual fiscal analysis a narrative description of circumstances resulting in a 25 percent or greater annual change for any budget line items. (Order No. R9-2010-0016, Section K.3.c.1.)
2. Provide in the annual report an updated timeframe for attainment of a desired outcome level in the annual report when an assessment indicates that the desired outcome level has not been achieved at the end of the projected timeframe, but the review of the existing activities and BMPs are adequate, or that the projected timeframe should be extended. (Order No. R9-2010-0016, Section K.3.c.2.)
3. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement)*, provide the following information in the Checklist pursuant to Section K.3.c.3.:
  - a. Construction:
    - 1) Number of Active Sites

- 2) Number of Inactive Sites
- 3) Number of Sites Inspected
- 4) Number of Violations
- b. New Development:
  - 1) Number of Development Plan Reviews
  - 2) Number of Projects Exempted from Interim/Final Hydromodification Requirements
- c. Post Construction Development:
  - 1) Number of Priority Development Projects
  - 2) Number of SUSMP Required Post-Construction BMP Inspections
  - 3) Number of SUSMP Required Post-Construction BMP Violations
  - 4) Number of SUSMP Required Post-Construction BMP Enforcement Actions Taken
- d. Illicit Discharges and Connections:
  - 1) Number of IC/ID Eliminations
  - 2) Number of IC/ID Violations
- e. MS4 Maintenance:
  - 1) Total Miles of MS4 Inspected
- f. Municipal/Commercial/Industrial:
  - 1) Number of Facilities
  - 2) Number of Violations (Order No. R9-2010-0016, Section K.3.c.3., Attachment D.)
- 4. *Except for reporting on the claimants' own municipal projects (which is not eligible for reimbursement), report the following information contained in Table 5 pursuant to Section K.3.c.4.:*
  - a. New Development:
    - 1) All revisions to the SSMP, including where applicable: (b) updated procedures for identifying pollutants of concern for each priority development project; (c) updated treatment BMP ranking matrix; (d) updated site design and treatment control BMP design standards. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 2.)
    - 2) Brief description of BMPs required at approved priority development projects. Verification that site design, source control, and treatment BMPs were required on all applicable priority development projects. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 3.)

- 3) Name and location of all priority development projects that were granted a waiver from implementing LID BMPs pursuant to Section F.1.d.4. during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 4.)
  - 4) Updated watershed-based BMP maintenance tracking database of approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction, including updates to the list of high-priority priority development projects; and verification that the requirements of this Order were met during the reporting period. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 5.)
  - 5) Name and brief description of all approved priority development projects required to implement hydrologic control measures in compliance with Section F.1.h. including a brief description of the management measures planned to protect downstream beneficial uses and prevent adverse physical changes to downstream stream channels. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. New Development 6.)
- b. Construction:
- 1) A description of planned ordinance updates within the next annual reporting period, if applicable. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 1.)
  - 2) A description of any changes to procedures used for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 2.)
  - 3) Any changes to the designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 3.)
  - 4) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility; (b) date of enforcement actions by facility; (c) brief description of the effectiveness of each high-level enforcement action at construction sites. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
  - 5) Supporting files must include a record of inspection dates, the results of each inspection, photographs (if any), and a summary of any enforcement actions taken. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Construction 4.)
- c. Municipal (*other than a claimant's own development*):
- 1) Updated source inventory. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 1.)
  - 2) All changes to the designated municipal BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 2.)

- 3) Descriptions of any changes to procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 3.)
  - 4) Summary and assessment of BMP retrofits implemented at flood control structures, including: (a) List of projects retrofitted; (b) List and description of structures evaluated for retrofitting; (c) List of structures still needing to be evaluated and the schedule for evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 4.)
  - 5) Include in the summary of the MS4 and MS4 facilities operations and maintenance activities, the (a) Number and types of facilities maintained. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.a.)
  - 6) Include (a) types of facilities and (b) summary of the inspection findings in the summary of the municipal structural treatment control operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 5.)
  - 7) Include a list of facilities planned for bi-annual inspections and the justification in the summary of the MS4 and MS4 facilities operations and maintenance activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 6.c.)
  - 8) Include in the summary of the municipal areas/programs inspection activities: (a) date of inspections conducted at each facility; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 7.a.-c.)
  - 9) Description of activities implemented to address sewage infiltration into the MS4. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 8.)
  - 10) Description of BMPs and their implementation for unpaved roads construction and maintenance. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Municipal 9.)
- d. Commercial/Industrial:
- 1) Updated inventory of commercial/industrial sources of discharges. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 1.)
  - 2) Include the following information in the summary of the inspection program: (a) date of inspections conducted at each facility or mobile business; (b) The BMP violations identified during the inspection by facility; (c) date of enforcement actions by facility or mobile business; (d) brief description of the effectiveness each high-level enforcement actions at commercial/industrial sites including the follow-up activities for each facility. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 2.)

