



## State Water Resources Control Board

October 14, 2024



### VIA DROP BOX

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

Re: *San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1, F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R County of San Diego, Cities of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, San Diego, and Vista, Claimants*

### **Comments on and Objections to Claimants' Written Comments and Proposed Reasonable Reimbursement Methodologies dated February 16, 2024**

Dear Director Halsey:

The Commission on State Mandates' (Commission) adopted its Amended Decision on Remand in the above matter on May 26, 2023. On July 27, 2023, the Commission issued a Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing. On March 29, 2024, the Commission approved a written stipulation by the parties to the above matter to extend by six months the time for claimants to file written comments and proposed reasonable reimbursement methodology (RRM). The approved written stipulation also extended by six months the time for the State Water Resources Control Board (State Water Board) and California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) (collectively Water Boards), the Department of Finance (Finance) and the State Controller's Office to file comments and make objections to claimants' written comments and proposed RRM. Claimants filed comments and their proposed RRM on February 20, 2024. The Commission subsequently granted a two-week extension to October 14,

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

2024, for the Water Boards, Finance and the State Controller's Office to file comments. In accordance with this schedule, the Water Boards submit the following comments and objections to claimants' comments and proposed RRM. The Water Boards also join in the comments filed by Finance in this matter.

As detailed below and in the attached Technical Analysis prepared by the Water Boards' technical expert and incorporated by reference in these comments, the proposed RRMs (1) fail to satisfy the statutory requirements for adoption of RRMs, (2) are not supported by substantial evidence in the record, and, critically, (3) would ignore accuracy, although accuracy can be achieved here. Finally, rejection of the proposed RRMs in favor of reimbursement based upon fully known costs is the only practical approach to reimburse eligible claimants for implementation of activities mandated in the varied and complex municipal separate storm sewer system (MS4) permit context.

Statewide, the nine California Regional Water Quality Control Boards and the State Water Board regulate several hundred local agencies through MS4 permits. The regulated local agencies vary widely in overall population, density, geographic size and characteristics, predominant land uses, hydrology, and individual jurisdictional operations, among other factors. MS4 permits can, and do, vary widely based on local conditions and predominant sources of pollution. MS4 permits are required by federal law to be individualized<sup>1</sup> so no two permits are exactly alike. Successive permits issued to local agencies often carry over permit conditions, but also include new permit conditions that build upon the earlier permit, and therefore generally are not exact replicas of the prior permit.

While MS4 permits are considered executive orders within the meaning of Government Code section 17516(c)<sup>2</sup> for purposes of determining whether they impose reimbursable state mandates, these complex permits, often comprising several hundred pages, must be analyzed on a case-by-case basis to determine which claimed permit provisions impose mandates subject to reimbursement. Once the Commission determines which permit provisions impose reimbursable mandates, more refined scrutiny is necessary to ensure that only reasonably necessary activities to perform a particular mandate are reimbursed through adoption of parameters and guidelines.<sup>3</sup> While some mandates imposed by executive orders or statutes, such as the subject of the Commission's 2015 Decision in Case No. 14-PGA-01 (11-TC-03),<sup>4</sup> may lend themselves to the RRM process, the San Diego Water Board Order No. R9-2007-0001 (Test Claim Permit), like other MS4 permits, does not. Claimants' inability to satisfy the statutory requirements here, despite submittal of over 80,000 pages of supporting documentation,

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<sup>1</sup> See 40 C.F.R. § 122.26(a)(3).

<sup>2</sup> *County of Los Angeles v. Commission on State Mandates*, 150 Cal.App.4th (2007).

<sup>3</sup> Gov. Code § 17557.

<sup>4</sup> In re Parameters and Guidelines, *Immunization Records – Pertussis*, Case No. 14-PGA-01 (11-TC-03) (Sept. 25, 2015) (2015 Decision).

demonstrates why complex and varied MS4 permits are incompatible with the RRM process.

For these and the additional reasons discussed below, the Water Boards urge the Commission to reject claimants' proposed RRMs and instead adopt the Draft Proposed Decision and Parameters and Guidelines dated July 27, 2023.<sup>5</sup> The Water Boards also request that the Commission reject submittal of any new evidence claimants may submit in reply to these comments. If the Commission were to allow additional evidence, the Water Boards request the opportunity to review and comment on such evidence.

### **I. The Proposed RRMs Do Not Satisfy the Statutory Requirements for Adoption of RRMs**

Government Code section 17518.5 sets forth the statutory framework for development and adoption of an RRM as an approach for reimbursing eligible local agencies or school districts for the costs of implementing reasonably necessary activities to carry out state mandates. The Water Boards recognize that the Legislature provided the Commission flexibility in the adoption of RRMs<sup>6</sup> and that Government Code section 17518.5 “expressly provides for an RRM as an alternative to the requirement for detailed documentation of actual costs.”<sup>7</sup> The RRM framework, nevertheless, must rely on the accurate and verifiable sources of information employed in the development of an RRM and “requires that the end result ‘balances accuracy with simplicity.’”<sup>8</sup> As explained below and in the attached Technical Analysis, Claimants fail to demonstrate that the sources of information on which they base the proposed RRMs meet these robust standards.

Government Code section 17518.5 defines an RRM as follows: “(a) ‘Reasonable reimbursement methodology’ means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.”<sup>9</sup> Section 17518.5 provides in part:

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<sup>5</sup> Prior to adoption, the Commission should modify the Draft Proposed Decision and Parameters and Guidelines to reflect that the reimbursement period for most of the mandated activities does not begin until March 24, 2008, based on the December 12, 2007 Addendum to the 2007 Test Claim Permit that extended by 60 days the requirement to begin implementation of most of the mandated activities. See Water Board’s Comments, Decl. of Erica Ryan, Exh. 1 (Technical Analysis), Att. 5.

<sup>6</sup> 2015 Decision, p. 9.

<sup>7</sup> Id., p. 11.

<sup>8</sup> Ibid.; see Gov. Code § 17557, subd. (f).

<sup>9</sup> Government Code section 17514 defines “costs mandated by the state” to mean “any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1976, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

(b) “[a] reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

(c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner [,and]

(d) Wherever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.”

Section 1183.12 of the Commission’s regulations specifies that “[a] proposed reasonable reimbursement methodology, as described in Government Code section 17518.5, shall include *any documentation or assumption* relied upon to develop the proposed methodology.”<sup>10</sup> Further, section 1183.12 makes clear that representations of fact to support a proposed RRM “shall be supported by documentary evidence or testimonial evidence in accordance with section 1187.5 of these regulations.”<sup>11</sup>

Claimants assert that the proposed RRMs “are based on detailed information from the Municipal Claimants relating to the costs they incurred to perform the state mandated activities.”<sup>12</sup> Claimants identify eight general categories of documents that were reviewed by their consultant, John Quenzer, whose declaration relies on 14 volumes of documents comprising approximately 80,000 pages. As described in the Technical Analysis prepared by the Water Boards’ technical expert, Erica Ryan, claimants’ failure to identify specific references in their supporting documents prevents the Water Boards (and the Commission) from evaluating the sources of information on which the proposed RRMs are based. As a result, the Water Boards are likewise prevented from concluding that the proposed RRMs were developed consistent with the statutory framework for RRMs in Government Code section 17518.5(b)-(d). Neither the Water Boards nor the Commission should have to guess which specific documentation, assumptions and sources of information claimants contend justify their requested reimbursement in the amount of \$252,762,731.82.<sup>13</sup>

Claimants do not explain which individual claimants they consider a representative sample of eligible claimants,<sup>14</sup> fail to provide a summary of the data sets used and calculations conducted for developing the referenced unit costs or documents relied upon in the RRMs, fail to describe or show through spreadsheets how the

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<sup>10</sup> Cal. Code Regs., tit. 2, § 1183.12(b) (emphasis added).

<sup>11</sup> Id., § 1183.12(d).

<sup>12</sup> Claimants’ comment letter, p. 4.

<sup>13</sup> Quenzer Decl., ¶ 20.

<sup>14</sup> Quenzer Decl., ¶ 9.

methodologies are actually calculated and fail to provide specific references to information within the 80,000 pages of supporting documents to allow the Water Boards to evaluate or reproduce the basis for each of the proposed RRM. The Water Boards have therefore been prevented from evaluating whether and how the proposed RRM are based on approximations of local costs or specific actual costs to perform the mandated activities, and whether and how the proposed RRM identify and allocate shared costs to individual claimants, as required by applicable law.

Claimants also fail to demonstrate how, if at all, the proposed RRM consider “variation in costs among local agencies . . . to implement the mandate in a cost-efficient manner,”<sup>15</sup> as required by statute. Finally, as discussed below and in the Water Boards’ Technical Analysis,<sup>16</sup> claimants’ proposed RRM are based upon time periods that exceed the actual time periods in which individual claimants were required to implement the individual mandated activities, propose reimbursement for activities performed under the prior 2001 permit, and fail to demonstrate that the proposed methodologies appropriately exclude duplicate, or otherwise nonreimbursable, activities. Claimants cannot demonstrate that the proposed RRM were developed consistent with the statutory and regulatory requirements.<sup>17</sup>

*A. The Proposed RRM Do Not Satisfy Section 17518.5(b).*

Claimants have not demonstrated that the proposed RRM are based on cost information from “a representative sample of eligible claimants, information provided by associations of local agencies, or other projections of local costs.” While claimants state that the proposed RRM “include[] cost information from a representative sample of the Co-Permittees[,]”<sup>18</sup> nowhere do claimants identify which individual claimants constitute a representative sample for purposes of developing any of the proposed RRM. The 19 eligible claimants are varied in geographic size, land uses, populations, and maturity of stormwater programs, among other variations. As discussed in the Technical Analysis, some claimants rely on internal agency staff for permit implementation; others rely primarily on outside contractors, and in some instances, eligible claimants rely on other claimants to perform functions and provide reimbursement pursuant to memoranda of understanding (MOU). By not identifying with any particularity which eligible local agencies claimants consider representative and by not providing specific references to associated supporting documentation, the Water Boards, and the Commission, are prevented from verifying that the purported sample of eligible claimants is in fact representative and are likewise prevented from evaluating any relevant cost information. Without this essential information, neither the

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<sup>15</sup> Gov. Code § 17518.5(c).

<sup>16</sup> Ryan Decl., Att. 1.

<sup>17</sup> Claimants’ Comments, p. 4.

<sup>18</sup> Claimants’ Comments, Quenzer Declaration, ¶ 9; see also Barrett Declaration, ¶ 9.

Commission nor the Water Boards can conclude any of the proposed RRM would result in reasonable reimbursement.<sup>19</sup>

*B. The Proposed RRM Do Not Satisfy Section 17518.5(c)*

Government Code section 17518.5(c) requires that a RRM consider “the variation in costs among local agencies . . . to implement the mandate in a cost-efficient manner.”<sup>20</sup> Claimants have not demonstrated that the proposed RRM satisfy this statutory requirement. Claimants’ singular reference to consideration of variation in costs<sup>21</sup> is Mr. Quenzer’s statement that he “considered these documents [Volumes 1-14] and the variation in costs among Municipal Claimants to implement the state mandates to develop [RRMs] for each reimbursable activity described in the Draft Proposed Decision and Parameters and Guidelines for Test Claim 07-TC-09-R . . . .”<sup>22</sup> No where does Mr. Quenzer specify whether he considered costs from all or a subset of individual claimants, and if so, which claimants comprise the subset for any of the RRM.

The applicable statute further specifies that the variation in costs pertains to local agencies implementing the mandated activities “*in a cost-efficient manner.*”<sup>23</sup> Claimants’ comments describing development of proposed RRM do not identify any specific variations in costs that may have been considered for any or all of the proposed RRM. Moreover, the proposed RRM do not demonstrate that the costs to implement each particular mandate in a cost-efficient manner are properly confined to “only those costs for the activities that were determined to be reimbursable by the Commission in the decision on the test claim, and the costs of reasonably necessary activities to comply with the mandate pursuant to section 1183.8(d) . . . .”<sup>24</sup> In fact, as discussed below and in the Technical Analysis, most, if not all, of the proposed RRM would result in improper reimbursement for activities the Commission has not determined are reasonably necessary to implement the Test Claim Permit’s<sup>25</sup> mandated provisions.

As discussed in the Water Boards’ Technical Analysis, claimants’ use of budgeted costs that do not necessarily correspond to a particular mandated activity makes it difficult if not impossible to conclude that the RRM would reimburse claimants *only* for the costs for activities that are reasonably necessary to implement the mandated activities.<sup>26</sup> For example, claimants’ budgeted costs (a) are projections or estimates of future expenditures so are not necessarily representative of actual costs, and (b) do not

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<sup>19</sup> Claimants do not appear to have relied on other elements of section 17815.5(b) – “information provided by associations of local agencies . . . or other projections of local costs” in developing the proposed RRM.

<sup>20</sup> Gov. Code § 17518.5(c).

<sup>21</sup> Quenzer Decl., ¶ 9.

<sup>22</sup> *Ibid.*

<sup>23</sup> Gov. Code § 17518.5(c).

<sup>24</sup> Cal. Code Regs., tit. 2, § 1183.10(b)(2).

<sup>25</sup> The term Test Claim Permit in these comments and the term 2007 Order, as used in the Technical Analysis, refer to the same order.

<sup>26</sup> Ryan Decl., Exh. 1 (Technical Analysis).

distinguish which activities were performed to implement a mandated requirement and which activities were not required or reasonably necessary. As a result, the proposed RRM would improperly reimburse claimants for the implementation of activities that the Commission has not determined are reimbursable. Adoption of the RRM is not appropriate where claimants cannot demonstrate that the costs are limited to the reasonably necessary activities to comply with the mandate pursuant to section 1183.8(d).

*C. The Proposed RRM Do Not Satisfy Section 17518.5(d)*

Section 17518.5(d) provides, in part, “Wherever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.”

Claimants assert that “[s]ome of the RRM are based on “approximations of local costs’ from which generalized formulas to support timely and cost-effective reimbursement have been developed[,] [s]ome of the RRM are based on both ‘approximations of local costs’ and specific actual costs to perform the mandated activities[, and finally,] some of the RRM derive solely from fixed actual costs that were then allocated to each individual Municipal Claimant using a cost formula used by the Municipal Claimants and documented in various Cost-Sharing Memorandums of Understanding (‘MOUs’) used by the Municipal Claimants to divided[sic] costs for certain mandated activities.[fn 10]. How these RRM may be used for purposes of timely and cost-effective reimbursement is set forth in the discussion of each RRM.”<sup>27</sup>

As discussed above, the RRM framework focuses on the sources of information underlying a proposed RRM. Claimants do not identify or explain the documentation or assumptions relied upon to develop each of the proposed RRM. Moreover, claimants fail to demonstrate that the RRM exclude, or are capable of excluding, costs for activities that are not reasonably necessary to implementing the mandated activities and are therefore not reimbursable. Likewise, claimants fail to demonstrate if, or how, the proposed RRM can be adjusted to ensure that they result in reimbursement only for the allowable time periods in which the mandated activities are required to be performed and, further, that they are amenable to adjustments for any that offsetting revenues that reduce an individual claimant’s reimbursement amount.

By way of example, claimants have not demonstrated how the following sources of information are accurate and verifiable for purposes of developing the proposed RRM. Moreover, as discussed below, how, if at all, these sources of information support the proposed RRM is not transparent and these sources of information do not demonstrate that the proposed RRM are based on substantial evidence.

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<sup>27</sup> Claimants’ Comments, p. 4.

*2005 NPDES Stormwater Cost Survey*

To the extent claimants assert one or more proposed RRM is based on approximations of local costs, reliance on the 2005 NPDES Stormwater Cost Survey (2005 State Survey)<sup>28</sup> is inappropriate for the following reasons. Claimants primarily rely on the 2005 State Survey in an attempt, by comparison, to validate values derived in the proposed RRMs. Claimants' reliance on the 2005 State Survey to validate values is inappropriate for several reasons, as discussed below and in the Technical Analysis. The costs in the 2005 State Survey do not isolate those costs associated only with mandated activities. In addition, claimants did not identify the 2005 State Survey in their list of supporting documents, but attempt to rely on it to validate elements of some of the proposed RRMs. The Water Boards explain the purposes, scope, and importantly, the limitations, of the 2005 State Survey in the Technical Analysis in support of the Water Boards' comments.<sup>29</sup>

The 2005 State Survey is neither representative nor does it serve as a reasonable approximation of local agency costs to implement the Test Claim Permit's mandated activities. The 2005 State Survey evaluated costs from six local agency municipal stormwater permittees statewide, only one of which is an eligible claimant. The 2005 State Survey is not representative of costs to implement Test Claim Permit's mandated activities.

Attempting to rely on costs reported by local agencies in other jurisdictions, subject to different permit provisions and implemented in an earlier time period, to develop RRMs for this Test Claim Permit introduces even greater variability in the proposed RRMs. The City of Encinitas is the only eligible claimant whose costs were considered in the 2005 State Survey. However, the City of Encinitas's costs reported for the survey were based on implementation of the 2001 San Diego County Permit,<sup>30</sup> not the Test Claim Permit. And as explained in the Technical Analysis, the 2005 State Survey was developed not to approximate local costs of permit implementation but for the primary purpose of understanding costs per household associated with permit implementation. The purposes, scope and limitations of the 2005 State Survey as described in the Technical Analysis demonstrate that costs identified therein are neither relevant nor representative and should not be used as a proxy to validate any of the proposed RRMs. In short, the costs considered in the 2005 State Survey do not represent the costs to implement the mandated activities because the costs relied on include other expenses. The 2005 State Survey does not provide accurate or verifiable evidentiary support for any of the proposed RRMs.

Additionally, the 2005 State Survey concludes that the very nature of stormwater program budgets, which are inconsistent statewide due to varying local agency internal operations, make it challenging to isolate which specific permit activities are associated

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<sup>28</sup> Ryan Decl., Exh. 1, Att. 7.

<sup>29</sup> Ryan Decl., Exh. 1, §III.B.

<sup>30</sup> Ibid.



with which expenses in an overall budget.<sup>31</sup> One of the outcomes of the 2005 State Survey was that municipal stormwater budgets are complicated and not reliable for the purposes of isolating costs for specific permit activities.<sup>32</sup>

### *2011 County of San Diego Survey*

Claimants state that the proposed RRM s are based in part on the 2011 County of San Diego Survey (County Survey). Unlike the 2005 State Survey, the County Survey *is* specific to eligible claimants. The County Survey, however, likewise does not support an accurate or verifiable approximation of local costs. As described in the Technical Analysis, individual claimants responded to the surveys with different types of inputs based on subjective determinations. The data are not comparable and cannot be normalized for purposes of developing a methodology that can be relied upon as accurate and verifiable.

