



July 9, 2024

Mr. David Burhenn  
Burhenn & Gest, LLP  
624 South Grand Avenue, Suite 2200  
Los Angeles, CA 90017

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

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

**Re: Proposed Statewide Cost Estimate**

*California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and  
XVIII.B.9, Adopted May 22, 2009, 09-TC-03*  
Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,  
adopted May 22, 2009

Dear Mr. Burhenn and Ms. Sidarous:

The Proposed Statewide Cost Estimate for the above-captioned matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, July 26, 2024, at 10:00 a.m., at Park Tower, 980 9th Street, Suite 300, Sacramento, California, 95814 and via Zoom.**

The Commission is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters whether they are physically appearing at the in-person meeting location or participating via Zoom. If you want to speak during the hearing and you are in-person, please come to the table to speak when your item is up for hearing. If you are participating via Zoom, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted.

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Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify. Please also include the names of the people who will be speaking and the names and email addresses of the people who will be speaking remotely for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them. 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.

This matter is proposed for the Consent Calendar. Please let us know in advance if you oppose having this item placed on consent and wish to testify at the hearing or have a representative testify on your behalf, and if other witnesses will appear.

In that case, please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list.

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 will not be included in the Commissioners' hearing binders and a PDF of the document, shall be filed via the Commission's dropbox at <https://www.csm.ca.gov/dropbox.shtml>, at least 24-hours prior to the hearing to allow staff time to process and post the document to allow all in-person and remote participants to review it. Commission staff shall provide an electronic copy to the Commission, include an electronic copy in the public hearing binder at the hearing, and post a copy on the Commission's website, and may share the document with the Commission and the public using the "share screen" function. (Cal. Code Regs., tit. 2, § 1181.10(b)(1)(C)).

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

Mr. Burhenn and Ms. Sidarous  
July 9, 2024  
Page 3

### **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 "Heather" and last name "Halsey" clearly distinguishable.

Heather Halsey  
Executive Director

**ITEM 7**

**PROPOSED STATEWIDE COST ESTIMATE**

**\$459,106 - \$690,409**

**Initial Claim Period<sup>1</sup>**

**(June 1, 2009 to December 31, 2017)**

*California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9.*

**09-TC-03**

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate by a vote of [vote count will be included in the adopted Statewide Cost Estimate] during a regularly scheduled hearing on July 26, 2024 as follows:

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

**STAFF ANALYSIS**

**Summary of the Mandate, Eligible Claimants, and Period of Reimbursement**

This Statewide Cost Estimate addresses state-mandated activities arising from National Pollutant Discharge Elimination System (NPDES) Order No. R8-2009-0030, adopted by the Santa Ana Regional Water Quality Control Board on May 22, 2009.

The Commission adopted the Test Claim Decision on March 24, 2023, partially approving reimbursement for permittees that incur increased costs to perform the

<sup>1</sup> The entire reimbursement period is within the initial claim period because the Commission found the mandate is not reimbursable beginning January 1, 2018 since the claimants have fee authority, sufficient as a matter of law, to pay for the reimbursable activities pursuant to Government Code section 17556(d).

reimbursable activities under the mandate. The Commission adopted the Decision and Parameters and Guidelines on September 22, 2023. The permittees include the County of Orange, the Orange County Flood Control District, and the cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Hills, Laguna Woods, La Habra, La Palma, Lake Forest, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster and Yorba Linda.<sup>2</sup>

The initial reimbursement period, which is also the entire reimbursement period, is from June 1, 2009, through December 31, 2017 (the last month of 2008-2009 through first half of 2017-2018).<sup>3</sup> Eligible claimants were required to file initial claims with the State Controller's Office (Controller) by April 25, 2024. Late initial reimbursement claims may be filed until April 25, 2025, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.<sup>4</sup>

### **Reimbursable Activities**

The Commission approved the following reimbursable activities for this program:

- A. Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by the Office of Administrative Law (OAL), whichever is later. (Order No. R8-2009-0030, Section XVIII.B.8.)
- B. Develop a "constituent-specific source control plan" for copper, lead, and zinc, including a monitoring program, to ensure compliance" with WLAs [waste load allocations] for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Order No. R8-2009-0030, Section XVIII.B.9.)<sup>5</sup>
- C. Public education program:
  1. By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes

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<sup>2</sup> Exhibit A, Decision and Parameters and Guidelines, adopted September 22, 2023, pages 6, 16.