- 3) All changes to designated minimum and enhanced BMPs. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Commercial/Industrial 3.)
- e. Residential:
- 1) All updated minimum BMPs required for residential areas and activities. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 1.)
  - 2) Description of efforts to manage runoff and storm water pollution in common interest areas and mobile home parks. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Residential 3.)
- f. Retrofitting Existing Development:
- 1) Updated inventory and prioritization of existing development identified as candidates for retrofitting. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 1.)
  - 2) Description of efforts to retrofit existing developments during the reporting year. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 2.)
  - 3) Description of efforts taken to encourage private landowners to retrofit existing development. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 3.)
  - 4) A list of all retrofit projects that have been implemented, including site location, a description of the retrofit project, pollutants expected to be treated, and the tributary acreage of runoff that will be treated. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 4.)
  - 5) Any proposed retrofit or regional mitigation projects and time lines for future implementation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Retrofitting Existing Development 5.)
- g. Workplans:
- 1) Updated workplans including priorities, strategy, implementation schedule, and effectiveness evaluation. (Order No. R9-2010-0016, Section K.3.c.4., Table 5. Workplans)

#### **D. Special Studies**

##### 1. Sediment Toxicity Study

- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate the toxicity of sediment in streams and its potential impact on benthic macroinvertebrate IBI scores. The study must be implemented in conjunction with the stream assessment monitoring in Attachment E. The study must include the following elements:
  - 1) At least four stream assessment locations must be sampled, including one reference site and one mass loading site. The selection of sites must be

done with consideration of subjectivity of receiving waters to discharges from residential and agricultural land uses.

- 2) At a minimum, sampling must occur once per year at each site for at least two years.
  - 3) At a minimum, sediment toxicity analysis must include the measurement of metals, pyrethroids, and organochlorine pesticides. The analysis must include estimates of bioavailability based upon sediment grain size, organic carbon, and receiving water temperature at the sampling site. Acute and chronic toxicity testing must be done using *Hyalella azteca*.
- b. Include the results and a discussion in the monitoring annual report including an assessment of the relationship between observed IBI scores and all variables measured. (Order No. R9-2010-0016, Attachment E, Section II.E.2.)
2. Trash and Litter Investigation
- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to assess trash (including litter) as a pollutant within receiving waters on a watershed based scale. The copermitees must select a lead copermitee. The study must include the following elements:
    - 1) The lead copermitee must identify suitable sampling locations within the Santa Margarita HU.
    - 2) Trash at each location must be monitored a minimum of twice during the wet season following a qualified monitoring storm event<sup>26</sup> and twice during the dry season.
    - 3) The lead copermitee must use the “Final Monitoring Workplan for the Assessment of Trash in San Diego County Watersheds” and “A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region” to develop a monitoring protocol.
  - b. Include the results and a discussion in the monitoring annual report and must, at a minimum, include source identification, an evaluation of BMPs for trash reduction and prevention, and a description of any BMPs implemented in response to study results. (Order No. R9-2010-0016, Attachment E, Section II.E.3.)
3. Agricultural, Federal and Tribal Input Study
- a. Develop and submit to the Regional Board by September 1, 2012, a workplan to investigate the water quality of agricultural, federal, and tribal runoff that is discharged into their MS4. The study must include the following elements:

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<sup>26</sup> A qualified monitoring storm event is defined as a minimum of 0.1 inches of precipitation preceded by 72 hours of dry weather.

- 1) The copermittees must identify a representative number of sampling stations within their MS4 that receive discharges of agricultural, federal, and tribal runoff that has not co-mingled with any other source. At least one station from each category must be identified.
  - 2) One storm event must be monitored at each sampling location each year for at least two years.
  - 3) At a minimum, analysis must include those constituents listed in Table 1 of the MRP. Grab samples may be utilized, though composite samples are preferred. The copermittees must also measure or estimate flow rates and volumes of discharges into the MS4.
- b. Include the results and a discussion from the study in the monitoring annual report. (Order No. R9-2010-0016, Attachment E, Section II.E.4.)
4. MS4 and Receiving Water Maintenance Study
- a. Develop and submit to the Regional Board by April 1, 2012, a workplan to investigate receiving waters that are considered part of the MS4 and that are subject to continual vegetative clearance activities, for example, mowing. The copermittees must assess the effects of the vegetation removal activities and water quality, including, but not limited to, modification of biogeochemical functions, in-stream temperatures, receiving water bed and bank erosion potential, and sediment transport. The study must include the following elements:
    - 1) The copermittees must identify suitable sampling locations, including at least one reference that is not subject to maintenance activities.
    - 2) At a minimum, the copermittees must monitor pre- and post-maintenance activities for indicator bacteria, turbidity, temperature, dissolved oxygen and nutrients (nitrite, nitrate, total Kjeldahl nitrogen, ammonia and total phosphorous). The copermittees must also measure or estimate flow rates and volumes.
  - b. Include the results and a discussion from the study in the annual monitoring report including the relevance of findings to CWA section 303(d) listed impaired waters. (Order No. R9-2010-0016, Attachment E, Section II.E.5.)

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be



included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>27</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from

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<sup>27</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

#### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

#### **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On January 10, 2024, I served the:

- **Current Mailing List dated January 3, 2024**
- **Proposed Decision and Parameters and Guidelines issued January 10, 2024**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2010-0016, 11-TC-03*

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E., Section II.E.2.-5, Adopted November 10, 2010

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 10, 2024 at Sacramento, California.



---

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/3/24

**Claim Number:** 11-TC-03

**Matter:** California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

**Claimants:** City of Murrieta  
City of Temecula  
City of Wildomar  
County of Riverside  
Riverside County Flood Control and Water Conservation District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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