### *Stormwater Program Budgets*

Several of the proposed RRM s rely on approximations of budgeted costs rather than actual expenditures. As explained in the Technical Analysis, claimants have not demonstrated that budgeted costs are appropriate for development of RRM s. It is not clear if claimants intend budgeted costs to serve as approximations of actual local costs. However, doing so is fraught with inaccuracies. Claimants' consultant Mr. Quenzer does not describe or reference which claimants' budgets he considered and whether they were proposed budgets, council/board of supervisors approved budgets, reconciled budgets or budgets that were submitted to the San Diego Water Board through permit reporting requirements. Mr. Quenzer does not explain which type of budgets, and for which years, he bases any of the proposed RRM s. Use of a percentage of a stormwater budget that was developed to support implementation of a claimant's comprehensive stormwater program for the limited purpose of supporting an RRM for a discrete permit activity cannot and does not yield an approximate cost to perform that discrete activity. RRM s reliant on percent of stormwater budget are inherently inaccurate.<sup>33</sup>

## **II. The Proposed RRM s Are Not Supported by Substantial Evidence**

While the Legislature established the RRM framework as an alternative to the traditional parameters and guidelines process that requires submittal of actual cost information, decisions to adopt an RRM are equally subject to the substantial evidence standard. Representations of fact to support a proposed RRM "shall be supported by documentary evidence or testimonial evidence in accordance with section 1187.5 of these regulations."<sup>34</sup> The RRM framework focuses on the *sources of information*

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<sup>31</sup> Ibid.

<sup>32</sup> Id.

<sup>33</sup> Ryan Decl., Exh. 1, §III.B. pp. 59-61

<sup>34</sup> Id., § 1183.12(d).

underlying a proposed RRM and a proposed RRM “shall include any documentation or assumption relied upon to develop the proposed methodology.”<sup>35</sup> As discussed below and in the Technical Analysis, the proposed RRMs are not predicated on accurate and verifiable supporting documentation or assumptions.

While claimants submitted fourteen volumes of supporting documentation comprising approximately 80,000 pages, claimants do not identify specific information or data within the documentation, identify or describe any assumptions relied upon, nor provide summaries of calculations they may have relied on in developing the proposed RRMs. As mentioned in the discussion of the 2005 State Survey, above, claimants purport to rely on a study which was prepared for a different purpose and does not reflect a reasonable approximation of local costs to implement the activities mandated in the Test Claim Permit. The Water Boards (and the Commission) are prevented from ascertaining which cost or other information within the 80,000 pages of supporting documents claimants rely on to develop the separate formulas and methodologies.

In many of the formulas for the RRM equations, claimants rely on a percent of a total claimant stormwater budget. Similar to the 2005 State Survey, as explained in the Technical Analysis, these budgets do not provide accurate and verifiable cost information as the broad categories also include expenses for activities that are not mandated. In addition to not demonstrating how costs exclusively for mandated activities are isolated within the formulas, claimants provide no mechanism that would allow the Water Boards or the Commission themselves to accurately isolate the allowable costs.

*A. The proposed RRMs are exceedingly complex and incapable of reproduction.*

The complexity associated with the proposed RRMs is exemplified by the following overview/summary of the proposed RRM equations provided in the Technical Analysis.<sup>36</sup> Claimants propose an RRM equation for a total of eight mandated activities. However, the complexity of applying a RRM methodology to the mandated activities of the 2007 Order becomes evident with the overall structure of the claimant’s RRM equations. Claimants proposed a total of 18 separate proposed formulas comprised of 34 independent factors as a methodology for reimbursement costs.

Further, each of the 34 independent factors within the 18 formulas has its own specific criteria as proposed by the claimants for the RRM to describe a reimbursement cost for a mandated activity. The criteria are a complex mix of timeframes of reimbursement and unique mandated activity equation factors. The 34 unique factors within each formula are further complicated across each of the proposed RRM equations and formulas with the application of budgets, agreements, percent of budgets or agreements, actual costs,

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<sup>35</sup> Cal. Code Regs., tit. 2, § 1183.12(b).

<sup>36</sup> Ryan Decl., Exh. 1, §II. pp. 14-16

CPI adjustment factors, or time frames of reimbursement used by the claimant to describe the mandated activity.

For example, for the mandated activities conducted under Sections E.2.f and E.2.g (Watershed activities and collaboration in the Watershed Urban Runoff Management Program) claimants have proposed four different RRM reimbursement equations with eight separate factors. Each of the eight equation factors is further defined to describe the mandated activity through either an average rate cost, percent of a budget or MOU, or a total number by the claimants in an attempt to describe a total reimbursement cost of the mandated activity based on how each of the equation factor descriptions for “Watershed Lead Costs,” “MOUs,” “Jurisdictional Activities,” “MOU,” “WRUMP Costs,” “Rate,” and “# Meetings” were conducted by the claimants under the Test Claim Permit.

For each of the 34 factors that comprise the proposed RRM methodology, examples of which are listed below, no documentation was provided to identify the location of the specific data used for each equation factor, which data were used, or how each factor was calculated for the proposed RRM equation reimbursement costs:

- *actual costs*
- *average unit costs for conveyance system cleaning*
- *number of meetings*
- *number of claimant attendees*
- *attendee claimant average rate*
- *calculation of the CPI*
- *application of CPI to equation factors,*
- *percentages applied to stormwater budgets*
- *percentages applied to stormwater applied to MOUs*
- *Claimant Proportional Share of MOUs*
- *Claimant Total Stormwater Budgets*
- *MOU Budgets*
- *Workgroup Budgets*
- *Workgroup Costs*
- *Contractor Costs and*
- *Claimant Proportional Share of Contractor Costs*

As a result, the formulas, including some individual components of the formulas, are not capable of reproduction based on the evidence claimants submitted. For example, Mr. Quenzer’s references to Consumer Price Index (CPI) and also to “total budgets,” cannot be reproduced or associated with a particular claimant or a particular mandated activity. The lack of documentation and specificity concerning any assumptions Mr. Quenzer may have relied on in developing his opinions render the proposed RRMs incapable of objective evaluation, reproduction or validation.

The Water Boards' technical expert provides extensive detail explaining some of the additional deficiencies in claimants' proposed RRM in the Technical Analysis and some are also identified below. These deficiencies underscore the lack of accuracy, verifiability and, fundamentally, the lack of evidentiary support for the proposed RRM.

1. *Overbroad Time Periods.* The proposed RRM formulas are based on overbroad fiscal years that would, inappropriately, reimburse claimants for activities performed (1) before the effective date of the Test Claim Permit and after December 31, 2017, (2) before the delayed implementation start date of March 24, 2008, established in the December 12, 2007 Addendum to the Test Claim Permit adopted December 12, 2007, and applicable to all but one mandated activity, and (3) pursuant to the preceding 2001 MS4 permit, during the transitional period established in the Test Claim Permit, and extended by the December 12, 2007 Addendum.
  2. *Reasonably Necessary Activities.* The Draft Proposed Decision and Parameters and Guidelines identify the reasonably necessary activities to implement the mandated activities and exclude certain proposed reasonably necessary activities. Claimants' reliance on percent share of total budgets or MOUs for the majority of the equations prevents effective isolation of costs for reasonably necessary activities to ensure appropriately limited reimbursement. The proposed RRM would reimburse claimants for preliminary activities such as development of a mandated activity even though the activities were determined to be not reimbursable in the Amended Decision on Remand and in some cases, as explained in the Technical Analysis, would reimburse claimants for duplicate efforts.<sup>37</sup>
  3. *The proposed RRM are internally inconsistent.* Claimants' consultant John Quenzer describes the proposed formulas but also presents them in equation form. Moreover, the summary table in claimants' comment letter differs from the equations presented in Mr. Quenzer's declaration. These inconsistencies prevent the Water Boards from evaluating the accuracy of the equations.
  4. *The proposed RRM do not reflect or allow for pro-rating.* The formulas do not pro-rate nor demonstrate how pro-ration can be accomplished to isolate only those costs to perform a higher level of service as compared to the 2001 permit.
- B. Comparison to the Commission's 2015 RRM Decision Underscores the Lack of Evidentiary Support Here*

In contrast, the RRM the Commission adopted in its 2015 Decision in 14-PGA-01 (11-TC-02) was supported by a declaration from the State Controller's Office certifying that reimbursement claims data for the two fiscal years of data relied upon was true and

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<sup>37</sup> Ryan Decl., Exh. 1.

correct. Additionally, the school district claimant also filed a declaration of its expert witness in which he explained precisely how he obtained the data to form his opinion and formulated the methodology on the basis of that data. The Commission found that the RRM there was based on a representative statistical analysis that considered rural and urban, large and small districts and was from a representative sample of California school districts. “The proposed RRM considers the variation in costs because the number of students varies in the different districts and ‘the level of actual costs incurred is tied to the number of students.’”<sup>38</sup>

The RRM in the 2015 Decision was verifiable and supported “with a statistical analysis prepared by the consultant who took the claims data provided by the Controller’s Office and the enrollment data published by CDE to determine the weighted average of costs claimed for fiscal year 2012-2013 for pupils entering 7<sup>th</sup> grade. This method also eliminated outliers by comparing ‘actual per-student claim levels to the expected value for each district, taking into account its size and proportion of claims attributable to follow-up activities.’ The proposed unit cost was then checked for reasonableness by reviewing the claims and enrollment data for fiscal year 2011-2012.”<sup>39</sup>

The methodology approved in 2015 was accurate, verifiable, and capable of reproduction. The reader was able to understand from the declaration which school districts’ data were considered, which were not considered, and why. Here, it is impossible to ascertain what specific information claimants’ expert either considered or relied on to develop his opinion of what is a reasonable cost for a given mandated activity. The lack of specificity in claimants’ comments and declarations renders the RRMs here incapable of a determination that the proposed RRMs are supported by substantial evidence. In summary, the record lacks the substantial evidence necessary for the Commission to find that the proposed RRMs satisfy the statutory and regulatory criteria for an RRM and would provide reasonable reimbursement for the mandated activities.

### **III. The Proposed RRMs Fail to Balance Simplicity with Accuracy and Improperly Ignore Accuracy Although It Is Achievable Here**

Throughout their comments, claimants’ purported focus is on fair and efficient reimbursement<sup>40</sup> with no acknowledgement of the independent requirement that an RRM must balance simplicity with accuracy.<sup>41</sup> As explained in the Technical Analysis,<sup>42</sup> the proposed RRMs are exceedingly complex and not susceptible to implementation in a straightforward manner that achieves simplicity. And since actual costs are wholly past and fully known the proposed RRMs run counter to the principle the Commission

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<sup>38</sup> Decision 14-PGA-01, p. 23 (footnote omitted.)

<sup>39</sup> Ibid.

<sup>40</sup> Cite to Claimants Comments.

<sup>41</sup> Gov. Code section 17557(f)

<sup>42</sup> Ryan Decl., Exh. 1, §II. pp. 14-16

articulated in its 2015 Decision: “[T]he purpose of an RRM is to promote simplicity, not to ignore accuracy, where accuracy can be achieved.”<sup>43</sup>

#### *A. Accuracy is Achievable Here*

The proposed RRMs purport to reduce complex mandated activities across varied eligible claimants to reimbursement formulas that, collectively, total over \$250 million dollars of requested reimbursement. Yet claimants have not demonstrated that the formulas exclude or are capable of excluding expenses for activities the Commission has not determined are reimbursable to reflect available accuracy. Nor do claimants explain how the proposed RRMs would, or even could, be adjusted to account for offsetting revenues that an individual claimant may have received for one or more mandated activities during the reimbursement period. Finally, as detailed in the Technical Analysis, claimants’ formulas propose reimbursement for activities prior to the time period in which the Test Claim Permit required their performance. Any submittals for reimbursement in reliance on proposed RRMs would require further adjustment to reduce reimbursement for nonreimbursable activities and to accurately account for offsetting revenues. The claims submittal process under the proposed RRMs would be far from simple and would result in inaccurate reimbursement.

The record before the Commission shows that accurate reimbursement is achievable here. The allowable time periods for reimbursement for each of the Test Claim Permit’s mandated activities terminated on or before December 31, 2017. Claimants have already expended funds to implement the mandated activities and are aware of their actual expenditures as reduced by any offsetting revenues. Unlike the mandated activities in the Commission’s 2015 Decision in 14-PGA-01 in which straightforward, reproduceable formulas for unit cost reimbursement were developed for past but also prospective performance of reimbursable mandated activities,<sup>44</sup> actual costs to implement the Test Claim Permit have been incurred and are fully known.<sup>45</sup> Claimants’ complicated and unsupported proposed RRMs should not supplant accuracy.

#### *B. Reasonable Reimbursement Methodologies Are Incompatible with Accurate Reimbursement in the MS4 Permit Context*

As a general matter, the development and implementation of MS4 permits is inherently complex. MS4 permits such as the Test Claim Permit are regionally/geographically limited in scope and regulate a limited number of local agencies. The local agencies

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<sup>43</sup> Decision 14-PGA-01, p. 22 (emphasis added).

<sup>44</sup> Decision 14-PGA-01 illustrates this contrast. That decision provides, the “Commission approves the request to amend the parameters and guidelines and adopts the base unit cost RRM of \$9.17 per 7<sup>th</sup> grade pupil on 2012-2013 data, adjusted in subsequent years by the Implicit Price Deflator, for the period of reimbursement beginning July 1, 2014. The base unit costs, when adjusted for inflation by the Implicit Price Deflator for fiscal year 2014-2015 is \$9.47.” None of the proposed RRMs here are similarly straightforward.

<sup>45</sup> Ryan Decl., Exh. 1, §II.b , p. 61.

regulated by MS4 permits often vary by population, predominant land uses, geographic and hydrologic characteristics, predominant sources of pollution, and often have varied funding sources.<sup>46</sup>

And while claimants generally are subject to the same mandated activities set forth in the permit, the level of effort to implement mandated activities is not consistent across claimants and does not lend itself to a single methodology, unit cost or otherwise, per mandated activity. The fact that claimants submitted 80,000 pages of supporting documents and were still unable to identify substantial evidence in the record to support their proposed RRM underscores the complexity of municipal stormwater permits and their implementation, and further illustrates that the proposed RRM's one-size-fits-all approach in the context of MS4 permits will not result in reasonable reimbursement that is fair both to eligible claimants and the State.

Further, as explained in the Technical Analysis, during the reimbursement period, some eligible claimants were charging a fee to residents that applied, in part, to carrying out certain permit implementation activities.<sup>47</sup> Others received revenues from the statewide gas tax or other sources during the Test Claim Permit reimbursement period.<sup>48</sup> These variations in revenues or funding sources underscore the importance of accurately accounting for implementation expenses, but also for accurately accounting for required reductions to account for offsetting revenues on a claimant-by-claimant basis to assure that claimants are only reimbursed for mandated activities actually performed. Claimants' proposed RRM's provide no such assurance.

The Test Claim Permit is considered an executive order in the mandates framework. Yet, the Test Claim Permit, like the approximately 13 other MS4 permits throughout the State, is unlike most executive orders and its implementation by local agencies presents unique and complex challenges. The complexity inherent in stormwater regulation, applied on a regional basis, makes the Test Claim Permit, as well as other stormwater permits, ill-suited for establishing reasonable reimbursement formulas that balance simplicity with accuracy.

And as the Commission recognized in its 2015 Decision, while an RRM must balance simplicity with accuracy, accuracy may not be ignored where it is achievable. Here, claimants have not established how the proposed RRM's achieve simplicity, let alone how they balance simplicity with accuracy in the context of the Test Claim Permit's mandated activities. The reimbursement period for implementation of the mandated activities terminated at the end of 2017. Claimants know the costs they incurred to implement the mandated activities and know what offsetting revenues each must

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<sup>46</sup> Id., Ryan Decl., Exh. 1, §II.B pp. 59-61, and Ariel Cutter Declaration.

<sup>47</sup> Id., Ryan Decl., Exh. 1, §II.C p. 25, and Ariel Cutter Declaration.

<sup>48</sup> Id., Ryan Decl., Exh. 1, §II.C p. 25, and Ariel Cutter Declaration.

account for prior to reimbursement. Under these circumstances, the Commission should reject the proposed RRM's in favor of accuracy.

For the above reasons and as detailed in the supporting Technical Analysis, declarations and other supporting documents, the Water Boards urge the Commission to reject the proposed RRM's and instead adopt the Draft Proposed Decision and Parameters and Guidelines dated July 27, 2023, with the modification noted above.

The above comments and objections are true and correct to the best of my knowledge, information and belief.

Sincerely,

A handwritten signature in blue ink that reads "Catherine George Hagan". The signature is written in a cursive style.

Catherine George Hagan  
Attorney IV  
Office of Chief Counsel  
State Water Resources Control Board

cc: Service List for 07-TC-09-R via Commission Drop Box



## DECLARATION OF ARIEL CUTTER

### IN SUPPORT OF WATER BOARDS' COMMENTS ON PROPOSED REASONABLE REIMBURSEMENT METHODOLOGY BEFORE THE COMMISSION ON STATE MANDATES IN 07-TC-09-R

I, Ariel Cutter, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth below and, if called as a witness, could testify competently to all of the facts set forth herein.
2. I am employed by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and serve in the capacity of Scientific Aid. My business address is 2375 Northside Drive, Suite 100, San Diego, California, 92108.
3. I have a Bachelor of Science in Environmental Science from American University.
4. In my role as a Scientific Aid, I am familiar with the practice of locating publicly available records from public agency websites.
5. On October 01, 2024, I was asked to gather certain records to support the San Diego Water Board's and State Water Resources Control Board's (Water Boards) development of comments and a technical analysis addressing the Claimants' Proposed Reasonable Reimbursement Methodology in the Commission on State Mandates matter, 07-TC-09-R.
6. I located and downloaded publicly available San Diego City Adopted Budget documents from the City of San Diego's website under Adopted Budget Home, Budget Archives, for the Fiscal Years 2006-2007 through 2015-2016 on the City's website. I accessed the Adopted Budgets for each of the above fiscal years at the following location: [Fiscal Year 2025 Adopted Budget | City of San Diego Official Website](#).
7. For each fiscal year from 2006-2007 through 2015-2016 (Fiscal Year 2016 on the City's website), I electronically combined the San Diego City Adopted Budget individual files into a single file for fiscal years 2006-2007 through 2012-2013 (Fiscal Year 2013 on the City's website). The City's website made single combined files available for each fiscal year 2013-2014, 2014-2015 and 2015-2016 so I downloaded the single combined file for each of these fiscal years.