<sup>3</sup> Exhibit A, Decision and Parameters and Guidelines, adopted September 22, 2023, pages 5, 14.

<sup>4</sup> Government Code section 17561(d)(3).

<sup>5</sup> According to the permit, Activity B. applies to the permittees "with discharges to Coyote Creek or the San Gabriel River" and must be completed within 12 months of the date of permit adoption. Exhibit C (4), Regional Water Quality Control Board, Order No. R8-2009-0030, page 73 (test claim permit).

to the current program in the annual report for 2011-2012. (Order No. R8-2009-0030, Section XIII.1.)

2. Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Order No. R8-2009-0030, Section XIII.4.)
  3. The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Order No. R8-2009-0030, Section XIII.7.)
- D. Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. (Order No. R8-2009-0030, Section XI.4.)<sup>6</sup>

### **Offsetting Revenues and Reimbursements**

The Parameters and Guidelines specify that 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 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.<sup>7</sup>

Offsetting revenues identified in the reimbursement claims totaled \$449,920 for fiscal years 2008-2009 through 2010-2011, and 2012-2013 through 2016-2017 (no claims were filed for 2011-2012 or 2017-2018). Only the County of Orange identified offsetting revenue but did not disclose its source.<sup>8</sup>

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<sup>6</sup> Exhibit A, Decision and Parameters and Guidelines, adopted September 22, 2023, pages 15-16.

<sup>7</sup> Exhibit A, Decision and Parameters and Guidelines, adopted September 22, 2023, page 19.

<sup>8</sup> Exhibit C (6), Spreadsheet of Claims Data.

## Statewide Cost Estimate

All activities except for C.2., and C.3., are one-time activities and end within the first few years of the program. Therefore, all costs for Activities A., B., C.1., and D., are expected to be claimed for the first few years of the reimbursement period only. Costs for Activity C.2., however, are expected to be claimed for the entire reimbursement period ending December 31, 2017. As explained below, although Activity C.3. is ongoing, costs are only expected to be claimed for the first couple years of the reimbursement period.

Staff reviewed 53 unaudited reimbursement claims submitted by 12 city claimants and Orange County, as compiled by the Controller. Staff developed the Statewide Cost Estimate based on the assumptions and methodology discussed herein. Table 1 below summarizes the cost estimates for all fiscal years, 2008-2009 to 2016-2017.

**Table 1. Reimbursement Period Cost Estimate**

Activity A. Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL (April 19, 2019), <sup>9</sup> whichever is later.	\$513,282- \$627,344
Activity B. Develop a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA.	\$72,578 - \$114,914
Activity C.1. By July 1, 2012, complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012.	\$110,310 - \$237,585
Activity C.2. Administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and	\$177,238 - \$381,748

<sup>9</sup> The OAL approval date of April 19, 2019, is in the history of California Code of Regulations, title 23, section 3979.11.

community activities) by July 1, 2010 and annually thereafter.	
Activity C.3. The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses.	\$623 - \$1,455
Activity D. Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies.	\$17,256 - \$53,679
Indirect Costs identified	\$17,739 - \$28,601
Offsetting Revenue	\$449,920 - \$727,789
Late Filing Penalty	\$0 - \$27,128
<b>Total Costs</b>	<b>\$459,106 - \$690,409</b>

### Assumptions

1. Except for Activities C.2., and C.3., all of the approved activities are one-time activities and therefore most costs are expected to be claimed only for the first few years of the reimbursement period.

- a. Activity A. requires the permittees to submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL (April 19, 2019),<sup>10</sup> whichever is later. All the claims for this activity were filed for the first three fiscal years of the claiming period, 2008-2009 to 2010-2011,<sup>11</sup> (The reimbursement period includes only June of fiscal year 2008-2009).