8. The single PDF for each fiscal year from 2006-2007 through 2015-2016 obtained as described above are included in the concurrently filed Water Boards' Supporting Documents.
9. I reviewed the downloaded San Diego City Adopted Budget documents and compiled a summary spreadsheet titled "SD City Budgets." The summary spreadsheet depicts specific information from the San Diego City Adopted Budgets as follows: (1) Storm Drain Fees, which include revenue and expenditures related to the Storm Drain Fee as shown on the San Diego City Adopted budgets for each of the fiscal years 2006-2007 through 2015-2016, and (2) General Fund expenditures for Storm Water Pollution Prevention from Fiscal Year 2006-2007 through Fiscal Year 2015-2016 as shown in the San Diego City Adopted Budget documents for these fiscal years.
10. The spreadsheet titled "SD City Budgets" is included as a PDF file concurrently filed Water Boards' Supporting Documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/10/24 San Diego, CA

(Date and Place)



(Signature)

Ariel Cutter

(Printed Name)

**DECLARATION OF ERICA RYAN**  
**IN SUPPORT OF WATER BOARDS' COMMENTS ON CLAIMANTS'**  
**PROPOSED REASONABLE REIMBURSEMENT METHODOLOGY**

**07-TC-09-R**

I, Erica Ryan, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts set forth below and, if called upon to testify as a witness, could testify competently to all of the facts set forth herein.
2. Except as otherwise stated, the facts set forth herein are known to me personally or have been determined through my review of public records or official records maintained in the ordinary course of business by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and the State Water Resources Control Board (State Water Board) (collectively Water Boards). All records reviewed were maintained by authorized personnel, or persons acting under their control, in the ordinary course of business at or near the time of the act, condition, or event described therein. If called to testify as a witness, I could and would testify competently thereto.

**Background**

3. I have been employed by the San Diego Water Board as a Water Resource Control Engineer since 2015. My business address is 2375 Northside Drive, Suite 100, San Diego, California, 92108. During my employment with the San Diego Water Board, I have been assigned to the Stormwater Management Unit within the Surface Water Protection Branch
4. My work with the San Diego Water Board is varied and includes:
  - a. Municipal Separate Storm Sewer System (MS4) permittee (discharger) compliance assessment, inspection and enforcement of San Diego Water Board MS4 Permits including Order R9-2013-2001, as amended (Regional MS4 Permit), Orders R9-2007-001; R9-2009-0002 and R9-2010-0016.
  - b. Technical review and analysis of Regional MS4 Permit Copermitttee-required submittals;
  - c. Development of the proposed reissuance of the Regional MS4 Permit;
  - d. Discharger compliance assessment, inspection, and enforcement of State Water Board NPDES Permits that regulate Phase II (Small) MS4 discharges, industrial stormwater discharges, and construction discharges; and

- e. Provide assistance to other San Diego Water Board Units for MS4 Permit Compliance and Implementation, Restoration Plans, and total maximum daily loads (TMDLs).
5. I have Bachelor of Science degree in Structural Engineering from University of California, San Diego.
  6. I possess the following certifications/licenses that are relevant to my work with the San Diego Water Board:
    - a. Qualified Stormwater Pollution Prevention Plan Developer (QSD);
    - b. Qualified Industrial Storm Water Practitioner (QISP)
    - c. Trainer of Record Construction General Permit;
    - d. Trainer of Record Industrial General Permit.
  7. In addition to my work with the San Diego Water Board, I have the following additional relevant experience working within municipalities implementing MS4 permits:
    - a. I was employed by the City of San Marcos as a municipal stormwater program manager during the period 2008 to 2014 and was responsible for varied work including implementation of the requirements in the 2001 and 2007 San Diego Water Board MS4 permits, coordination of MS4 maintenance requirements with contractors and public works, review of development and planning applications, public education and outreach and staff training, preparation of annual reports, attendance at regional and watershed meetings, MOU adoption and cost share implementation, and overall stormwater program budget preparation for city council adoption.
    - b. I performed similar work for the City of Rancho Santa Margarita during the period 2002 to 2008.
    - c. During the period 1984-2002, as a project engineer I provided consultant support for preparation of MS4 Conveyance and Sewer Pipeline Analysis and Design, engineering cost estimates, construction bid estimates, MS4 and regulatory permit compliance documents and cost estimates, local utility agency coordination and cost estimates, construction specification preparation, contract bid documents, municipal representative during construction, constructor claims assessments, and technical consultant contract scope of work development, contract award, and implementation and management of consultant contracts. I supported the following entities, the City of San Diego Sewer Pipeline Group Job Relocation, Berryman & Hennigar, DUDEK & Associates, Torno America and Granite Construction.

8. Through my education and experience, I am familiar with and have knowledge of municipal stormwater permit development and implementation, including review of annual reports and budgets, and enforcement. I am also familiar with and have knowledge of local government/permittee internal operations, including development of annual reports and budgets, permit implementation and compliance. My education and collective experience qualify me to perform technical review and to prepare the attached Technical Analysis.

### **Documents Obtained and Reviewed**

9. I obtained and reviewed the following documents to prepare the Water Boards' Technical Analysis (Technical Analysis) included as Exhibit 1 to my Declaration and submitted concurrently with the Water Boards' Comments on Claimants' Proposed Reasonable Reimbursement Methodology.
  - a. The Commission on State Mandates' Draft Proposed Decision and Parameters and Guidelines for Test Claim 07-TC-09-R, dated July 27, 2023.
  - b. Claimants' Comments on Draft Proposed Decision and Parameters and Guidelines, Test Claim 07-TC-09-R, inclusive of Claimants' request that the Commission adopt Claimants' Proposed Reasonable Reimbursement Methodology, declarations of Lara Barrett and John Quenzer and Supporting Documentation Volumes 1-14.
  - c. City of San Diego Adopted Municipal Budget for FYs 2006/2007-2015/2016 located at <https://www.sandiego.gov/finance/annual> and attached to the Declaration of Ariel Cutter on behalf of the Water Boards.
  - d. Consumer Price Index for All Urban Consumers (CPI-U) Data Series CUURS49ESA0 Years 2005 to 2024 San Diego-Carlsbad, CA All items Base Period: 1982-84=100 located at <https://www.bls.gov/cpi/data.htm>.
  - e. September 2010 US Environmental Protection Agency NPDES Permit Writers' Manual <https://www.epa.gov/npdes/npdes-permit-writers-manual>.
  - f. February 21, 2001, California Regional Water Quality Control Board San Diego Region Order No. 2001 -01 NPDES No. CAS 01 08758 Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the incorporated Cities of San Diego County, and the San Diego Unified Port District (2001 Order).
  - g. December 12, 2007, Addendum No. 1 to Order No. R9-2007-0001 NPDES Permit No. CAS0108758 an Addendum Extending Selected Due Dates for

Order NO. R9-2007-0001 as a result of the October 2007 Wildfires in San Diego County (2007 Order Addendum No 1).

- h. May 8, 2013, Regional Board Order No. R9-2013-0001 (NPDES Permit No. CAS0108758), Water Quality Control Board San Diego Region, as Amended By Order Nos. R9-2015-0001 and R9-2015-0100 NPDES NO. CAS0109266 National Pollutant Discharge Elimination System (NPDES) Permit And Waste Discharge Requirements for Discharges from The Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region.
  - i. January 24, 2007, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, prescribes requirements for the control of pollutant discharges from MS4s within San Diego County. (2007 Order).
  - j. January 2005 NPDES Stormwater Costs Survey California State Water Resources Control Board Offices of Water Programs California State University Sacramento (2005 State Cost Survey).
  - k. I prepared a 2007 Order Implementation Timeline Summary included as Attachment 4 to the Technical Analysis.
10. For my review, I obtained and included as attachments to my declaration the documents listed above, other than the Commission's Proposed Decision and Parameters and Guidelines, Claimants' Comments, and the City of San Diego Budgets that are attached to the Declaration of Ariel Cutter.

### **Preparation of Technical Analysis**

To prepare the Technical Analysis for the Water Boards, I performed a review of each of the Claimants' eight (8) proposed reasonable reimbursement methodology (RRM) equations, the 18 equation formulas, and 34 equation formula factors for the reimbursement of mandated activities as set forth in Claimants' comments and supporting declaration of John Quenzer. My review and technical analysis that I completed for each of the Claimants' Proposed RRM equations, equation formulas, and equation formula factors included:

- 1. Review of the Commission's Draft Proposed Decision and Parameters and Guidelines dated July 27, 2023, specifically, discussion of the period of reimbursement and discussion of the reasonably necessary activities in the Commission's Draft Proposed Parameters and Guidelines, Sections III and IV.

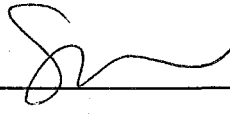
2. Review and evaluation of the Commission's discussion of mandated activity reimbursement costs and Claimant activities proposed for reimbursement.
3. Comparison between the Claimant's proposed RRM time periods of reimbursement and the Commission's time period of reimbursement for mandated activities identified in the Proposed Decision.
4. Comparison between the Claimant's Proposed RRM time periods of reimbursement and the implementation time periods of each mandated activity required by the 2001 Order, 2007 Order and 2007 Order Addendum No.1.
5. Evaluation of the 2007 Order implementation start and end dates for each mandated activity required by the 2007 Order.
6. Review and evaluation of the Consumer Price Index for All Urban Consumers to review the Claimant's values proposed CPI values in the RRM.
7. Comparison review of the 2005 State Survey unit cost values used by Claimants to evaluate unit costs in the proposed RRMs.
8. Comparison review of the 2011 Surveys used by Claimant's for unit cost values in the Proposed RRM.
9. Review and analysis of the City of San Diego budgets for fiscal years 2006-2007 through 2015-2016.
10. Review of calculation methods used in the proposed RRMs for total reimbursement costs.
11. Comparison review of the proposed RRM equation summary table and proposed RRM equation methodology for consistency.
12. Comparison review of the proposed RRM equation methodology text for consistency with the proposed RRM equation methodology equations.
13. Review and evaluation to determine if the proposed total reimbursable costs for mandated activities in the proposed RRMs were reproducible.
14. Review of stormwater budgets in Claimants supporting documentation.
15. Review of Claimant MOUs in Claimants' supporting documentation.



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/10/2024 San Diego, CA

(Date and Place)



(Signature)

Erica Ryan

(Printed Name)

# EXHIBIT 1

## TECHNICAL ANALYSIS

Prepared by Erica Ryan  
In Support of the Water Boards' Comments on Claimants'  
Proposed Reasonable Reimbursement Methodologies  
07-TC-09

**I. Claimants<sup>1</sup> include costs for activities the Commission<sup>2</sup> identified were not reimbursable under the Proposed Decision<sup>3</sup>**

*A. Claimants' proposed reasonable reimbursement methodologies (RRM)s<sup>4</sup> include time periods outside of the allowable time period for reimbursement costs.*

Claimants' proposed periods of reimbursement for the eight RRM<sup>5</sup> proposed equations<sup>6</sup> include costs for activities performed during time periods outside of the allowable time period identified by the Commission in the Proposed Decision.<sup>7</sup> The Proposed Decision identifies the time period for allowable reimbursement costs to the Claimants for reimbursable activities is January 24, 2007, the 2007 Test Claim Permit effective date, through December 31, 2017.<sup>8</sup>

The Proposed Decision does not provide a translation for this explicit time-period to a fiscal year basis that would be eligible for reimbursable costs as the Claimants do in the RRM. The Commission also did not allow for an increase or reduction in the explicit time-period that the Claimants could claim reimbursable costs based on converting it to a fiscal year basis.

The Commission recognizes in the Proposed Decision that the Claimants conduct reimbursable activities within specific periods of time referred to

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<sup>1</sup> **Claimants** - County of San Diego, Cities of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, El Cajon, Encinitas, Escondido, La Mesa, National City, Oceanside, San Diego, and Vista.

<sup>2</sup> **Commission** - State of California Commission on State Mandates <https://csm.ca.gov/>.

<sup>3</sup> **Proposed Decision** - July 27, 2023, Commission of State Mandates draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing, San Diego Regional Water Quality Control Board Order No R9-2007-0001, Permit CAS0108758.

<sup>4</sup> **RRM** – February 16, 2024, Comment Letter Request to Commission on State Mandates to adopt reasonable reimbursement methodologies (“RRMs”) Re: County of San Diego, Cities of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, El Cajon, Encinitas, Escondido, La Mesa, National City, Oceanside, San Diego, and Vista Comments on Draft Proposed Decision and Parameters and Guidelines, Test Claim 07-TC-09-R; Shawn D. Hagerty Best Best & Krieger.

<sup>5</sup> RRM, Page, 3, Section II.

<sup>6</sup> RMM pages 5 through 11, sections A through H.

<sup>7</sup> Proposed Decision, Sec. IV.B., pp. 22-24.

<sup>8</sup> Proposed Decision's Parameters and Guidelines, Sec. III, pp. 87-88 (“Period of Reimbursement”).

as a “Fiscal Year.”<sup>9</sup> Further, the 2007 Order<sup>10</sup> (see Attachment 1) under Federal NPDES regulation, title 40 Code of Federal Regulations (CFR), section 122.26(d)(2)(vi)<sup>11</sup> specifically requires the Claimants to conduct and report activities on a Fiscal Year basis. The activities required to be reported by NPDES regulation 40 CFR 122.26(d)(2)(vi) on a fiscal year basis are consistent with the mandated activities determined by the Commission. The 2007 Order defines the Fiscal Year as a 12-month period from July 1 through June 30.<sup>12</sup>

Consistent with the 2007 Order, both the Proposed Decision<sup>13</sup> and the proposed RRM<sup>14</sup> define a Fiscal Year that represents a 12-month period that starts on July 1 of the previous year and ends on June 30 of the following year. For example, the 12-month period for Fiscal Year 2006 to 2007 would start on July 1, 2006, and end on June 30, 2007. For all Claimants this specific fiscal year time period is the time period basis that is used throughout the RRM to identify total reimbursable costs.<sup>15</sup>

Because a fiscal year is not based on a calendar year, which is defined as January 1 through December 31 of the same year, the most commonly accepted practice by the Claimants in the proposed RRM to identify a fiscal year is to designate the years of the first and second half of the fiscal year. However, the proposed RRM is inconsistent and confusing with identification of the fiscal year and the time period for reimbursement. Claimants have not adequately explained how the fiscal year basis they rely on for the proposed RRM formulas translate to the actual time periods in which each claimant was required to perform the various mandated activities. Nor have they explained whether the inaccurate use of Fiscal Year 2006-2007 in development and implementation of the various formulas inappropriately affects the resulting unit costs for mandated activities.

For example, Fiscal Year 2006 to 2007 would typically be denoted as either FY 06/07, FY 2006-07 or FY 2006/2007 to clearly communicate the start and ending years of the fiscal year. The reason for this designation is due to the overlap in the calendar year between the start of one fiscal year and the end of another fiscal year. For example, the calendar year of 2007

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<sup>9</sup> Proposed Decision, pp. 22-24.

<sup>10</sup> 2007 Order - January 24, 2007, Section J.

<sup>11</sup> <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-122/subpart-B/section-122.26>.

<sup>12</sup> 2007 Order Fact Sheet p. 75 and 87, 2007 Order Sections J and G.

<sup>13</sup> Proposed Decision, pp. 22-24, 87-88.

<sup>14</sup> Quenzer Declaration 11.a.

<sup>15</sup> RRM, p.12.

is the second half of Fiscal Year 2006/2007 and the first half of FY 2007/2008. A far less common practice in the RRM for identifying the time-period covered by a fiscal year is simply designating the year that is the end of the fiscal year period. For example, FY 2006/2007 which ends on June 30, 2007, would be designated as FY 07 or FY 2007. However, the most common practice to ensure transparency and avoid confusion within public agencies and to the public is to include both years in the Fiscal Year designation (i.e., FY 2006/2007).

Table 1 below summarizes that among the Claimants the majority (18 out of 19 or 95%) clearly identify the start and end years of the fiscal year in their operating budgets (i.e., FY 2006/2007 (July 1, 2006-June 30, 2007)). This is an important distinction between the generally accepted method amongst the Claimants on designating the fiscal year and the manner of the FY designation used in the proposed RRM to identify the time period of reimbursement costs.

The proposed RRM uses the far less common fiscal year designation that identifies the end of the fiscal year proposed for reimbursement costs in the proposed RRM equations. Thus, where the proposed RRM formulas use FY 2007 designated as  $t=2007$  in the equation, Claimants actually intend July 1, 2006, to June 30, 2007, as the time period of reimbursement.

This is an important point with regards to the proposed RRM because the Claimants rely on this method of fiscal year designation in all of the proposed RRM equations to designate the time period of reimbursement. This method of designating the fiscal year in all of the proposed RRM equations and the equation factors makes the time period of reimbursement requested by the Claimants difficult to understand and difficult to confirm that the proposed RRMs seek reimbursement only for the time periods they are required to perform the mandated activities.

**Table 1**  
**Summary of Claimant Fiscal Year Designation <sup>16</sup>**

<b>Claimant</b>	<b>Fiscal Year Designation</b>	<b>Operating Budget Adoption Cycle</b>
County of San Diego	FY 2006–07	2 year
Carlsbad	Fiscal Year 2006-2007	1 year
Del Mar	Fiscal Year 2006-2007	2 year
Imperial Beach	Fiscal Year 2006-2007; FY 2006-07	2 year
Lemon Grove	FY 06/07; FY 2006–07	1 year
Poway	FY 2006–07	1 year
San Marcos	Fiscal Year 2006-07	1 year
Santee	Fiscal Year 2006-07	1 year
Solana Beach	FY 2007 and FY 2006/07	2 year
Chula Vista	Fiscal Year 2006-2007, FY 2006-07	1 year
Coronado	Fiscal Year 2024/2025, Fiscal Year 2006-07	1 year
El Cajon	Fiscal Year 2006-07	1 year
Encinitas	Fiscal Year 2006-07, FY 2006–07	1 year
Escondido	Fiscal Year 2006/07, Fiscal Year 2006/07	1 year
La Mesa	Defined as Fiscal Years 2006-2007 and 2007-2008 and cited as 2006-2008 Biennial Budget	2 year
National City	FY 07 Annual Budget cited as FY 2006-07	1 year
Oceanside	FY 2006-2008 Cited for Fiscal Years July 1, 2006, through June 30, 2008	2 year
City of San Diego	FY 07 (without explanation. appears to mean FY ending 6/30/07 or FY 2006/2007)	1 year
Vista	FY 2006-2007	1 year

<sup>16</sup> Claimant Supporting Documentation Volumes: Volumes 2 – 11 JURMP Annual Reports, Volume 12 Water Quality Improvement Project Annual Reports, Volume 13, pp. 1-10756 WURMP Annual Reports Volume 13, pp. 10757-10784 County Fiscal Analysis Documents, and Claimant publicly available website information.

Using the 2007 Order and the Proposed Decision’s use of the term fiscal year, the Proposed Decision period of allowed reimbursement costs for reimbursable activities from January 24, 2007, through December 31, 2017, when converted to a fiscal year basis, would start part way into the second half of FY 06/07 and end in the first half of FY 17/18. As shown below in Table 2, the Proposed Decision time period can be directly converted to a calculated numeric percent of, or portion of, a fiscal year. As demonstrated in Table 2 the Proposed Decision would not allow Claimants to recover costs for reimbursable mandated activities that were conducted from July 1, 2006, until January 24, 2007, or after December 31, 2017. Therefore, the Claimants cannot claim reimbursable costs as they propose in the RRM for 100 percent of FY 2006/2007 or 100 percent of FY 2017/2018.