The selenium TMDL for the Cooperative Watershed Program applies to the following permittees: the County of Orange, Orange County Flood Control District (OCFCD), and the cities of Irvine, Laguna Hills, Laguna Woods, Lake Forest, Newport Beach, Orange, Tustin, and Santa Ana that discharge to the San Diego Creek Subwatershed; and the County of Orange, OCFCD, and the

<sup>10</sup> The OAL approval date of April 19, 2019, is in the history of California Code of Regulations, title 23, section 3979.11.

<sup>11</sup> Exhibit C (6), Spreadsheet of Claims Data.



cities of Costa Mesa, Santa Ana and Newport Beach for the Santa Ana-Delhi Channel.<sup>12</sup>

The claimants for Activity A. are the cities of Costa Mesa, Irvine, Laguna Hills, Laguna Woods, Lake Forest, Orange, Tustin, Newport Beach, and Orange County.<sup>13</sup> Therefore, the high estimate assumes only the remaining two permittees subject to the TMDL will file claims (Santa Ana and the OCFCD).

- b. Activity B. requires the permittees to develop a “constituent-specific source control plan” for copper, lead, and zinc to ensure compliance” with WLAs for dry and wet weather runoff. The plan, which was due “within 12 months of permit adoption” (by May 22, 2010),<sup>14</sup> included a monitoring program and was derived from waste load allocations in the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. According to the 2015-2016 Annual Progress Report and Program Effectiveness Assessment, this source control plan was finalized in June 2010.<sup>15</sup> The reimbursement claims for Activity B., were all filed for fiscal year 2009-2010 only,<sup>16</sup> and since this one-time activity was completed there are no other years for which to claim.

The workgroup of watershed cities that developed the Activity B. source control plan consisted of Anaheim, Brea, Buena Park, Cypress, Fullerton, La Habra, La Palma, Los Alamitos, Placentia, Seal Beach and Orange County.<sup>17</sup> However according to the permit, Activity B. applies to the permittees “with

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<sup>12</sup> Exhibit C (5), Regional Water Quality Control Board, Santa Ana Region, Excerpts of the Santa Ana River Basin Plan, [https://www.waterboards.ca.gov/santaana/water\\_issues/programs/basin\\_plan/docs/2019/New/Chapter\\_6\\_June\\_2019.pdf](https://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/docs/2019/New/Chapter_6_June_2019.pdf) (accessed on May 24, 2024), pages 6-88 to 6-89.

<sup>13</sup> Exhibit C (6), Spreadsheet of Claims Data.

<sup>14</sup> The test claim permit was *adopted* by the Regional Board on May 22, 2009, but had a later effective date of June 1, 2009. Exhibit C (4), Regional Water Quality Control Board, Order No. R8-2009-0030, page 82 (test claim permit).

<sup>15</sup> Exhibit C (2), Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009, 09-TC-03*, adopted March 24, 2023, <https://csm.ca.gov/decisions/09-tc-03-032423.pdf> (accessed on January 9, 2024), page 105.

<sup>16</sup> Exhibit C (6), Spreadsheet of Claims Data.

<sup>17</sup> Exhibit C (2), Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009, 09-TC-03*, adopted March 24, 2023, <https://csm.ca.gov/decisions/09-tc-03-032423.pdf> (accessed on January 9, 2024), page 105.

discharges to Coyote Creek or the San Gabriel River.”<sup>18</sup> The TMDL lists the following permittee cities in the Coyote Creek basin: Anaheim, Brea, Buena Park, Cypress, Fullerton, Garden Grove, La Habra, La Palma, Los Alamitos, Placentia, Yorba Linda; and the following permittee cities in the San Gabriel River Basin (reaches 1 to 5): Garden Grove, Los Alamitos, and Seal Beach.<sup>19</sup>

For Activity B. the following claimants submitted reimbursement claims: the cities of Anaheim, Buena Park, Costa Mesa, Fullerton, Irvine, Laguna Hills, Laguna Woods, Lake Forest, Orange (city), Tustin, Westminster, and Orange County.<sup>20</sup> Some of these claimants participated in the workgroup to create the plan, but it is unclear what role claimants who filed initial claims but did not participate in the workgroup had in preparing the plan. The approved activity is only to create the plan but not to implement it.<sup>21</sup>

The high estimate assumes, in addition to the local agencies that already claimed reimbursement for Activity B., only the seven permittees subject to the TMDL who participated in the workgroup but did not already claim (Brea, Cypress, La Habra, La Palma, Los Alamitos, Placentia, and Seal Beach) will claim reimbursement.