**Table 2**  
**Summary of Time Periods by Fiscal Year Claimants May Receive Reimbursable Costs for Mandated Activities Under the 2007 Order**

<b>Year Number</b>	<b>Fiscal Year</b>	<b>Date Period</b>	<b>Percent of Fiscal Year Allowed for Reimbursement<sup>17</sup></b>
1	FY 06/07	January 24, 2007 - June 30, 2007	42 % (last 5 months of the FY)
2	FY 07/08	July 1, 2007 - June 30, 2008	100 %
3	FY08/09	July 1, 2008 - June 30, 2009	100 %
4	FY 09/10	July 1, 2009 - June 30, 2010	100 %
5	FY 10/11	July 1, 2010 - June 30, 2011	100 %
6	FY 11/12	July 1, 2011 - June 30, 2012	100 %
7	FY 12/13	July 1, 2012 - June 30, 2013	100 %
8	FY 13/14	July 1, 2013 - June 30, 2014	100 %
9	FY 14/15	July 1, 2014 - June 30, 2015	100 %
10	FY 15/16	July 1, 2015 - June 30, 2016	100 %
11	FY 16/17	July 1, 2016 - June 30, 2017	100 %
12	FY 17/18	July 1, 2017 - December 31, 2017	50 % (6 of 12 months)

As illustrated below in Table 3 and Attachment 2 to this Technical Analysis, the proposed RRMs inappropriately propose that all of the Quenzer Declaration<sup>18</sup> equations start from “t= 2007”, in other words from July 1, 2006, to June 30, 2007.

<sup>17</sup> Percent of Fiscal Year Allowed for Reimbursement = 100 x 1 FY (12 months – No. Months Costs not Allowed for Reimbursement)/ 12 Months Note –months and percent are not rounded to the next whole number.

<sup>18</sup> Declaration of John Quenzer in Support of Reasonable Reimbursement Methodology 07-TC-09-R.

**Table 3**  
**Summary of RRM Claimant Proposed Reimbursement Period**

<b>Reimbursable Mandate Activity</b>	<b>RRM Equation Reference<sup>19</sup></b>	<b>FY Start</b>	<b>FY End</b>	<b>Period of RRM Proposed Cost Reimbursement Equation</b>
Reporting on Street Sweeping and Conveyance System Cleaning <sup>20</sup>	A.	2006/2007	2012/2013 <sup>21</sup>	July 1, 2006 - June 30, 2013
Conveyance System Cleaning <sup>22</sup>	B.	2006/2007	2014/2015	July 1, 2006 - June 30, 2015
Educational Component <sup>23</sup>	C.	2006/2007	2014/2015	July 1 2006 - June 30, 2015
Watershed activities and collaboration in the WURMP <sup>24</sup>	D	2006/2007	2012/2013	July 1, 2006 - June 30, 2013
Regional Urban Runoff Management Program <sup>25</sup>	E.	2006/2007	2012/2013	July 1, 2006 - June 30, 2013
Program Effectiveness Assessment <sup>26</sup>	F.	2006/2007	2012/2013	July 1, 2006 - June 30, 2013
		2006/2007	2014/2015	July 1 2006 - June 30, 2015
Long-term Effectiveness Assessment <sup>27</sup>	G.	2006/2007	2012/2013	July 1, 2006 - June 30, 2013
All Permittee Collaboration <sup>28</sup>	H	2006/2007	2012/2013	July 1, 2006 - June 30, 2013
		2006/2007	2016/2017	July 1, 2006 - June 30, 2017
		2006/2007	2012/2013	July 1, 2006 - June 30, 2013

The proposed RRM summary table of equations<sup>29</sup> (see Attachment 2) does not identify that only part of FY 2006/2007 is in the reimbursable time period as described in the Quenzer Declaration. The Claimants are requesting reimbursement for activities during 100 percent of FY 2006/2007 instead of the portion of the fiscal year allowed by the

<sup>19</sup> RRM p. 12, See Attachment 2.

<sup>20</sup> 2007 Order, Sections J.3.a.(3)(c) (iv)-(viii), (x)-(xv.)

<sup>21</sup> 2013 Order May 8, 2013, Regional Board Order No. R9-2013-0001 (NPDES Permit No. CAS0108758), Water Quality Control Board San Diego Region, as Amended by Order Nos. R9-2015-0001 and R9-2015-0100NPDES NO. CAS0109266 National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from The Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region. (Attachment 9 to this Technical Analysis.)

<sup>22</sup> 2007 Order Section D.3.a.(3)(b)(iii).

<sup>23</sup> 2007 Order Sections D.5.a.(1)-(2), D.5.b.(1)(a), D.5.b.(1)(b) (iii.-vi.), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3).

<sup>24</sup> 2007 Order Sections E.2.f and E.2.g.

<sup>25</sup> 2007 Order Sections F.1., F.2.and F.3.

<sup>26</sup>2007 Order Sections I.1 and I.2.

<sup>27</sup> 2007 Order Section I.5.

<sup>28</sup> 2007 Order Sections L.1.a.(3)-(6).

<sup>29</sup> RRM p. 12, See Attachment 2.

Proposed Decision from January 24, 2007, to June 30, 2007, or 42 percent of the fiscal year.

In each of the eight proposed RRM reimbursement equations laid out in the Quenzer Declaration, the Claimants describe the methodology for development of each of the proposed unique formulas and formula factors included in the equations for reimbursement (see Attachment 2). In describing how to interpret the time period, the Quenzer Declaration states the following under the “REIMBURSEMENT FORMULAE” section, Item 11:<sup>30</sup>

*Reimbursements intended to cover the time in which the unfunded mandate was imposed shall be articulated as:*

$$\sum_{t=2007}^{t=2015} x_t$$

*In this formula, x shall refer to the line-item specific reimbursable and the year refers to the fiscal year where the mandate applied (i.e., 2007 shall refer to fiscal year (“FY”) 2006/2007). The purpose of this summation is to sum the specific reimbursable for each year that the state mandate was in place.*

The Quenzer Declaration includes a calculated Consumer Price Index (CPI) schedule<sup>31</sup> for adjusting annual cost increases to the formula factors. The CPI schedule identifies that 100 percent of FY 2006/2007 was included as the time period of reimbursement in the proposed RRM equations without any pro rata reduction to account for the Proposed Decision’s allowable time period.<sup>32</sup>

Additionally, the Quenzer Declaration provides a narrative clarification of the proposed reimbursement cost equation for Reporting on Conveyance System Cleaning<sup>33</sup> described as:

*The time period of the reimbursement for reporting is halfway through FY 2006/2007 through FY2012/2013 as this is when 2007 Permit required this activity.*

The Quenzer Declaration’s description of the reimbursement time periods of the formulas is inconsistent within the Quenzer Declaration formula equations. In addition, the Quenzer Declaration reimbursement time periods are inconsistent with the proposed RRM summary of equations.

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<sup>30</sup> Quenzer Declaration 11.a.

<sup>31</sup> Quenzer Declaration, 11.b.

<sup>32</sup> Quenzer Declaration, 11.c.

<sup>33</sup> Quenzer Declaration, 12.a.



The Commission's explicit time period for allowable reimbursement costs is 42% of FY 2006/2007 and does not allow for rounding up to 50 percent to request reimbursement costs. As stated in the proposed RRM, "*Halfway through FY 2006/2007*" is in fact the mathematical equivalent of 50 percent of the fiscal year time period of July 1, 2006, through June 30, 2006, or six months of a 12-month period.

In addition, the term "halfway through" used throughout the proposed RRM also incorrectly implies the time period for reimbursement is the first six months of FY 2006/2007 or July 1, 2006, to December 31, 2006, rather than the from the 2007 Order's effective date of January 24, 2007, to June 30, 2007. The Proposed Decision clearly only allows for reimbursable costs for the time period from January 24, 2007, to June 30, 2007, during the second half of FY 2006/2007. This time period of reimbursement specified in the Proposed Decision for the Claimants' reimbursement of mandated activities is distinctly separate in the proposed RRM from the related issue that January 24, 2007, is not the appropriate start date for reimbursement with the exception of one mandated activity<sup>34</sup>. Claimants continued to implement the 2001 permit and were not required to begin implementing the 2007 permit until March 24, 2008. As discussed in section I.B., below, by adoption of Addendum No. 1 to the 2007 Order,<sup>35</sup> required implementation of permit activities that were to begin approximately one year (365 days) after the 2007 Order effective date (or January 24, 2008) were delayed until March 24, 2008, due to a state of emergency in the San Diego Region.

The proposed RRM time period of reimbursement of 50% of FY 2006/2007 instead of the actual time period of reimbursement of 42% allowed by the Commission increases the Claimant's eligible costs by eight percent<sup>36</sup> or more for all 19 claimants. The Claimants propose the eight percent increase in reimbursable costs in all eight of the proposed RRM equations<sup>37</sup> (see Attachment 2).

For example, for every one (1) million dollars of reimbursement costs proposed by the Claimants in the RRM for FY 2006/2007 an eight percent increase would result in an additional \$1.52 million dollars of reimbursement costs to the Claimants which are outside of the Commission's time period. The Claimants are

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<sup>34</sup> Sections L.1.a (3)-(6) of the 2007 Order

<sup>35</sup> See Attachment 5.

<sup>36</sup> 50 Percent of FY 2006-2007 proposed by RRM minus Commission Proposed Decision of 42 percent of FY 2006-2007= 8 Percent.

<sup>37</sup> RRM pp 5-11, RRM p. 12

not entitled to reimbursement costs above and beyond the time period of reimbursement identified by the Commission.<sup>38</sup>

The Claimants' proposed RRM equations do not identify any pro rata reduction of FY 2006/2007 costs. Instead, the Claimants request the ability to seek reimbursement for the entire fiscal year. All proposed Claimant RRM formulas propose a time period of t= 2007 which is defined in the RRM as being 100 percent of FY 2006/2007<sup>39</sup> (see Attachment 1):

*In this formula <sup>40</sup>x shall refer to the line-item specific reimbursable and **the year refers to the fiscal year** where the mandate applied (i.e., 2007 shall refer to fiscal year ("FY") 2006/2007). The purpose of this summation is to sum the specific reimbursable for each year that the state mandate was in place.<sup>41</sup>*

In the Quenzer Declaration for reimbursable activity A, *Street Sweeping and Conveyance System Cleaning Reporting*, the Quenzer Declaration does not identify the required reduction in time period for FY 2006-2007 and instead identifies that the same cost is applied for 100 percent of all fiscal years. This is further repeated in the proposed RRM equations (see Attachment 2). The Quenzer Declaration proposes that the total reimbursement for all 19 claimants in FY 2006-2007 would be \$1,657,704.21:

*Using this formula, each entity would receive eighty-seven thousand, two-hundred and forty-seven dollars and fifty-nine cents (\$87,247.59). The time period of the reimbursement for reporting is halfway through FY 2006/2007 through FY2012/2013 as this is when 2007 Permit required this activity.*

Additional inconsistencies between the Proposed Decision and the proposed RRM equations (see Attachment 2) occur throughout the proposed RRM and Quenzer Declaration proposed time periods for reimbursement. For example, wherever the Consumer Price Index (CPI)<sup>42</sup> is proposed by the Claimants to adjust the cost annually, 100 percent of FY 2006/2007 is included in the cost of reimbursement. This inconsistency is repeated for other proposed RRM equations which include a CPI annual cost adjustment. In addition, this CPI annual cost adjustment is not included anywhere in the actual written RRM

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<sup>38</sup> 8% x one million dollars = \$80,000 x 19 Claimants = \$1.52 million.

<sup>39</sup>RRM pp. 5-11.

<sup>40</sup> Quenzer Declaration 11.a.

<sup>41</sup> Quenzer Declaration 11.a.

<sup>42</sup> Quenzer Declaration 11.c.

equations where the Claimants are seeking to include a CPI adjustment for reimbursement costs of a mandated activity.

The Quenzer Declaration uses a narrative pro rata for the fiscal year time period that is inconsistent with the Proposed Decision's time period for reimbursable activities. However, the narrative pro rata time period is not accurately represented or used in the Claimant's proposed RRM equations which all represent t=2007 (i.e. 100 percent reimbursement of costs during FY 2006/2007). For example, based on the Quenzer Declaration narrative, the Claimant proposed RRM equation time period of reimbursement for the mandated activity should have been modified from t=2007 to t= 2008, however, the equation time period of reimbursement was proposed as at t=2007.

As another example, the table of reimbursement for the formula factor "education costs" inaccurately states that the reimbursable cost requested is for 100 percent of FY 2006/2007. The total cost in the table that is included for reimbursable education costs for FY 2006/2007 is essentially equal to the remaining fiscal years. There is no prorated reduction for "halfway through FY 2006/2007" or 50 percent of the proposed RRM reimbursement cost.

*B. Claimants' Proposed RRMs include reimbursement costs for activities required by the prior 2001 Order (See Attachment 3)<sup>43</sup>:*

The Quenzer Declaration proposes RRM equations which are based on inaccurate and vague formulae time periods resulting in reimbursement costs which were not conducted under the 2007 Order.<sup>44</sup> The Quenzer Declaration proposes for all of the RRM equations that the Claimants be reimbursed by the number of fiscal year time periods for each reimbursable activity. The Quenzer Declaration bases all of the proposed RRM equations<sup>45</sup> on the assumption that the 2007 Order was "requiring this activity."<sup>46</sup> The 2007 Order specifically included a transitional reporting and implementation period where the Claimants were still required to continue conducting and reporting activities required under the 2001 Order until specific provisions of the 2007 Order were implemented

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<sup>43</sup> 2001 Order - February 21, 2001, California Regional Water Quality Control Board San Diego Region Order No. 2001 -01 NPDES No. CAS 01 08758 Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the incorporated Cities of San Diego County, and the San Diego Unified Port District.

<sup>44</sup> 2007 Order -January 24, 2007, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, prescribes requirements for the control of pollutant discharges from MS4s within San Diego County.

<sup>45</sup> See Attachment 2, (RRM p. 12.).

<sup>46</sup> RRM p.3, Quenzer Declaration, 11.a through 19.

after the 2007 Order effective date of January 24, 2007 (See Attachment 4).<sup>47</sup> The Proposed Decision specifically states that Claimants cannot claim reimbursement costs for activities conducted no earlier than the effective date of the 2007 Order. The Commission did not identify reimbursement costs for Claimant activities conducted under the prior 2001 Order.<sup>48</sup>

The 2007 Order recognizes that the Claimants were required to continue to implement the 2001 Order activities with interim reporting requirements to address the transitional periods of implementation and reporting for the 2001 Order JURMP and WURMP activities.<sup>49</sup> The 2007 Order specifically states that for the July 2006 to June 2007 (FY 2006/2007) reporting period that the JURMP and WURMP Annual Reports shall be submitted on January 31, 2008 for the 2001 Order activities requested for reimbursement by the Claimants<sup>50</sup>.

The January 31, 2008, submittal date is in the second half of FY 2007/2008. In other words, the Claimants continued to report pursuant to the 2001 Order for 60 percent of FY 2007/2008 for all but one of the mandated activities<sup>51</sup>, before the 2007 Order required implementation of the 2007 Order provisions.

The 2007 Order states the following for continued reporting of activities which were conducted under the 2001 Order and after the 2007 Order adoption date:

*For the July 2006–June 2007 reporting period, Jurisdictional URMP and Watershed URMP Annual Reports shall be submitted on January 31, 2008. Each Jurisdictional URMP and Watershed URMP Annual Report submitted for this reporting period shall at a minimum be comprehensive descriptions of all activities conducted to fully implement the Copermittees’ Jurisdictional URMP and Watershed URMP documents, as those documents were developed to comply with the requirements of Order No. 2001-01. The Principal Permittee shall be responsible for submitting these documents in a unified manner, consistent with the unified reporting requirements of Order No. 2001-01.<sup>52</sup>*

The Quenzer Declaration incorrectly identifies that the start date of reimbursement costs for the 2007 Order mandate activities is “t=2007”, or July 1, 2006, through June 30, 2007 (FY 2006/2007).<sup>53</sup> The 2007 Order identified a specific date of implementation of 365 days after adoption, or January 24, 2008,

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<sup>47</sup> 2007 Order Section J.4.

<sup>48</sup> Proposed Decision, p.7 and p.11.

<sup>49</sup> 2007 Order Section J.4 Interim Reporting Requirements.

<sup>50</sup> 2007 Order, Section J.

<sup>51</sup> 2007 Order, Section L.

<sup>52</sup> 2007 Order, Section J, Interim Reporting.

<sup>53</sup> Quenzer Declaration 11.a.

and reporting for activities required by the 2007 Order after the effective date of January 24, 2007. For all section D activities, the 2007 Order required that the Claimants cease implementing activities conducted under the 2001 Order and begin implementation of activities required under the 2007 Order on January 24, 2008.<sup>54</sup> The 2007 Order states:

*Each Copermittee shall implement all requirements of section D of this Order no later than 365 days after adoption of the Order, unless otherwise specified in this Order. Prior to 365 days after adoption of the Order, each Copermittee shall at a minimum implement its Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.*

Further, at the request of the Claimants, required implementation of all but one of the mandated activities<sup>55</sup> was delayed an additional sixty (60 days) upon adoption of Addendum 1 to the 2007 Order<sup>56</sup> (see Attachment 5). Addendum 1 was adopted by the San Diego Water Board on December 12, 2007. Addendum 1 specifically extended the time period when Claimants were required to continue to implement and report the activities required by the 2001 Order prior to implementing the 2007 Order's mandated activities.

Addendum 1 to the 2007 Order extended to March 24, 2008, the Claimants' starting date of required implementation and reporting activities of the 2007 Order for sections D, E.1, F, J.1.(2), J.1.b (3), and J.1.c.2 and other sections of the 2007 Order which were also dependent on these specific sections in order to be implemented by the Claimants.

Therefore, until March 24, 2008, the Claimants were implementing and reporting on the 2001 Order's requirements for all but one<sup>57</sup> of the mandated activities found in the Amended Decision on Remand (07-TC-09-R).

Addendum 1 to the 2007 Order extended the implementation and the reporting requirements of the 2007 Order from 365 days to 425 days after the adoption date, or in other words, as modified by Addendum 1, the 2007 Order required implementation of the mandated activities (with one exception) beginning on March 24, 2008, rather than on January 24, 2008, or earlier as the Claimants propose in the RRM.

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<sup>54</sup> 2007 Order Section D. Jurisdictional Urban Runoff Management Program.

<sup>55</sup> 2007 Order, Section L.1.a (3)-(6).

<sup>56</sup> 2007 Order Addendum No 1 - December 12, 2007, Addendum No. 1 to Order No. R9-2007-0001 NPDES Permit No. CAS0108758 an Addendum Extending Selected Due Dates for Order NO. R9-2007-0001 as a result of the October 2007 Wildfires in San Diego County.

<sup>57</sup> 2007 Order, Section L.1.a (3)-(6).

In terms of fiscal years, which are the basis of the proposed RRM equations to calculate reimbursement costs, the Claimants were not required to start implementing or reporting the 2007 Order required activities until near the end of the second half of FY 2007/2008 or 9 months from the start of FY 2007/2008. The Claimants did not begin fully implementing or reporting on the 2007 Order activities until FY 2008 -2009 or July 1, 2008, through June 30, 2009. The time periods of implementation that the 2007 order required implemented are discussed in more detail for each mandated activity further in this Technical Analysis.

As a result, the Claimants were still implementing and reporting required activities under the 2001 Order from July 1, 2007, through March 24, 2008, or for 75 percent of FY 2007/2008. The Claimants were only implementing the 2007 Order mandated activities from March 24, 2008, to June 30, 2008, or in terms of the actual fiscal year time period for the start date of Section D activities, Claimants were not required to implement the 2007 Order until the last 25 percent of FY 2007/2008.

However, the Quenzer Declaration identifies in the proposed RRM equations that the time period of reimbursement is from “*halfway through FY 2006-2007*”<sup>58</sup> for activities which were either not required or implemented under the 2007 Order. In other instances which are described in detail in Section II of this Technical Analysis, the Quenzer Declaration identifies time periods for reimbursement costs for the proposed RRM equations starting at  $t = 2007$  (i.e. July 1, 2006, the start of FY 2006/2007) without any pro rata adjustment in the total reimbursement costs. This inconsistency in the time period of reimbursement results in the Claimants requesting 100 percent of FY 2006/2007 and FY 2007/2008 reimbursement costs when in fact the Claimants continued to implement activities under the 2001 Order that are not reimbursable. The Claimants fail to explain the effect or appropriateness of developing formulas that incorporate FYs in which Claimants either were not performing any mandated activities or were performing some, but not all, of the mandated activities.

Therefore, no reimbursable activities required by the 2007 Order were being implemented by the Claimants during the entirety of FY 2006/2007, and for the majority (75 percent) of FY 2007/2008. The Proposed Decision also specifies that the Claimants may only be reimbursed for implementation costs, not for costs related to developing programs required by the 2007 Order.<sup>59</sup>

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<sup>58</sup> Quenzer Declaration, 11.a.

<sup>59</sup> Proposed Decision, p.48

## II. Technical Analysis of Proposed RRM Equations, Formulas, and Formula Factors

The following technical analysis of each of the Claimants' proposed RRM equations for each mandated activity illustrates the effects of the inaccurate time periods for reimbursement reflected in the proposed RRM equations, formulas, and formula factors. In addition, the technical analysis evaluates each of the proposed RRM equations, formulas, and formula factors to illustrate that the Claimants' resolution of the time periods of reimbursement alone cannot resolve other inherent issues within the proposed RRM equations.

These inherent issues cannot be resolved by adjusting the proposed RRM equation and formula time periods of reimbursement. The issues include that Claimants propose formulas and formula factors within each of the proposed RRM equations that have (1) costs for activities which are either not mandated activities or (2) are activities where the Claimants do not include an adjustment to prorate the cost of the mandated activity for the higher level of service.<sup>60</sup> Seven of the eight proposed RRM equations rely on factors such as a percent of a stormwater budget or cost share of an MOU agreement or similar factors where these factors include both reimbursable mandated activities and activities which are *not eligible* for reimbursement.

The Claimants propose RRMs for a total of eight mandated activities. However, the complexity of applying a RRM methodology to the mandated activities of the 2007 Order becomes evident with the overall structure of the Claimant's proposed RRM equations. The Claimants proposed a total of 18 separate formulas comprised of a total of 34 independent factors as a methodology for reimbursement costs. Further, each of the 34 independent formula factors within the 18 formulas has its own specific criteria in the Claimants' proposed RRM to describe a total reimbursement cost for each mandated activity.

In addition, the criteria for each of the 34 formula factors described in the proposed RRM is a complex mix of time periods of reimbursement and unique mandated activity equation factors. The 34 unique factors within each formula are further complicated across each of the proposed RRM equations and formulas with the application of budgets, agreements, percent of budgets or agreements, actual costs, CPI adjustment factors, or time frames of reimbursement used by the Claimants to describe the mandated activity.

For example, for the mandated activities conducted under Sections E.2.f and E.2.g<sup>61</sup> (Watershed activities and collaboration in the Watershed Urban Runoff

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<sup>60</sup> Proposed Decision, pp. 48-84.

<sup>61</sup> 2007 Order Sections E.2.f and E.2.g.

Management Program) Claimants have proposed four different RRM reimbursement equations with eight separate factors. Each of the eight equation factors is further defined to describe the mandated activity through either an average rate cost, percent of a budget, Claimant cost share percent of an MOU, or a total number by the Claimants.

Each of these formula factors proposed by the Claimants attempts to describe a total reimbursement cost of the mandated activity based on how each of the equation factor descriptions for “Watershed Lead Costs”, “MOUs”, “Jurisdictional Activities”, “MOU”. “WRUMP Costs”, “Rate”, and “# Meetings” were actually conducted by the Claimants under the 2007 Order. The descriptions of these formula factors provide no mechanism to enable the Water Boards or the Commission to ensure that the proposed RRM equations are in fact reimbursing the Claimants for *only* the mandated activities as specified by the Commission.

For each of the 34 formula factors that comprise the proposed RRM methodology submitted by the Claimants, no documentation was provided to identify each of the locations of the specific data or data sets used for each equation factor in Volumes 1 through 14 submitted by the Claimants as supporting documentation, which data or data sets were used for the calculation of the factors, unit costs, and the total reimbursement cost, how each factor was calculated with the corresponding data, a summary of these calculations with all data used, or how each factor was calculated for the proposed RRM equation reimbursement costs including but not limited to:

- *actual costs*
- *average unit costs for conveyance system cleaning*
- *number of meetings*
- *number of Claimant attendees*
- *attendee Claimant average rate*
- *calculation of the CPI*
- *application of CPI to equation factors,*
- *percentages applied to stormwater budgets*
- *percentages applied to stormwater applied to MOUs*
- *Claimant Proportional Share of MOUS*
- *Claimant Total Stormwater Budgets*
- *MOU Budgets*
- *Workgroup Budgets*

Last, in many of the proposed RRM equations the Quenzer Declaration states that the methodology arrived at for unit costs are in accordance to “my opinion” without any technical substantiation as to how these unit costs were arrived at either through detailed calculations, spreadsheets, the exact equations used to produce the numbers, or methods or calculations used to adjust data sets to



“consider the variation in local costs”<sup>62</sup>. Although the Quenzer Declaration does not use the term “Best Professional Judgement”, the use of the term “in my opinion” is taken as equivalent to “Best Professional Judgement” in this technical analysis.

“Best Professional Judgement” is a universally relied upon methodology and process for scientific and engineering purposes and is specifically cited in the United States Environmental Protection Agency NPDES Permit Writer’s Guide<sup>63</sup> (see Attachment 6). “Best Professional Judgement” is used to determine or develop a numeric factor when one has not already been established. Best Professional Judgement has a specific process and technical protocol to be used when determining a proposed method to calculate numeric factors.

None of the generally accepted methodology practices for development of numeric factors used for Best Professional Judgement, were included in the proposed RRM equations. Instead of the Best Professional Judgement methodology practices, the Claimants use comparisons of unit costs proposed in the RRM formulas and formula factors to the 2005 State Cost Survey to validate the unit costs proposed by the RRM<sup>64</sup> (see Attachment 7). The use of Best Professional Judgement methodology is described in more detail in Section III of this technical analysis.

**A. Reporting on Street Sweeping and Conveyance System Cleaning**

For this reimbursable activity, the 2007 Order states that<sup>65</sup>:

*The Principal Permittee shall be responsible for collecting and assembling the individual JURMPs which cover the activities conducted by each individual Copermitttee. The Principal Permittee shall submit the JURMPs to the Regional Board 365 days after adoption of this Order.*<sup>66</sup>

and

*Each Jurisdictional Urban Runoff Management Program Annual Report shall contain a comprehensive description of all activities conducted by the Copermitttee to meet all requirements of section D. The reporting period for these annual reports shall be the*

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<sup>62</sup> Quenzer Declaration, 11-19.

<sup>63</sup> USEPA Permit Writer’s Manual September 2010 US Environmental Protection Agency NPDES Permit Writers’ Manual <https://www.epa.gov/npdes/npdes-permit-writers-manual>.

<sup>64</sup> 2005 State Cost Survey January 2005 NPDES Stormwater Costs Survey California State Water Resources Control Board Offices of Water Programs California State university Sacramento (2005 State Survey). [https://www.owp.csus.edu/research/papers/papers/NPDES\\_Stormwater\\_costsurvey.pdf](https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf)

<sup>65</sup> 2007 Order Section J.

<sup>66</sup> 2007 Order Section J.3.1.a, Reporting.

*previous fiscal year. For example, the report submitted September 30, 2008, shall cover the reporting period July 1, 2007 to June 30, 2008.*<sup>67</sup>

*(1) Copermittees – Each Copermittee shall generate individual Jurisdictional Urban Runoff Management Program Annual Reports which cover implementation of its jurisdictional activities during the past annual reporting period. Each Copermittee shall submit to the Principal Permittee its individual Jurisdictional Urban Runoff Management Program Annual Report by the date specified by the Principal Permittee. Each individual Jurisdictional Urban Runoff Management Program Annual Report shall be a comprehensive description of all activities conducted by the Copermittees to meet all requirements of each component of section D of this Order.*

*(2) Principal Permittee – The Principal Permittee shall submit Unified Jurisdictional Urban Runoff Management Program Annual Reports to the Regional Board by September 30 of each year, beginning on September 30, 2008. The Unified Jurisdictional Urban Runoff Management Program Annual Report shall contain the twenty-one individual Jurisdictional Urban Runoff Management Program Annual Reports.*<sup>68</sup>

The 2007 Order required Claimants to submit the first JURMP Annual Report for conveyance cleaning and street sweeping activities<sup>69</sup> on or before September 30, 2008. The due date of September 30, 2008, for reporting on these mandated reimbursable activities is in the first half of FY 2008/2009 or July 1, 2008, through June 30, 2009 (t=2009).

In terms of a fiscal year time period, the Claimants' implementation of these section D activities<sup>70</sup> were not fully implemented under the 2007 Order until FY 2008/2009. These section D activities were not fully implemented due to the schedule for required cleaning and street sweeping that was identified in the 2001 and 2007 Orders. Therefore the majority of the Claimants' conveyance system cleaning was scheduled and conducted under the 2007 Order prior to October 1 annually with less cleaning activities conducted after October 1.<sup>71</sup> 2007 Order section D.3.(3)(b)(i) required the Claimants to conduct a minimum inspection schedule for cleaning activities between "May 30 and September 30"

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<sup>67</sup>2007 Order Section J.3.1.a (1).

<sup>68</sup> 2007 Order Section J.3.1.a (2).

<sup>69</sup> 2007 Order provisions J.3.a (3) (c) (iv) –(vi) and J.3.a (3) (c) (x) through (xv).

<sup>70</sup> 2007 Order provisions J.3.a (3) (c) (iv) –(vi) and J.3.a (3) (c) (x) through (xv).

<sup>71</sup> 2007 Order Sections D.3.

once a year with cleaning activities to be conducted “in a timely manner” for facilities that met specific required cleaning criteria.

Therefore, reporting on conveyance system cleaning conducted during FY 2008/2009 required by the 2007 Order would be reported in the Annual Report submitted on September 30, 2009, in FY 2009/2010. For the Annual Report due September 30, 2008, or FY 2008/2009, because of the schedule identified in the 2001 and 2007 Orders, minimal conveyance system cleaning occurred between March 24, 2008, to June 30, 2008, because the majority of the cleaning activities were conducted in accordance with the schedule of the 2007 Order described previously. These activities would have been conducted pursuant to the 2001 Order during the time period from July 1, 2006, to March 24, 2008, or FY 2006/2007 and 75 percent of FY 2007/2008.

The 2001 Order specified that the Claimants clean the conveyance system annually from May 1 through September 30 and any additional cleaning from October 1 through April 30.<sup>72</sup> The 2001 Order requirements fall over two fiscal year periods with the majority of the required cleaning period falling in the last two months of FY 2006/2007 and 9 months from the start of FY 2007/2008. Therefore most, if not all, of the conveyance system cleaning implemented by the Claimants would have occurred already under the 2001 Order for FY 2007/2008 by the time the 2007 Order required implementation of this reimbursable activity on March 24, 2008.

On the basis of trash volumes on paved streets, the 2007 Order required Claimants to implement street sweeping activities monthly, annually, or bi-monthly, beginning in the last 90 days of FY 2007/2008 from March 24, 2008, to June 30, 2008. Under the 2007 Order, *reporting* for street sweeping was submitted in the annual report due during the year following the fiscal year reporting period that the cleaning activity was conducted.

Prior to March 24, 2008, the Claimants were implementing street sweeping activities pursuant to the 2001 Order annually from May 1 through September 30 and October 1 through April 30.<sup>73</sup> Therefore, Claimants were implementing street sweeping activities under the 2001 Order from July 1, 2006, to March 24, 2008, or all of FY 2006/2007 and the majority (75 percent) of FY 2007/2008.

Under the 2007 Order the Claimants would have been required to report on street sweeping activities that were conducted under the 2007 Order during the last 90 days in FY 2007/2008 on the annual report submittal date of September 30, 2008, in FY 2008/2009. Therefore, the required reporting on street sweeping

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<sup>72</sup> 2001 Order Section F.3.a(5) (c) (i) and (ii).

<sup>73</sup> 2001 Order Section F.3.

activities was not required to begin under the 2007 Order until September 30, 2009, in FY 2009/2010, or t=2010.

The proposed RRM presented in the Quenzer Declaration does not accurately reflect when the Claimants were required to begin reporting on the implementation of the 2007 Order requirements by identifying that the reimbursement period is t=2007 or FY 2006/2007 or even “halfway through” FY 2006/2007.<sup>74</sup> The Claimants cannot request reimbursement costs that were required for activities or reporting on activities under the 2001 Order. In addition, the Proposed RRM equations are incorrectly derived by not using appropriate time periods and, separately, reimbursement is not allowed for these time periods

### **B. Conveyance System Cleaning**

The Claimants<sup>75</sup> propose RRM equations for reimbursement of conveyance system cleaning costs based on a unit cost per fiscal year time period for a total number of storm drain inlets cleaned, total linear feet of storm drain pipes cleaned, and total linear feet of channels cleaned.<sup>76</sup> As described previously, the 2007 Order did not require the Claimants to implement this activity until March 24, 2008, in other words the last 90 days of FY 2007/2008.

In terms of an entire fiscal year time period, the Claimants implementation of this activity was not implemented per the requirements in the 2007 Order until FY 2008/2009, or July 1, 2008, to June 30, 2009. Under the 2001 Order, conveyance system cleaning for storm drain inlets, channels, and storm drainpipes was conducted during the period from July 1, 2006, to March 24, 2008 or all of FY 2006/2007 and the majority of FY 2007/2008 (75 percent).

The 2001 Order specified that the Claimants clean the conveyance system annually from May 1 through September 30 and any additional cleaning as needed from October 1 through April 30. Therefore, the majority of all conveyance system cleaning for storm drain inlets, channels, and storm drain pipes required to be cleaned already occurred under the 2001 Order during FY 2007/2008, from July 1, 2007 to June 30, 2008, even though implementation of the 2007 Order, section D activities was not required until March 24, 2008. Therefore, the Claimants did not begin to implement the requirements of the 2007 Order for conveyance system cleaning until FY 2008/2009 or July 1, 2008, through June 30, 2009.

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<sup>74</sup> Quenzer Declaration, 12.b.

<sup>75</sup> Quenzer Declaration, 13 pp 5-7.

<sup>76</sup> Quenzer Declaration, 13, p 6.

Further, the 2007 Order specifies that the Claimants are required to clean each conveyance system facility based on the presence of specific levels of debris in the storm drain inlet, channel, or storm drainpipe that are identified as having “high volumes of trash and debris” at least once a year between May 1 and September 30.

The 2007 Order required cleaning activities by the Claimants “in a timely manner” as based on the level of accumulated volume of in the conveyance system facility. Storm drain inlets and catch basins were only required to be cleaned in a timely manner by the Claimants if they determined it “had accumulated trash and debris greater than 33% of design capacity.” Further, the 2007 Order required Claimants to clean storm drainpipes “designed to be self-cleaning” of “any accumulated trash and debris immediately.” Claimants were required to clean open channels of “observed anthropogenic litter in a timely manner.”<sup>77</sup> Section D.3.a (b) (i)-(iii) of the 2007 Order states:

*The maintenance activities shall, at a minimum, include:*

*i. Inspection at least once a year between May 1 and September 30 of each year for all MS4 facilities that receive or collect high volumes of trash and debris. All other MS4 facilities shall be inspected at least annually throughout the year.*

*ii. Following two years of inspections, any MS4 facility that requires inspection and cleaning less than annually may be inspected as needed, but not less that every other year.*

*iii. Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity shall be cleaned in a timely manner. Any MS4 facility that is designed to be self cleaning shall be cleaned of any accumulated trash and debris immediately. Open channels shall be cleaned of observed anthropogenic litter in a timely manner.*

Following the required annual conveyance cleaning activities for FY 2008/2009 and FY 2009/2010, and beginning in FY 2010/2011, the 2007 Order did not require the Claimants to continue to clean annually a conveyance system facility that did not meet the specific annual debris volume criteria in the 2007 Order.

The Quenzer Declaration proposes a time period for the RRM equation reimbursement costs beginning with t=2007 or FY 2006/2007 “for each year the

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<sup>77</sup> 2007 Order Section D.3.a (b) (i)-(iii).

state mandate was in place”<sup>78</sup> and that “the time period for reimbursement for conveyance system cleaning is halfway through FY 2006/2007 through FY 2014/2015.”

The Quenzer Declaration further states that “*This activity was required by the 2007 Permit and continued through FY 2014/2015 until the 2013 Permit requirements relating to the new JRMP were implemented.*”<sup>79</sup> This statement is factually incorrect based on the aforementioned discussion on the provision language of the 2001 Order, 2007 Order, and Addendum 1 to the 2007 Order.