- c. Activity C.1. (public awareness survey) was to be completed by July 1, 2012. The Annual Progress Report and Program Effectiveness Assessment indicates the survey was conducted in May 2012.<sup>22</sup> All costs for one-time Activity C.1. were claimed for 2009-2010 and 2010-2011, with 96 percent of costs claimed (\$105,792 of \$110,310) for 2009-2010. It is assumed that this activity was completed in 2010-2011 and no costs for it will be claimed for fiscal years after fiscal year 2010-2011.

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<sup>18</sup> Exhibit C (4), Regional Water Quality Control Board, Order No. R8-2009-0030, page 73 (test claim permit).

<sup>19</sup> Exhibit C (8), U.S. EPA, Region IX, Total Maximum Daily Load for Metals and Selenium, San Gabriel River and Impaired Tributaries, March 26, 2007, [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/tmdl/Established/San%20Gabriel%20River%20Metals%20TMDL/final\\_sangabriel\\_metalstmdl\\_3-27-07.pdf](https://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/Established/San%20Gabriel%20River%20Metals%20TMDL/final_sangabriel_metalstmdl_3-27-07.pdf) (accessed on January 8, 2024), page 53.

<sup>20</sup> It is unclear why non-workgroup and non-TMDL cities (Costa Mesa, Irvine, Laguna Hills, Laguna Woods, Lake Forest, Tustin, Westminster) claimed costs for Activity B.

<sup>21</sup> Exhibit C (2), Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009*, 09-TC-03, adopted March 24, 2023, <https://csm.ca.gov/decisions/09-tc-03-032423.pdf> (accessed on January 9, 2024), page 114.

<sup>22</sup> Exhibit C (7), Unified Annual Progress Report, Program Effectiveness Assessment, November 15, 2017, Section C-6.0, page C-6-15.

- d. Activity D. (develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies) was due within 18 months of permit adoption (by Nov. 22, 2010). Costs for Activity D were claimed for 2010-2011, 2012-2013, 2013-2014, and 2014-2015, with 81 percent of the costs claimed for 2010-2011. Therefore, since the pilot program appears to have been completed, it is assumed no costs will be claimed for fiscal years after 2014-2015.
2. It is assumed ongoing costs for Activity C.2. will continue to be claimed for the entire reimbursement period, ending December 31, 2017. However, no additional costs are expected to be claimed for continuing Activity C.3., because costs for that activity were only claimed for the first couple years of the reimbursement period.
    - a. Activity C.2., to administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter continues throughout the reimbursement period and is assumed to make up all of the costs claimed for fiscal year 2015-2016 through the first half of fiscal year 2016-2017 (December 31, 2017), other than minor indirect costs.
    - b. Activity C.3. requires the principal permittee, in collaboration with the co-permittees, to develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. All claims for Activity C.3. were filed only for 2008-2009 and 2009-2010, so no costs for other fiscal years are expected to be claimed.
  3. Consistent with the assumptions for the one-time activities A., B., C.1., and D., discussed above, the vast majority of costs claimed were for the first three fiscal years of the permit: 2008-2009, 2009-2010, and 2010-2011. The initial claims indicate that 86 percent of the total costs claimed (\$392,860 of \$459,106, net of offsets) are for fiscal years 2008-2009 through 2010-2011.
  4. Activities A. and B. apply to only a subset of the permittees, so it is assumed only that subset of permittees will claim for those Activities.
  5. The amount claimed for the period of reimbursement may also be higher if late or amended claims are filed. Only 13 of 28 eligible claimants (46 percent) filed claims for the reimbursement period.<sup>23</sup> The remaining 15 eligible claimants may

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<sup>23</sup> Exhibit C (6), Spreadsheet of Claims Data.

still file late claims, and the 13 claimants that timely filed may file amended claims for additional costs.

6. As indicated by the claims filed, most or all the cities' claimed costs are for contracted services because the permit designated the County of Orange as the principal permittee and the city claimants paid the principal permittee for services under a cost sharing agreement. The County of Orange may only claim for its own expenses and not those incurred on behalf of the city claimants.
7. Costs may be lower if offsetting revenue was used by a claimant to pay for the reimbursement activities. The Test Claim Decision recognizes various types of non-tax revenue that could be offset,<sup>24</sup> and the Parameters and Guidelines state offsets include but are 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."<sup>25</sup> Only the County of Orange identified offsetting revenue of \$449,920 for fiscal years 2008-2009 through 2010-2011, and 2012-2013 through 2016-2017 (no claims were filed by any local agencies for 2011-2012 or 2017-2018). The County did not disclose the source of revenue, but according to its Program Effectiveness Assessment for 2015-2016, its revenue sources for stormwater (other than General Fund) include: a separate utility billing item, gas tax, and special district funds, such as a sanitation fee, fleet maintenance fund, grants, pollution response cost recovery, and other service fees and fines.<sup>26</sup> Also, reimbursements from other local agencies under the cost sharing agreement are not the County's proceeds of taxes and may account for the County's claimed offsetting revenue.

Although the City of Lake Forest identified grant funding received in fiscal year 2012-2013 for two percent of its costs,<sup>27</sup> and for fiscal years 2014-2015 and

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<sup>24</sup> Exhibit C (2), Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009, 09-TC-03*, adopted March 24, 2023, <https://csm.ca.gov/decisions/09-tc-03-032423.pdf> (accessed on January 9, 2024), pages 198, 199-204.

<sup>25</sup> Exhibit A, Decision and Parameters and Guidelines, adopted September 22, 2023, page 18.

<sup>26</sup> Exhibit C (3), County of Orange and Orange County Flood Control District, Annual Progress Report, Program Effectiveness Assessment, November 15, 2016, Section C-2.0, page C-2-7.

<sup>27</sup> Exhibit C (1), Claimant's Comments on the Draft Proposed Decision, filed November 4, 2022, <https://csm.ca.gov/matters/09-TC-03/doc85.pdf> (accessed on January 9, 2024), page 221.

2015-2016 received grant funding for eight percent of its costs,<sup>28</sup> it did not file claims for 2012-2013 or 2015-2016, and did not identify any offsetting revenue in its 2014-2015 claim.<sup>29</sup>

8. Actual costs may be lower if the Controller reduces any reimbursement claim for this program following an audit deeming the claim to be excessive, unreasonable, or not eligible for reimbursement.

## Methodology

### *A. Reimbursement Period Cost Estimate*

Activity A. consists of submitting a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit (by May 22, 2011), or one month after approval of the Regional Board selenium TMDLs by OAL (April 19, 2019),<sup>30</sup> whichever is later. Consistent with the assumptions above, the estimate includes only the three fiscal years 2008-2009 to 2010-2011. The low estimate is costs actually claimed. The high estimate adds two more claimants (Santa Ana and the OCFCD) that are subject to the selenium TMDL. Activity A. claims are calculated by using the average costs claimed multiplied by the two eligible claimants that have not yet filed claims.

Activity A. actual costs claimed [\$513,282] / the number of filers [9] = average Activity A. cost per filer [\$57,031]

Average Activity A. cost per filer [\$57,031] x number of non-filers [2] = total estimated non-filer Activity A. costs [\$114,062]

Activity A. actual costs claimed [\$513,282] + estimated non-filer Activity A. costs that could be claimed in late claims [\$114,062] = Total potential Activity A. costs [\$627,344]

Activity B., consists of developing a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. Consistent

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<sup>28</sup> Exhibit C (1), Claimants’ Comments on the Draft Proposed Decision, filed November 4, 2022, <https://csm.ca.gov/matters/09-TC-03/doc85.pdf> (accessed on January 9, 2024), pages 225, 229. See also Exhibit C (2), Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009, 09-TC-03*, adopted March 24, 2023, <https://csm.ca.gov/decisions/09-tc-03-032423.pdf> (accessed on January 9, 2024), pages 199-204.

<sup>29</sup> Exhibit C (6), Spreadsheet of Claims Data.