The Quenzer Declaration includes a summary table from FY 2006/2007 through FY 2014/ 2015 with each Claimant’s totals for each fiscal year of the number of MS4 Structures (i.e. inlets), linear feet of MS4 Pipe Cleaned, and linear feet of MS4 Open Channel cleaned.<sup>80</sup> The table shows that the total number of storm drain inlets increased by 20,000 inlets from FY 2010/2011 to FY 2011/2012 when the number of storm drain inlets would decrease based on the 2007 Order’s reductions in cleaning.

Because the total number of facilities required to be cleaned by the Claimants under the 2007 Order were only required to be cleaned if the facility met the explicit volume or debris criteria, the total number of facilities the Claimants cleaned would decrease starting in FY 2010/2011. However, the Quenzer Declaration summary table identifies that an increase in the number of facilities occurred in the fiscal year periods when the Claimants would have reduced the total number of conveyance system facilities that were cleaned. The Quenzer Declaration does not explain how or if the formulas take into consideration the criteria applicable to determining whether cleaning a particular conveyance was actually required by the 2007 Order.

In addition, the Quenzer Declaration summary table for FY 2006/2007 did not include a pro rata reduction of 50 percent stated in the text of the RRM in the total number of facilities when compared to the total number of facilities proposed for reimbursement in FY 2007/2008 for linear feet of storm drains and channels.

Based on the Quenzer Declaration summary table, the Claimants are proposing reimbursement costs for all conveyance cleaning required under the 2001 Order for 100 percent of FY 2006/2007. For example, in FY 2006/2007 the Claimants are requesting reimbursement for 1.5 million linear feet of channel cleaned and 131,000 linear feet of storm drain pipe cleaned.

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<sup>78</sup> Quenzer Declaration, 11.a, p. 3.

<sup>79</sup> Quenzer Declaration, 13 p. 7.

<sup>80</sup> Quenzer Declaration, 13 Table on p. 7.

For the last three fiscal years, FY 2012/2013, FY 2013/2014, and FY 2014/2015, in the Quenzer Declaration table the numbers for each facility type appear to be place holders copied and pasted into the table. This conclusion is based on the inclusion of repeating identical numbers for all three conveyance system facility categories in FY 2012/2013, FY 2013/2014, and FY 2014/2015. All 19 Claimants are unlikely to clean the exact number of conveyance system facilities three years in a row without variation due to the variation in numbers of facilities across claimant jurisdictions.

Accuracy is critical with regards to proposing an RRM reimbursement equation. The Quenzer Declaration summary includes conveyance system facility totals that are the basis of the Claimants' total reimbursement cost for this mandated activity. The Quenzer Declaration proposed RRM equations do not match the Quenzer Declaration text statements regarding the fiscal year time periods proposed for reimbursement, or the final proposed summary table in the RRM (see Attachment 2). The proposed RRM equations do not include a pro rata adjustment for any fiscal year. In addition, the Quenzer Declaration summary table of total conveyance system facilities does not reflect any pro rata reduction consistent with the Quenzer Declaration statements that the Claimants are entitled to 50 percent of conveyance system reimbursement costs for FY 2006/2007.

The Claimants are only entitled to reimbursement for conveyance system cleaning required by the 2007 Order from March 24, 2008 (25 percent of FY 2007/2008) and 100 percent of FY 2008/2009 to the proposed RRM end date of FY 2014/2015. The Claimants are not entitled to any reimbursement costs for conveyance system cleaning conducted in FY 2006/2007 and for 75 percent of FY 2007/2008. To put this in perspective, the inaccuracy in identifying the reimbursable activities under the 2007 Order proposed by the Quenzer Declaration for the RRM is equivalent to a total of \$17 million dollars for conveyance system cleaning that the Claimants are not entitled to for these two reimbursement time periods.<sup>81</sup>

Last, the RRM<sup>82</sup> for conveyance system cleaning identifies that the information provided in the Quenzer Declaration summary table for the total number of Claimant conveyance system facilities cleaned is not an accurate or representative number of the total number of facilities cleaned by the Claimants. Further, this RRM identifies that the Claimants will provide at some unknown

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<sup>81</sup> 1.1 million linear feet of channel cleaning under the 2001 Order or \$8.7 million dollars + 43,477.25 storm drain inlets or \$ 6.5 million dollars of reimbursement costs+ 236,664.75 linear feet of storm drain pipe or 1.8 million dollars.

<sup>82</sup> RRM, p. 7.

future date additional supporting evidence of the actual number of conveyance facilities cleaned. The Quenzer Declaration states:

*Under this RRM, an individual claimant would calculate its reimbursement using the total number of inlets and storm basins, feet of channel cleaned, feet of pipe cleaned, and the unit costs described above. Each Municipal Claimant would submit evidence of the number of inlets and storm basins cleaned, feet of channel cleaned, and feet of pipe cleaned to get reimbursed based on the unit costs in the RRM.*

The proposed RRM does not include the data from the supporting documentation submitted by the Claimants Volumes 1 through 14 that can either be relied on or supports the RRM proposed equations for reimbursement. In addition, the Quenzer Declaration does not include any methodology or supporting documentation to demonstrate that the information provided is accurate in a manner consistent with the Commission's proposed determination on the eligible reimbursement costs. The Quenzer Declaration also does not identify a process for Claimants to affirm or demonstrate that they actually cleaned a facility as required by the 2007 Order requirements or that they were required by the 2007 Order criteria to clean a facility.

In other words, without affirmation from Claimants that the reimbursement costs were only for conveyance system facilities that were *required* to be cleaned, the proposed RRM would overstate the reimbursement amounts and potentially reimburse the Claimants when the 2007 Order did not actually require the activity due to timing or debris criteria. The Proposed RRM does not provide a way for Claimants to reduce the amount requested for conveyance system cleaning solely based on the 2007 Order required activities based on debris volume and facility design criteria as opposed to listing all conveyance facilities cleaned in a time period. It is not clear if the total number of facilities listed in the Quenzer Declaration met the required 2007 Order cleaning threshold criteria or not.

### **C. Educational Component<sup>83</sup>**

The Quenzer Declaration identifies a proposed RRM methodology<sup>84</sup> to reimburse educational costs that combines two proposed RRM reimbursable cost equations. The Quenzer Declaration proposes (1) a RRM reimbursable cost equation for the Claimants County regional outreach shared costs and (2) a separate RRM reimbursable cost equation for the Claimants' jurisdictional educational program costs for section D residential education program

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<sup>83</sup> 2007 Order Sections D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii.-vi.), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3).

<sup>84</sup> Quenzer Declaration, Item 14 p.7.



development and implementation. The Quenzer Declaration does not clarify if the “County Costs” refer to education program costs in the unincorporated County of San Diego used by other Claimants or if these are regional education programs for use by all Claimants within the County of San Diego. The Quenzer Declaration states that the proposed RRM equation for regional outreach shared costs is based on a Claimants Cost-Sharing Memorandum of Understanding (MOU)<sup>85</sup>:

*Actual annual shared costs for developing and implementing the Residential Education Program; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs.<sup>86</sup>*

For the Jurisdictional Educational Program part of the proposed RRM equation, the Quenzer Declaration states that reimbursable costs for each Claimant are based on an average percentage (2.16 percent) of all of the Claimant’s total stormwater budget reported as education costs between FY 2006/2007 to FY 2014/2015:

*Where “Education Costs” is the percentage of the total stormwater budget reported as education costs and “Total” is the Co-Permittee’s total stormwater budget in a particular year. The value of the Education Costs represents the average percentage of the total stormwater budget reported as education costs between FY06-07 to FY14-15. The average yearly Education Costs are two and sixteen hundredths percent (2.16%) of the total annual stormwater budget.<sup>87</sup>*

The Quenzer Declaration proposes to use a Claimant’s total stormwater budget for all of the 2007 Order’s education implementation mandated activities and apply a 2.16 % average budget for an education component to calculate the total Claimant reimbursable costs for each fiscal year period.

A “total stormwater budget” is not clarified in the Quenzer Declaration and could mean either the total *adopted budget forecasted* for each fiscal year or the total final budget of actual costs incurred spent for that fiscal year.

In addition, use of the “total stormwater budget” for each Claimant contains costs that are not considered mandated reimbursable activities, and costs already proposed for reimbursement for other mandated activities outside of the education component. This creates an RRM equation where reimbursement of the same mandated activity is being paid or partly paid to the Claimants more than once. In addition, the Quenzer Declaration did not provide a methodology in the proposed RRM equations to subtract the development of educational

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<sup>85</sup> RRM Supporting Documentation Volume 13, pp. 10785-10907 Cost-Sharing Memorandums of Understanding.

<sup>86</sup> Quenzer Declaration, Item 14.b p.8.

<sup>87</sup> Quenzer Declaration, Item 14.b p.8.

programs or calculate the pro rata adjustment for an increased level of service from the 2001 Order. For section D mandated activities, the Proposed Decision identified that only the implementation of mandated activities that were prorated for the increased level of service over the 2001 Order was a reimbursable cost.

In addition, total stormwater budgets vary broadly among Claimants as to what is included or not included within a total stormwater budget.<sup>88</sup> Claimant stormwater budgets reported in annual reports under the 2007 Order were inconsistently reported based on each Claimant's interpretation of what was included in the fiscal analysis. For example, some Claimants include conveyance system cleaning in a municipal budget and some do not.<sup>89</sup> For example, the City of San Diego Storm Drain Fee budget includes in addition to its Street Division Expense also includes line items for water utilities management of the fee, public liability fees, MWD expenses, and street service data processing.<sup>90</sup>

For annual reporting under the 2007 Order, Claimants may include a total in the fiscal analysis directly from a municipal budget without excluding other items which are not part of the budget to implement the 2007 Order. This inconsistency among stormwater budgets has been an ongoing and long-standing concern for the assessment of MS4 permit annual reports statewide since 2005 (see Attachment 7).<sup>91</sup> A detailed discussion of the findings of the 2005 State Costs Survey and Claimant stormwater budgets are included in Section III to this technical analysis.

The Quenzer Declaration is unclear what budget items are included in a Claimant's "total stormwater budget" in the proposed RRM equations. The Quenzer Declaration also does not include a proposed methodology or rationale to account for the impact of combining larger jurisdictions' budgets with smaller jurisdictions' budgets to calculate an average based on a total stormwater budget by Claimant.

The approach in the Quenzer Declaration for the proposed RRM equations results in the inclusion of costs which are not reimbursable and for activities that are not mandated activities. Further, the approach in the Quenzer Declaration does not address local variation in costs from one Claimant to another. For example, a large jurisdiction may have a significant stormwater budget where a small jurisdiction may have a much smaller stormwater budget which will increase the total percent of a budget component across the board for all claimants and is not representative or reasonable.

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<sup>88</sup> Claimant Supporting Documentation Volume 1, pp. 1-376, 2011 Survey.

<sup>89</sup> Ariel Cutter Declaration, City of San Diego Stormwater Budgets FY 2005/2008 – 2015/2016.

<sup>90</sup> Ariel Cutter Declaration, City of San Diego Stormwater Budgets FY 2005/2008 – 2015/2016.

<sup>91</sup> 2005 State Costs Survey: January 2005 NPDES Stormwater Costs Survey California State Water Resources Control Board Offices of Water Programs California State university Sacramento (2005 State Survey) [https://www.owp.csus.edu/research/papers/papers/NPDES\\_Stormwater\\_costsurvey.pdf](https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf)

The Quenzer Declaration also does not factually state the fiscal year time period that the Claimants were required to implement this activity under the 2007 Order:

*The time period of the reimbursement of the education components is halfway through FY 2006/2007 through FY 2014/2015. This activity was required by the 2007 Permit and continued through FY 2014/2015 which was when the 2013 Permit requirements relating to the new JRMP were implemented.<sup>92</sup>*

For this mandated activity, the Claimants were not required to implement the 2007 Order for all provision D requirements, which includes the Educational Component, for each jurisdiction until March 24, 2008, which is the last 90 days of FY 2007/2008. This includes sections D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii) through D.5.b.(1)(b)(vi.), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), and D.5.b.(3). Until March 24, 2008, the Claimants were implementing the education components of the 2001 Order from July 1, 2006, to March 24, 2008, or all of FY 2006/2007 and the majority (75 percent) of FY 2007/2008 (see Attachment 4).

Section D of the 2007 Order did not require the Claimants to develop and implement regional education programs that are required under Section F at each Claimant's jurisdiction. The requirement to develop and implement regional education programs was under Section F of the 2007 Order. Addendum 1 to the 2007 Order was also applicable to Section F of the Order which required implementation of a Regional Residential Education Program beginning March 24, 2008.<sup>93</sup> Until March 24, 2008, the Claimants were implementing regional education components pursuant to the 2001 Order<sup>94</sup> from July 1, 2006, to March 24, 2008, which includes all of FY 2006/2007 and the 75 percent of FY 2007/2008 (see Attachment 2). Therefore, the Quenzer Declaration time period for Claimants requests reimbursable costs for implementing the education component that are not reimbursable under the 2001 Order for all of FY 2006/2007 and 75 percent of FY 2007/2008.

The Quenzer Declaration provides a summary table for County Education Costs where the fiscal year time period includes all of FY 2007/2008 and does not include a prorated 25 percent of this fiscal year. Based on this summary table, the costs are the total costs for each fiscal year. The Claimants were not fully implementing the MOU components for the 2007 Order until FY 2009/2010 if these costs were in fact for implementation costs of jurisdictional programs.

For the jurisdictional Claimant cost summary, the Quenzer Declaration states that the time period of reimbursement is from FY 2006/2007. However, no reduction in costs is included in the total cost for all 19 claimants for FY 2006/2007 to

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<sup>92</sup> Quenzer Declaration 14, p. 7.

<sup>93</sup> 2007 Order Section F.

<sup>94</sup> 2001 Order .

reflect this actual time period of implementation required by the 2001 Order. Based on this summary table, the Quenzer Declaration is stating that the average cost for each Claimant to implement its jurisdictional education program is a total of \$52,000 budget for each Claimant. Based on the Claimants 2007 Order annual report budgets for jurisdictional education programs<sup>95</sup> for small and middle size jurisdictions this is a very high budget for implementing an educational program for the 2007 Order.

The Commission's Proposed Decision identified that only *implementation* of this activity was eligible for reimbursement.<sup>96</sup> The Proposed Decision specifically identified that development of this mandated activity was not a reimbursable cost by the Claimants.

In addition, the Proposed Decision recognizes that under the prior Order 2001 the Claimants had already developed and were implementing an education component. The Proposed Decision also recognizes that the Claimants had already developed an MOU<sup>97</sup> for the 2001 Order education component requirements and were required to submit under the 2007 Order an MOU to implement the 2007 Order education component requirements.<sup>98</sup> The MOUs developed by the Claimants under the 2001 and 2007 Orders were to pay for regional cost shares for regional programs and activities. Cost sharing among Claimants within the 2007 Order MOUs were for development of section D model jurisdictional program requirements and were not costs to implement individual Claimant jurisdictional programs specified under section D.

Because of the ongoing jurisdictional and regional education programs that were already in place and carried over from the 2001 Order to the 2007 Order, the Commission's Proposed Decision identified that only program implementation costs that were prorated for the higher level of program service required by the 2007 Order (i.e. above and beyond the 2001 Order program requirements) were to be reimbursable to the Claimants.<sup>99</sup>

For example, Order 2001 section F.4 required each Claimant to develop and implement an educational component at a minimum to address specified target communities including Municipal, Construction, Industrial, Commercial Owners, Residential, General Public, and School Children, and Quasi-Governmental Agencies/Districts (i.e., educational institutions, water districts, sanitation districts, etc.) for various topics.

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<sup>95</sup> Claimant Supporting Documents Volumes 2 – 11 JURMP Annual Reports, Volume 12 Water Quality Improvement Project Annual Reports, Volume 13, pp. 1-10756 WURMP Annual Reports, Volume 13, pp. 10757-10784 County Fiscal Analysis Documents.

<sup>96</sup> Proposed Decision, Page x Amended Decision on Remand and page reference.

<sup>97</sup> 2001 Order Provision O.3.h; 2007 Order Section M.5.

<sup>98</sup> RRM Supporting Volume 13, pp. 10785-10907 Cost-Sharing Memorandums of Understanding.

<sup>99</sup> Proposed Decision, Section, pp 48-84.

In the Quenzer Declaration, the Claimants are requesting reimbursement costs for developing the 2007 Order section D education requirements for regional and jurisdictional programs. The Commission specified that reimbursement costs for development of regional and jurisdictional programs were not reimbursable costs for the mandated activities. In addition, the Commission specified that reimbursement costs for development of regional and jurisdictional programs for the mandated activities were to be prorated for the higher level of service required by the 2007 Order that were in addition the required activities implemented under the 2001 Order.

The Quenzer Declaration proposes an RRM equation of a Claimant's percentage of MOU share cost but the equation does not differentiate between development and implementation of reimbursement costs specific to an individual jurisdictional program implementation. The Quenzer Declaration does not provide for a methodology on prorating the cost differential required to implement the 2007 Order requirements above and beyond the 2001 Order program requirements and implementation. Last, the Quenzer Declaration does not identify if the MOU cost share is implementing section F requirements which are not part of the reimbursable section D requirements.

The MOU cost share for Claimants is identified in the Quenzer Declaration as the "actual annual shared costs:"

*where "County Education Costs" are the actual annual shared costs for developing and implementing the Residential Education Program; and "MOU" is the Municipal Claimant's proportional share of the cost based on the applicable MOUs.<sup>100</sup>*

The Quenzer Declaration includes development costs that are not reimbursable and does not adjust the "actual annual shared costs" for the Claimant MOU differentiate between jurisdictional development and implementation costs from regional development and implementation costs. Regional educational programs were not a requirement of the 2007 Order section D reimbursable activities for an education component.

#### ***D. Watershed activities and collaboration in the Watershed Urban Runoff Management Program<sup>101</sup>***

The Quenzer Declaration identifies a proposed RRM methodology<sup>102</sup> that combines four proposed RRM reimbursable cost equations. The Quenzer Declaration proposes the following RRM reimbursable cost equations: 1) watershed lead costs and watershed workgroup activities; 2) jurisdictional

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<sup>100</sup> Quenzer Declaration 14, p.8.

<sup>101</sup> 2007 Order Sections E.2.f and E.2.

<sup>102</sup> Quenzer Declaration, Item 14 pp.7-9.

watershed activities; 3) regional watershed activities (Watershed Urban Runoff Management Plan (WURMP)) costs; and 4) Claimant meeting attendance at watershed workgroup meetings.

The Quenzer Declaration states that the RRM proposed equation for watershed lead costs is based on the Claimants' Cost-Sharing Memorandum of Understanding (MOU). The RRM proposed equation for jurisdictional watershed activities costs is based on four jurisdictional activities performed by each Claimant and an average cost for each jurisdictional activity.

The RRM proposed equation for regional watershed activities (WURMP) costs is based on actual County Watershed Workgroup expenditure costs and each Claimant's share of the Cost-Sharing MOU. The RRM proposed equation for costs related to Claimant meeting attendance at Watershed Workgroup Meetings is based on an average Claimant cost of attendance, the number of Claimants attending the meetings, and total number of meetings.