<sup>30</sup> The OAL approval date of April 19, 2019 is in the history of California Code of Regulations, title 23, section 3979.11.

with the assumptions described above, the high estimate assumes that, in addition to the local agencies that already claimed reimbursement for Activity B, the seven permittees subject to the TMDL and that participated in the workgroup to develop the plan, but did not already claim (Brea, Cypress, La Habra, La Palma, Los Alamitos, Placentia, and Seal Beach), will claim reimbursement. This is calculated by using the average costs claimed multiplied by the seven eligible claimants who have not yet filed claims. Then add the actual claims to the average claim times the seven claimants who did not file claims. The low estimate is for only costs claimed. The high estimate assumes all claimants that participated in the workgroup will file a claim for this activity.

Activity B. actual costs claimed [\$72,578] / the number of filers [12] = average cost per filer [\$6,048]

Average Activity B. cost per filer [\$6,048] x number of non-filers [7] = total estimated non-filer Activity B. costs [\$42,336]

Activity B. actual costs claimed [\$72,578] + estimated non-filer costs that could be claimed in late claims [\$42,336] = Total potential Activity B. costs [\$114,914]

Costs for Activity C.1. consist of the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy by July 1, 2012, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. This is calculated by using the average costs claimed multiplied by the 15 eligible claimants who have not yet filed claims. Then add the actual claims to the average claim times the 15 claimants who did not file claims. The low estimate is for only costs claimed. The high estimate assumes all eligible claimants will file a claim for Activity C.1.

Activity C.1. actual costs claimed [\$110,310] / the number of filers [13] = average Activity C.1. cost per filer [\$8,485]

Average Activity C.1. cost per filer [\$8,485] x number of non-filers [15] = total estimated non-filer Activity C.1. costs [\$127,275]

Activity C.1. actual costs claimed [\$110,310] + estimated non-filer Activity C.1. costs that could be claimed in late claims [\$127,275] = Total potential Activity C.1. costs [\$237,585]

Activity C.2. consists of administering individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010, and annually thereafter. Activity C.2. is calculated by using the average costs claimed multiplied by the number of eligible claimants who have not yet filed claims. Then add the actual claims to the average claim times the number of claimants who did not file claims. The low estimate is for only costs claimed. The high estimate assumes all eligible claimants will file a claim for this activity.

Activity C.2. actual costs claimed [\$177,238] / the number of filers [13] = average Activity C.2. cost per filer [\$13,634]

Average Activity C.2. cost per filer [\$13,634] x number of non-filers [15] = total estimated non-filer Activity C.2. costs [\$204,510]

Activity C.2. actual costs claimed [\$177,238] + estimated non-filer Activity C.2. costs that could be claimed in late claims [\$204,510] = Total potential Activity C.2. costs [\$381,748]

Activity C.3. consists of the principal permittee, in collaboration with the co-permittees, developing and implementing a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, county or city websites, local libraries, city halls, or courthouses. Activity C.3. is calculated by using the average costs claimed multiplied by the number of eligible claimants who have not yet filed claims. Then add the actual claims to the average claim times the number of claimants who did not file claims. The low estimate is for only costs claimed. The high estimate assumes all eligible claimants will file a claim for this activity.

Activity C.3. actual costs claimed [\$623] / the number of filers [12] = average Activity C.3. cost per filer [\$52]

Average Activity C.3. cost per filer [\$52] x number of non-filers [16] = total estimated non-filer Activity C.3. costs [\$832]

Activity C.3. actual costs claimed [\$623] + estimated non-filer Activity C.3. costs that could be claimed in late claims [\$832] = Total potential Activity C.3. costs [\$1,455]

Activity D. consists of, within 18 months of permit adoption (by November 22, 2010), developing a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. This is calculated by using the average costs claimed multiplied by the number of eligible claimants who have not yet filed claims. Then add the actual claims to the average claim times the number of claimants who did not file claims. The low estimate is for only costs claimed. The high estimate assumes all eligible claimants will file a claim for this activity.

Activity D. actual costs claimed [\$17,256] / the number of filers [9] = average Activity D. cost per filer [\$1,917]

Average Activity D. cost per filer [\$1,917] x number of non-filers [19] = total estimated non-filer Activity D. costs [\$36,423]

Activity D. actual costs claimed [\$17,256] + estimated non-filer Activity D. costs that could be claimed in late claims [\$36,423] = Total potential Activity D. costs [\$53,679]

**Indirect Costs:** The low end of the range for indirect costs is those indirect costs actually claimed. The high end, in addition to indirect costs actually claimed, assumes that all eligible claimants who have not yet filed claims will file claims for indirect costs at

the same average rate actually claimed, which is calculated by dividing indirect costs claimed by direct costs claimed equals the average indirect cost rate (as a percentage). Then multiply the average indirect cost rate by the estimated direct costs.