The Quenzer Declaration states for all of the proposed RRM equations and all of the mandated activities<sup>103</sup> conducted under the 2007 Order Provisions E.2.f and E.2.g that:

*The time period of the reimbursement for watershed activities and collaboration in the WURMP is halfway through FY 2006/2007 through FY 2012/2013 as this is when 2007 Permit required this activity.*<sup>104</sup>

This is factually incorrect. Section E requirements under the 2007 Order were not required to be implemented until March 24, 2008, pursuant to Addendum No. 1:

*Each Copermittee shall implement all requirements of section E of this Order no later than 365 days after adoption of this Order, unless otherwise specified in this Order. Prior to 365 days after adoption of this Order, each Copermittee shall collaborate with the other Copermittees within its Watershed Management Area(s) (WMA) to at a minimum implement its Watershed URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.*<sup>105</sup>

The 2007 Order Addendum No. 1 extended the implementation date of section E requirements until March 24, 2008. Until March 24, 2008, the Claimants were implementing the requirements of the 2001 Order. Therefore, the Claimants were not implementing the 2007 Order Provisions E.2.f and E.2.g until the last 90 days of FY 2007/2008. Until March 24, 2008, the Claimants were implementing the

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<sup>103</sup> Quenzer Declaration 15, p.9-10.

<sup>104</sup> Quenzer Declaration Item 15. P.9.

<sup>105</sup> 2007 Order Section E.1.

2001 Order<sup>106</sup> from July 1, 2006, to March 24, 2008, or all of FY 2006/2007 and 75 percent of FY 2007/2008 (see Attachment 5).

For the RRM proposed equation component for Claimant reimbursement costs related to the watershed workgroup, the Quenzer Declaration states:

*“Watershed Lead Costs” are the actual annual shared costs for the Watershed Workgroup; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs.*<sup>107</sup>

The summary table of the fiscal year time period in the Quenzer Declaration identifies that the Claimants are requesting reimbursement costs for all of FY 2006/2007 and FY 2007/2008. The Quenzer Declaration does not describe or identify in the summary table for watershed lead costs any prorated reduction for FY 2006/2007 based on the Claimants implementing the 2001 Order requirements from July 1, 2006, to March 24, 2008. Therefore, the Claimants should not be reimbursed for watershed lead costs for FY 2006/2007 and 75 percent of FY 2007/2008. Because of the ongoing watershed programs that were already in place and carried over from the 2001 Order to the 2007 Order, the Commission’s Proposed Decision identified that only program implementation costs that were prorated for the higher level of program service required under the 2007 Order (i.e. above the 2001 Order program requirements) were to be reimbursed to the Claimants.<sup>108</sup> For example, Order 2001 sections J, K, L, and M required each Claimant to develop and implement watershed activities and WURMPs. The 2007 Order recognized this in section E.1.

The Quenzer Declaration proposes the Claimant’s annual proportionate share of costs implementing the “applicable” MOUs for fiscal years 2006/2007 through FY 2012/2013 as the basis for the RRM equation for these mandated activities. The Quenzer Declaration does not provide any description of the MOU or activities that are referenced. Claimants implemented an MOU for the 2001 Order and an MOU for the 2007 Order. The 2007 Order<sup>109</sup> required the Claimants to submit a formal agreement (i.e. MOU) within 180 days of the 2007 Order’s adoption date, or by July 23, 2007, near the beginning of FY 2007/2008. Therefore, the Claimant MOU that should be applicable for the proposed RRM is the 2007 Order MOU.

The Commission’s Proposed Decision specified that costs for developing an MOU or developing programs are not reimbursable for mandated activities. The Quenzer Declaration proposes an RRM equation based on a Claimant’s proportional share of the costs for MOU implementation based on the applicable

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<sup>106</sup> 2001 Order Sections J, K, L, and M.

<sup>107</sup> Quenzer Declaration 15., p. 10..

<sup>108</sup> Proposed Decision, Section pp. 59-60; see also 48-84

<sup>109</sup> 2007 Order provision M.5.

MOUs but does not differentiate between development and implementation of reimbursement costs specific to the mandated watershed activities for 2007 Order sections E.2.f and E.2.g.

The Quenzer Declaration also does not provide a methodology to prorate the cost differential required to implement the 2007 Order requirements above and beyond the 2001 Order program implementation. The Quenzer Declaration does not include a methodology to exclude Watershed Lead MOU costs that were for development of the MOU or costs for implementation of watershed lead activities that are not associated with 2007 Order provisions E.2.f and E.2.g. In summary, the total watershed lead costs identified in the Quenzer Declaration summary table includes costs under the 2001 order, costs for development of the MOU, and costs for management of MOUs and other activities unrelated to the mandated activities for 2007 Order sections E.2.f and E.2.g.

For Quenzer's proposed RRM equation to reimburse costs associated with jurisdictional watershed activities implemented under 2007 Order section E.2.f, the Quenzer Declaration does not identify a time period of reimbursement or provide a summary table by fiscal year for the total proposed Claimant reimbursement cost of \$4,207,768.50.<sup>110</sup>

The Quenzer Declaration proposed RRM equation identifies the time period of reimbursement from t=2007 to t=2013, in other words FY 2006/2007 to FY 2012/2013 or July 1, 2006, through June 30, 2013.

This proposed time period of reimbursement includes 100 percent of FY 2006/2007 and FY 2007/2008. As discussed previously, the Commission's Proposed Decision does not entitle the Claimants to reimbursement costs for activities required by the 2001 Order from July 1, 2006, to March 24, 2008, in other words for all of FY 2006/2007 and 75 % of FY 2007/2008. The Claimants were not required to implement Order 2007 section E.2.f activities until March 24, 2008. Section E.2.f activities consisted of the Claimants implementing "Watershed Activities that address the high priority water quality problems in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education Activities. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level."<sup>111</sup> The 2007 Order required each Claimant in each watershed to implement a specific number of activities:

*Each Watershed Copermittee shall implement identified Watershed Activities pursuant to established schedules. For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase.*<sup>112</sup>

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<sup>110</sup> Quenzer Declaration 15.b, p.9.

<sup>111</sup> 2007 Order Section E.2.f(1).

<sup>112</sup> 2007 Order Section E.2.f(4).



A minimum of four activities required to be implemented in each watershed by each Claimant in the proposed RRM equation appears reasonable. However, the Quenzer Declaration is unclear how the average cost was calculated for a jurisdictional activity cost of \$8,125 in FY 2007/2008 since the Claimants were implementing activities required under the 2001 Order and not the 2007 Order during that fiscal year until March 24, 2008. The Quenzer Declaration does not include an explanation other than that an average was taken. The Quenzer Declaration does not explain whether or not the costs were only implementation of activities that are mandated activities.

The 2007 Order specified which Claimants were in each watershed).<sup>113</sup> The total number of watersheds identified in the 2007 Order is nine with the number of Claimants varying from one to ten Claimants per watershed. Some Claimants are in more than one watershed and the same jurisdictional activities would have been implemented in more than one watershed resulting in fewer Claimants and activities implemented overall. For example, the County of San Diego is in all nine watersheds and the City of San Diego is in five watersheds.

According to Table 4 of the 2007 Order the number of annual activities in each watershed can range anywhere from four to 40. The Quenzer Declaration states without explanation that “*The Jurisdictional Activities are multiplied by the number of activities required per year.*”<sup>114</sup> The Quenzer Declaration does not identify the methodology in the proposed RRM equation used to calculate the total number of jurisdictional activities that were implemented by the Claimants annually in the nine watersheds to arrive at a total reimbursement cost for all Claimants of \$4,207,768.50 or each Claimant receiving \$221,461.50.

For the proposed RRM equation component for the Claimant’s reimbursement costs associated with Regional Watershed Activities under the WURMP, the Quenzer Declaration states:

*“WURMP Costs” are the actual annual costs for the Regional WURMP Working Group costs; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs*<sup>115</sup>

Although the Quenzer Declaration identifies that the time period of reimbursement costs for the proposed RRM equation would “be proper from halfway through FY 2006/2007 through FY 2012/2013,” the Claimants only incurred actual costs for a portion of this time and the actual time periods for

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<sup>113</sup> 2007 Order Table 4. Watershed Management Areas and Watershed Copermittees.

<sup>114</sup> Quenzer Declaration 15. c, p.11.

<sup>115</sup> Quenzer Declaration 15. c, PDF p.11g 42.

reimbursable activities are from FY 2008/2009 through FY 2009/2010 or July 1, 2008, through June 30, 2010.

As described previously, the 2007 Order Addendum No. 1 did not require implementation of section E requirements until March 24, 2008, and the 2007 Order's MOU was not implemented by the Claimants until July 23, 2007. Prior to these dates the Claimants were implementing the 2001 Order and 2001 MOU requirements and costs.

The proposed RRM equation time period for reimbursement costs is inconsistent with the table summary time period in the Quenzer Declaration and the RRM summary table of proposed RRM equations<sup>116</sup> (see Attachment 2). The Quenzer Declaration does not provide an explanation for the RRM equation for this part of the Claimant's reimbursable costs about how Regional Workgroup Watershed Activity costs are mandated activities under section E.2.f of the 2007 Order. That section does not require Regional Workgroup Watershed Activity support to implement the watershed activities in each watershed. Section E.2.f of the 2007 Order only states that "*These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.*"<sup>117</sup>

The Quenzer Declaration identifies that the reimbursement costs in the summary table are actual annual costs for each fiscal year time period. However, the Quenzer Declaration does not provide an explanation of the methodology used to calculate the average Claimants proportional share of the cost based on the "applicable MOUs." The Quenzer Declaration also does not adjust the Claimant's proportional share of the cost based on the "applicable MOUs" to only include costs associated for implementing section E.2.f mandated activities.

For the proposed RRM equation component for Claimant reimbursement costs related to Watershed Workgroup Meetings, the Quenzer Declaration states for the proposed RRM time period that:

*Although reimbursement would be proper from halfway through FY 2006/2007 through FY 2012/2013, there were only actual costs for a portion of this time,*<sup>118</sup>

The table summary in the Quenzer Declaration proposes reimbursement costs for Watershed Workgroup Meetings from FY 2007/2008 through FY 2012/2013 or July 1, 2007, through June 30, 2013, for mandated activities under 2007 Order section F.2.g. As described previously, the 2007 Order did not require section E requirements to be implemented until March 24, 2008, and the 2007 Order MOU

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<sup>116</sup> RRM, p12 See Attachment 2.

<sup>117</sup> 2007 Order Section E.2.f (1).

<sup>118</sup> Quenzer Declaration 15.d, p.12.

was not implemented by the Claimants until July 23, 2007 (FY 2007/20008). Prior to these dates the Claimants were implementing the 2001 Order and 2001 MOU requirements and costs.

This proposed time period of reimbursement in the RRM includes 100 percent of FY 2007/2008. The Claimants are not entitled to reimbursement costs for activities required by the 2001 Order from July 1, 2006, to March 24, 2008, in other words for all of FY 2006/2007 and the majority (75 %) of FY 2007/2008 activities. The Quenzer Declaration summary table for FY 2007/2008 does not adjust the total number of meetings to account for the time period the Claimants were actually implementing the requirements of the 2001 Order for FY 2007/2008. In fact, FY 2007/2008 has more total meetings (369) than any other FY conducted by the Claimants.

Section E.2.g, requires the Claimants to:

*[C]ollaborate to develop and implement the Watershed Urban Runoff Management Programs. Watershed Copermittee collaboration shall include frequent regularly scheduled meetings.<sup>119</sup>*

The 2007 Order recognized that Claimants were conducting collaboration meetings under the 2001 Order<sup>120121</sup> (see Attachment 4). The 2001 Order stated:

*Each Copermittee shall collaborate with all other Copermittees regulated under this Order to address common issues, promote consistency among Jurisdictional Urban Runoff Management Programs (Jurisdictional URMPs) and Watershed Urban Runoff Management Programs (Watershed URMPs), and to plan and coordinate activities required under this Order*

The Commission's Proposed Decision specified that the Claimants were not entitled to reimbursement costs associated with development of a mandated activity under the 2007 Order. The Quenzer Declaration does not provide a methodology for adjusting the total number of meetings for each fiscal year to account for those meetings which were focused on 1) the 2001 Order requirements; 2) development of watershed programs; 3) development and management of MOUs and 4) meetings conducted by the Claimants that focused on implementation of the mandated activity required by the 2007 Order. The Quenzer Declaration is unclear if FY 2012/2013 activities during these meetings were development of the MOU or discussions regarding the 2013 Order<sup>122</sup> which was adopted on May 8, 2013, and was in effect June 27, 2013.

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<sup>119</sup> 2007 Order, Section E.2.g.

<sup>120</sup> 2001 Order Section N.1.

<sup>121</sup> 2007 Order Amendment No. 1.

<sup>122</sup> 2013 Order - Order R9-2013-001, as amended.

For the number of meetings and meeting attendees, the Quenzer Declaration identifies that:

*Precise records of individual Co-Permittee meeting attendance was not available so the # Attendees was conservatively assumed to be one.<sup>123</sup> And “# Meetings” is the number of meetings per year.*

However, the Quenzer Declaration does not include any supporting documentation on the total number of meetings in the summary table held for each fiscal year. The Quenzer Declaration also does not include the basis of the assumption that every Claimant had an attendee at every single watershed group meeting for fiscal years FY 2007/2008 through FY 2012/2013 given the structure of the 2007 Order MOU where only some of the Claimants were identified to attend and other Claimants were only designated with voting rights. The Quenzer Declaration does not include a methodology or justification based on the available supporting documents submitted by the Claimants in Volumes 1-14.

Last, the Quenzer Declaration states that the rate proposed in the RRM reimbursement equation is:

*“the cost of the Municipal Claimant employee time per regional workgroup meeting; and The value of the Rate represents the average cost for a Municipal Claimant employee to attend a meeting between FY 2007/2008. The Rate was two hundred and sixty-two dollars and eighty-eight cents (\$262.88).<sup>124</sup>”*

The Quenzer Declaration provides no supporting methodology regarding how this average rate of meeting attendance was calculated for this part of the proposed RRM equation. For example, many of the Claimants had consultants attend the workgroup and other meetings. In the 2011 Survey<sup>125</sup>, the instructions given to all Claimants were to use a rate equivalent to the annual salary of the consultant when a consultant attended the meetings. The Quenzer Declaration does not identify if contractor rates are included in the average rate from the 2011 Survey or not. The Proposed Decision identified that the Claimants could not be reimbursed for contractor or consultant costs beyond what was charged to the Claimants.<sup>126</sup>

#### **E. Regional Urban Runoff Management Program (RURMP)<sup>127</sup>**

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<sup>123</sup> Quenzer Declaration, 15.d, p.12

<sup>124</sup> Quenzer Declaration, 15.d, p. 11

<sup>125</sup> Claimant Supporting Documentation Volume 1, pp. 1-376 County 2011 Co-Permittee Surveys

<sup>126</sup> Proposed Decision, pp. 46-84

<sup>127</sup> 2007 Order Sections F.1., F.2. & F.3

The Quenzer Declaration states for the proposed RRM equations that mandated activities<sup>128</sup> conducted under the 2007 Order sections F.1, F.2 and F.2.g that:

*The time period of the reimbursement for RURMP is halfway through FY 2006/2007 through FY 2012/2013 as this is when 2007 Permit required this activity.*<sup>129</sup>

This is factually incorrect. As previously explained, pursuant to Addendum No. 1 of the 2007 Order, section F requirements under the 2007 Order were not required to be implemented until March 24, 2008:

*The Copermittees shall implement all requirements of section F of this Order no later than 425 days after adoption of this Order, unless otherwise specified in this Order.*<sup>130</sup>

and

*Regional Urban Runoff Management Program, Section F, page 50 – “The Copermittees shall implement all requirements of section F of this Order no later than 425 days after adoption of this Order, unless otherwise specified in this Order.”*<sup>131</sup>

However, in the table summary of the Quenzer Declaration, the proposed RRM does not identify reimbursement costs until FY 2008/2009 through FY 2010/2011 or July 1, 2008 through June 30, 2011.<sup>132</sup> Although this reimbursement time period is consistent with the time period the Claimants were required to implement the 2007 Order for provision F mandated activities, the proposed RRM time period is inconsistent with the proposed RRM equation identified in the Quenzer declaration and in the RRM proposed methodology (see Attachment 2). Both the proposed RRM and the Quenzer declaration propose a time period of reimbursement of t=2007 to t=2013 or July 1, 2006, to June 30, 2013, FY 2006/2007 to FY 2012/2013 instead of t=2009 to t=2011. Last, the Quenzer Declaration proposes for the proposed RRM equation that:

*“Cost Share” is the actual annual cost share values as invoiced by County; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs.*<sup>133</sup>

However, the Quenzer Declaration does not provide supporting documentation on how these costs were arrived at and from which MOUs. For example, a methodology or summary table of each Claimant’s proportional cost share of the

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<sup>128</sup> Quenzer Declaration 15, p.10-11.

<sup>129</sup> Quenzer Declaration Item 15. p. P.10.

<sup>130</sup> 2007 Order Section F.

<sup>131</sup> 2007 Order Addendum No. 1.

<sup>132</sup> Quenzer Declaration 16, p.12.

<sup>133</sup> Quenzer Declaration 16, p.12.

costs are provided without explanation or documentation. As described previously, the Quenzer Declaration is also unclear if these MOU costs were for implementing the mandated activities, or for managing, facilitating and developing MOUs or activities. The Commission allowed reimbursable costs for implementing the mandated activities required in the 2007 Order but not for managing or developing MOUs or activities.

**F. Program Effectiveness Assessment<sup>134</sup>**

The Quenzer Declaration proposes an RRM equation based on two equation components:

*The total is determined by combining the jurisdictional program effectiveness assessment and regional FRA<sup>135</sup> workgroup expenditures as described in detail below.<sup>136</sup>*

The 2007 Order required each Claimant to implement annual effectiveness assessments under each Claimant's JURMP and for each watershed group:

*As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation.<sup>137</sup>*

and

*As part of its Watershed Urban Runoff Management Program, each watershed group of Copermittees (as identified in Table 4) shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation.<sup>138</sup>*

Section J of the 2007 Order required the Claimants to submit Annual JURMP and WURMP effectiveness assessments as part of the JURMP and WURMP Annual Reports.<sup>139</sup> As described previously, the 2007 Order Addendum No.1 did not require the Claimants to implement the JURMP or WURMP mandated activities until March 24, 2008, or near the end of FY 2007/2008. Until this date, the Claimants were required to implement the 2001 Order requirements.<sup>140</sup>

In addition, annual reports for the JURMP and WURMP under the 2007 Order were not submitted until September 30, 2008, see Attachment 4), or Fiscal Year 2008/2009. The Claimants were also required to implement annual effectiveness

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<sup>134</sup> 2007 Order Sections I.1 and I.2.