Indirect Costs Actually Claimed [\$17,739] / Direct Costs Actually Claimed [\$909,026] = Average Indirect Cost Rate [2%].

Indirect Cost Rate [2%] x Estimated Direct Costs (sum of all estimated activity costs for the initial claim period) [\$1,430,036] = High End of the Estimated Indirect Costs [\$28,601].

**Offsetting Revenues:** The low end of the range for offsetting revenues is the total amount of offsetting revenues actually claimed. The high end assumes that all eligible claimants will file claims, with offsetting revenues reported by all eligible claimants at the same average rate, and is calculated by dividing the offsetting revenue identified by the actual direct and indirect costs to get the offsetting revenue as a percentage of total costs claimed. Multiply the rate by the estimated direct and indirect costs not claimed. Then add the estimated offsetting revenue for non-filing claimants to the offsetting revenue actually claimed.

Actual Offsetting Revenues [\$449,920] / Actual Direct and Indirect Costs [\$909,026] = Offsetting Rate (offsetting revenues as a percentage of total costs claimed) [49%].

Estimated Non-filer Direct and Indirect Costs [\$567,080] x Offsetting Rate [49%] = Non-filer Offsetting Revenues [\$277,869].

Actual Offsetting Revenues [\$449,920] + Non-filer Offsetting Revenues [\$277,869] = High End of Estimated Offsetting Revenues [\$727,789]

**Late Filing Penalties:** The low end is \$0 because none of the initial claims compiled by the Controller were assessed a late filing penalty. The high end assumes that all non-filers will file claims for the initial period of reimbursement, which will be subject to a late filing penalty, which is calculated by adding non-filer direct and indirect costs and subtracting offsets to get net costs. Then multiply the net costs by a ten percent late filing penalty to calculate the estimated non-filer late filing penalties, which are added to the actual late filing penalties (as reported) to estimate the high late filing penalties.

Estimated Non-filer Direct and Indirect Costs [\$531,923] – Estimated Non-filer Offsets [\$260,642] = Estimated Non-filer Net Costs [\$271,281].

Estimated Non-filer Net Costs [\$271,281] x (10% late filing penalty) = Estimated Non-filer Late Filing Penalties [\$27,128].

Actual Late Filing Penalties [\$0] + Estimated Non-filer Late Filing Penalties [\$27,128] = High End of Estimated Late Filing Penalties [\$27,128].



### **Draft Proposed Statewide Cost Estimate**

On June 17, 2024, Commission staff issued the Draft Proposed Statewide Cost Estimate.<sup>31</sup> No comments were filed on the Draft Proposed Statewide Cost Estimate.

### **Staff Recommendation**

Staff recommends that the Commission adopt this Proposed Statewide Cost Estimate of \$459,106 to \$690,409 for the Initial Claim Period that began on June 1, 2009 and ends on December 31, 2017.

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<sup>31</sup> Exhibit B, Draft Proposed Statewide Cost Estimate, issued June 17, 2024.

## 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 July 9, 2024, I served the:

- **Current Mailing List dated June 17, 2024**
- **Proposed Statewide Cost Estimate issued July 9, 2024**

*California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and  
XVIII.B.9, Adopted May 22, 2009, 09-TC-03*

Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,  
adopted May 22, 2009

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 July 9, 2024 at Sacramento, California.



---

Jill Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/17/24

**Claim Number:** 09-TC-03

**Matter:** California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, Adopted May 22, 2009

**Claimants:** City of Anaheim  
City of Brea  
City of Buena Park  
City of Costa Mesa  
City of Cypress  
City of Fountain Valley  
City of Fullerton  
City of Huntington Beach  
City of Irvine  
City of Lake Forest  
City of Newport Beach  
City of Placentia  
City of Seal Beach  
City of Villa Park  
County of Orange  
Orange County Flood Control District

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

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

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