<sup>135</sup> Quenzer Declaration 17.b , PDF p. 13FRA is Fiscal, Reporting, and Assessment.

<sup>136</sup> Quenzer Declaration 17a, p.13.

<sup>137</sup> 2007 Order Section I.1.a.

<sup>138</sup> 2007 Order Section I.2.a.

<sup>139</sup> 2007 Order Section s J.1.a.(3) (l) and J.1.a.(4) (o).

<sup>140</sup> 2007 Order Addendum No.1 Provisions D, E, and J.

assessments under the 2001 Order for both the JURMP and WURMP<sup>141</sup> until March 28, 2008 (FY 07/08) and would not have been fully implementing the 2007 Order requirements until FY 2009/2010 or July 1, 2009, to June 30, 2010.

The additional requirements for the annual effectiveness assessments from the 2001 Order to the 2007 Order consisted of included identifying outcome levels from level 1-6 for the effectiveness assessment and steps needed to improve claimant's use of monitoring data, JURMP and WURMP programs.

The Quenzer Declaration states for the proposed RRM equations that mandated activities<sup>142</sup> conducted under the 2007 Order Sections I.1 and I.2 that:

*The time period of the reimbursement for program effectiveness is halfway through FY 2006/2007 through FY 2012/2013 as this is when 2007 Permit required this activity.*<sup>143</sup>

This is factually incorrect. As previously explained, pursuant to Addendum No. 1 of the 2007 Order, section I requirements were not required to be implemented until March 24, 2008. Section I requirements were not fully implemented until FY 2008/2009 or July 1, 2008, through June 30, 2009.

#### 1. Jurisdictional Program Effectiveness Assessment

For this part of the proposed RRM reimbursement equation, the Quenzer Declaration states that:

*“Effectiveness” is the percentage of the total stormwater budget all Co-Permittees spent on assessing if the jurisdiction program was effective and “Total” is the Municipal Claimant’s total stormwater budget. The yearly Effectiveness is three and seventy-two hundredths percent (3.72%) of the total annual stormwater budget for all Municipal Claimants is listed in 15.b.*<sup>144</sup>

However, the Quenzer Declaration does not provide any summary or supporting documentation explaining the methodology or basis for calculating the percentage of 3.72% or how the total of the Claimant's total stormwater budget was calculated to identify a \$26.8 million reimbursement cost for these mandated activities.

After reviewing the Quenzer Declaration's reference to section 15.b, “total annual stormwater budget” is not listed in section 15.b.<sup>145</sup> Instead, section 15.b of the Quenzer Declaration only identifies the Claimant Jurisdictional Activities basis for

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<sup>141</sup> 2001 Order Sections F.7, H.1.a (9), J.2.i and L.1.a (9).

<sup>142</sup> Quenzer Declaration 15, p.9-11.

<sup>143</sup> Quenzer Declaration Item 15. 9-11.

<sup>144</sup> Quenzer Declaration 17, p.13-14.

<sup>145</sup> Quenzer Declaration 15.b, p.11, Watershed Activities and Collaboration in the WURMP (Part E.2.f & E.2.g).

reimbursement costs. The basis of the Quenzer Declaration section 15.b reimbursement costs are: (1) total number of four jurisdictional activities and (2) an average unit cost for a jurisdictional activity:

*where “Jurisdictional Activities” are the costs to perform one jurisdictional activity per Co-Permittee adjusted annually for the CPI. The value of the Jurisdictional Activities represents the average cost to perform one jurisdictional activity in FY07-08. The Jurisdictional Activities are multiplied by the number of activities required per year. The average amount spent on the Jurisdictional Activities was eight thousand one hundred and twenty-five dollars (\$8,125). When the Jurisdictional Activities are added across the time the mandate applied and all the Municipal Claimants, the total is: Reimbursement = \$4,207,768.50*

The Quenzer Declaration is unclear what “total annual stormwater budget” the reimbursement costs are being referred in section 15.b when it states that cost is based on the Claimant Declarations<sup>146</sup> and the County Watershed Activities Database.

## 2. Regional Fiscal, Reporting, and Assessment (FRA) Workgroup Expenditures

For the second component of the proposed RRM equation, the Quenzer Declaration states that the formulas were determined by reviewing the County Watershed Workgroup Expenditure Records.<sup>147</sup> However, it does not include any description regarding the specific records used or the data used to develop the formula:

*“FRA Workgroup Costs” are the shared costs for developing and implementing the Regional FRA Workgroup Expenditures; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs. “<sup>148</sup>*

The Quenzer Declaration states for the time period of reimbursement that:

*Although reimbursement would be proper from halfway through FY 2006/2007 through FY 2012/2013, there were only actual costs for a portion of this time.*

As described previously, this is factually incorrect as the Claimants were not required to implement the annual effectiveness assessments for the 2007 Order until March 28, 2008 pursuant to Addendum No. 1 of the 2007 Order, or the last

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<sup>146</sup> Claimant Supporting Documentation Volume 2, pp. 377-743 Co-Permittee 2010 Declarations.

<sup>147</sup> Quenzer Declaration 17.b p.13.

<sup>148</sup> Quenzer Declaration 17.b 44p.13.



quarter of FY 2007/2008, and fully implement these mandated activities until FY 2008/2009.

The Quenzer Declaration includes a summary table that identifies the time period of reimbursement for these mandated activities are from FY 2008/2009 through FY 2010/2011 or July 1, 2008, through June 30, 2011. This time period is appropriate for this component of the proposed RRM equation for reimbursement costs. However, the time period is inconsistent with the actual formula proposed which identifies the period of reimbursement from t= 2007 to t=2015 or FY 2006/2007 to FY 2014/2015 which is July 1, 2006, to June 30, 2015.

The Quenzer Declaration does not provide a description of the methodology or data used to calculate the Claimant Proportional share of MOU costs for the workgroups. The Quenzer Declaration also does not identify which MOUs or MOU costs were applicable to calculate the total cost share for all Claimants in the summary table for each fiscal year of reimbursement.

Last, the Quenzer Declaration does not identify if the MOU Costs were adjusted or prorated to remove activities which were not mandated activities such as development and management of the MOUs for each fiscal year or if the costs were adjusted to only address the assessment part of the Regional Work Group. The Proposed Decision does not allow Claimants to receive reimbursement costs for activities outside of the mandated activities, costs associated with management or development of agreements or MOUs, or development of the mandated activities.<sup>149</sup> In addition, the Proposed Decision identified that reimbursable costs are to be prorated for the additional higher level of service required to implement the mandated activities by the 2007 Order above and beyond the requirements of the 2001 Order. As described previously, the effectiveness assessment was a requirement of the 2001 Order that continued into the 2007 Order with some minor modifications.

The RRM includes cost shares associated with the Regional FRA Workgroup activities that are not required in sections I.1 and I.2 of the 2007 Order. The Regional FRA Workgroup activities also included other 2007 Order activities associated with regional fiscal reporting and assessment (2007 Order sections G and J) and regional reporting of effectiveness assessments (2007 Order Provision J). Sections I.1 and I.2 of the 2007 Order only address 1) implementation and annual reporting of each Claimant's Jurisdictional effectiveness assessment and 2) Implementation of each Claimant's WURMP effectiveness assessment. The Regional FRA Workgroup activities do not

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<sup>149</sup> Proposed Decision, p.48.-84.

include regional annual effectiveness reporting or development which is included in section J of the 2007 Order.

*As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation.*<sup>150</sup>

and

*As part of its Watershed Urban Runoff Management Program, each watershed group of Copermittees (as identified in Table 4) shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation.*<sup>151</sup>

Regional Effectiveness Assessment and Reporting is included in 2007 Order section I.3 under the RURMP:

*As part of the Regional Urban Runoff Management Program, the Copermittees shall annually assess the effectiveness of Regional Urban Runoff Management Program implementation.*<sup>152</sup>

Last, the Quenzer Declaration did not identify as part of the reimbursement methodology if the Claimant Cost MOU cost shares were actual spent costs or proposed budgets. The Quenzer Declaration refers to the Residential Education costs which is under a different proposed RRM methodology<sup>153</sup> in the Quenzer Declaration and not section 17.b:

*When the costs for developing and implementing the Residential Education Program is added across the time the mandate applied for all Municipal Claimants, the total is:*<sup>154</sup>

In summary, the Quenzer Declaration does not provide (1) supporting documentation on the specific source data used for each Claimant and fiscal year, (2) the method for calculation of the reimbursement cost, (3) explanation that the reimbursement cost only included mandated activities, or (4) that the reimbursement cost was calculated in accordance with the requirements of the Proposed Decision.

## **G. Long-term Effectiveness Assessment (LTEA)<sup>155</sup>**

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<sup>150</sup> 2007 Order Section s I.1.a, I.1.b, and I.1.c.

<sup>151</sup> 2007 Order Section s I.2.a, I.2.b and I.2.c.

<sup>152</sup> 2007 Order Section s I.3.a, I.3.b and I.3.c.

<sup>153</sup> Quenzer Declaration, 14 p.7.

<sup>154</sup> Quenzer Declaration, 17.b p. 14.

<sup>155</sup> 2007 Order Sections I.5. and I.3.a (6) and Section J.1.b.(3).

The Quenzer Declaration proposes an RRM equation based on (1) actual costs of contractors and (2) the Claimant's proportional share of the cost based on the applicable MOUs and "review of the Regional Workgroup Expenditure Records":

*where "Contractor Costs" are the actual annual costs of the contractors needed to assess the long-term effectiveness of the projects as reported by County; and "MOU" is the Municipal Claimant's proportional share of the cost based on the applicable MOUs.*<sup>156</sup>

In the Quenzer Declaration, the time period of reimbursement for the proposed RRM equation is from halfway through FY 2006/2007 to FY 2012/2013 or July 1, 2006, to June 30, 2013.

*halfway through FY 2006/2007 through FY 2012/2013 as this is when 2007 Permit required this activity. Although reimbursement would be proper from halfway through FY 2006/2007 through FY 2012/2013, there were only actual costs for a portion of this time.*<sup>157</sup>

As stated previously, this is factually incorrect as the 2007 Order was not implemented for this mandated activity until March 28, 2008, or FY 2007/2008. The LTEA included an effectiveness assessment of the receiving waters monitoring program, and the objectives of section I.3.a(6). The requirements of section I.3.a (6) of the 2007 Order included the evaluations of the Claimants' jurisdictional, watershed, and regional effectiveness assessments. Further, section I.5 of the 2007 Order was not implemented until 210 days prior to the expiration of the 2007 Order. The 2007 Order was administratively extended until the adoption of the 2013 Order on May 8, 2013, went into effect on June 27, 2013.

The 2007 Order also acknowledges the LTEA implemented and submitted by the Claimants under the 2001 Order: *Each Copermitttee shall collaborate with the other Copermitttees to develop a Longterm Effectiveness Assessment (LTEA), which shall build on the results of the Copermitttees' August 2005 Baseline LTEA. The LTEA shall be submitted by the Principal Permittee to the Regional Board no later than 210 days in advance of the expiration of this Order.*<sup>158</sup>

The Quenzer Declaration's proposed RRM time period for reimbursement in the summary table is for "yearly Contractor Costs for Long-term Effectiveness Assessment" associated with FY 2008/2009, i.e. July 1, 2008, to June 30, 2009.<sup>159</sup> The Quenzer Declaration does not provide any supporting

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<sup>156</sup> Quenzer Declaration 18, PDF p.45.

<sup>157</sup> Quenzer Declaration 18, PDF p.45.

<sup>158</sup> 2007 Order Section I.5.a.

<sup>159</sup> Quenzer Declaration 18, PDF p.46.

documentation to explain the sources of information and methods used to calculate the total proposed reimbursement cost of \$344,539.

In addition, the time period of reimbursement proposed in the Quenzer Declaration is inconsistent with the mandated activity described in section I.5 of the 2007 Order. Section I.5 of the 2007 Order was not required to be implemented until 120 days prior to January 24, 2012, the expiration date of the 2007 Order, FY 2012/2013, prior to any administrative extensions of the 2007 Order. NPDES permits are implemented in five-year terms.<sup>160</sup> The Quenzer Declaration does not explain the costs that the Claimants request reimbursement for during fiscal years that are three years prior to the required mandated activity date. In addition, section I.5 of the 2007 Order was specifically implemented and submitted as a report by the Principal Permittee 210 days in advance of the expiration of the 2007 Order:

*In accordance with section I.5 of this Order, the Principal Permittee shall submit the LTEA to the Regional Board no later than 210 days in advance of the expiration of this Order.*<sup>161</sup>

The Quenzer Declaration does not explain the methodology used to determine the proposed reimbursement costs for the Regional Work Group MOUs for the Claimants and the contractors. The Quenzer Declaration also does not identify the methodology used to determine that only mandated activities are included in the reimbursement costs for the MOU, or the methodology used in the proposed RRM equation to determine that the calculated reimbursement costs were adjusted to not include development of the mandated activity. The Quenzer Declaration does not prorate reimbursement costs to include only the increase of the higher level of service compared to costs implementing the same requirements from the 2001 Order.

#### **H. All Copermittee Collaboration<sup>162</sup>**

The Proposed RRM equation for this mandated activity includes reimbursement costs to the Claimants that are already included in other proposed RRM equations. The Claimants cannot be reimbursed twice for mandated activities.

For this mandated activity, section L of the 2007 Order requires:

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<sup>160</sup> 2007 Order Attachment B, Standard Provisions 7 (q) and (r) (q) Expiration. This Order expires five years after adoption. (r) Continuation of expired order [23 CCR 2235.4]. After this Order expires, the terms and conditions of this Order are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits (40 CFR 122.6) are complied with.

<sup>161</sup> 2007 Order Section J.2.c.

<sup>162</sup> 2007 Order Sections L.1.a.(3) through L.1.a (6).

*“Each Copermittee collaborate with all other Copermittees regulated under this Order to address common issues, promote consistency among Jurisdictional Urban Runoff Management Programs and Watershed Urban Runoff Management Programs, and to plan and coordinate activities required under this Order.”<sup>163</sup>*

and

*“All Copermittees shall jointly execute and submit to the Regional Board no later than 180 days after adoption of this Order, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement which at a minimum:<sup>164</sup> ...*

- (3) Establishes a management structure to promote consistency and develop and implement regional activities;*
- (4) Establishes standards for conducting meetings, decision-making, and cost sharing;*
- (5) Provides guidelines for committee and workgroup structure and responsibilities; and*
- (6) Lays out a process for addressing Copermittee non-compliance with the formal agreement.”*

Section L.1 of the 2007 Order identifies that the Claimants collaborate with each other for consistency and planning among the JURMP and WURMP requirements, promote consistency with regional activities, and to develop and implement regional activities. The Claimants were also required to implement these same requirements by the 2001 Order.<sup>165</sup> The JURMP and WURMP requirements are identified in sections D (jurisdictional activities of each Claimant) and E (Claimant watershed activities by watershed)<sup>166</sup> of the 2007 Order. Regional activities (RURMP) are identified in section F of the 2007 Order.

The Quenzer Declaration states for the proposed RRM equations that the three proposed RRM equation components include reimbursement costs for (1) effective assessments in the County Cost RRM equation factor, (2) meeting attendance for watershed activities and collaboration of Claimants in the WURMP (Meeting Attendance factor), and (3) Regional Workgroup Expenditure “costs for preparing the plan.”<sup>167</sup>

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<sup>163</sup> 2007 Order Section L.1.

<sup>164</sup> 2007 Order Section L.1.a.

<sup>165</sup> 2001 Order Section N, All Copermittee Collaboration.

<sup>166</sup> See Table 4 of the 2007 Order.

<sup>167</sup> Quenzer Declaration 19.a,b,c , p. 15-16.

*“a reasonable reimbursement formula for the costs of the long-term effectiveness assessments”*

and

*“When the costs for preparing the plan is added across the time the mandate applied, the total is: Reimbursement = \$277,839.07<sup>168</sup>”*

and

*“reasonable reimbursement formula for the costs of the watershed activities and collaboration in the WURMP<sup>169</sup>”*

and

*“# Meeting Attendances” is the number of times representative from a Municipal Claimant attend a regional workgroup meeting<sup>170</sup>*

and

*“a reasonable reimbursement formula for the costs of the long-term effectiveness assessment is<sup>171</sup> ...*

and

*When the costs for preparing the plan is added across the time the mandate applied for all Municipal Claimants, the total is: Reimbursement = \$418.10<sup>172</sup>”*

Sections D and E of the 2007 Order include effectiveness assessment requirements. However, regional activities (RURMP) are not included in sections D and E of the 2007 Order. Effectiveness assessment requirements for the JURMP and WURMP, sections D and E of the 2007 Order, are included in sections I.1 and I.2 of the 2007 Order. Neither sections I.1 or I.2 of the 2007 Order include regional activities or reference section F (RURMP) and I.3 of the 2007 Order (RURMP Regional Effectiveness Assessments). The 2007 Order also does not include section I.5, Long-term Effectiveness Assessment in sections D and E.

Section F.3 (RURMP) of the 2007 Order states:

*“each Copermittee shall collaborate with the other Copermittees to develop, implement, and update as necessary a Regional Urban Runoff Management Program... The Regional Urban Runoff Management Program shall, at a minimum ... Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs.”*

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<sup>168</sup> Quenzer Declaration 19.a, p.15.

<sup>169</sup> Quenzer Declaration 19.b, p.16.

<sup>170</sup> Quenzer Declaration 19.b, p.16.

<sup>171</sup> Quenzer Declaration 19.b, p.16..

<sup>172</sup> Quenzer Declaration 19.c p.17

Section I.3.a(6) of the Order requires the Claimants to evaluate as part of the RURMP program whether or not the Claimants' jurisdictional, watershed, and regional effectiveness assessments were meeting objectives (a) through (h). Based on the results of the regional effectiveness assessment, the Claimants were required to identify changes to regional programs and activities in the RURMP.<sup>173</sup> Section I.5.e of the 2007 Order states:

*“The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.”*

The Quenzer Declaration has previously proposed RRM Equations (See Attachment 2) that included reimbursement costs of the Claimants mandated activities associated with Sections D, E, F and I of the 2007 Order relating to the implementation of effectiveness assessment requirements, attendance at WURMP watershed meetings, and Claimant watershed activities.<sup>174</sup> The previously proposed RRM equations in the Quenzer Declaration also already included the Regional FRA Workgroup costs and Claimant proportional share of annual MOU costs in the total reimbursement costs for mandated activities in sections E, F, and I.<sup>175</sup>

The Quenzer Declaration does not identify any supporting documentation, methodology, or explanation why the proposed RRM equation components used for reimbursement costs for the mandated activities under section L of the 2007 Order includes costs that are already in the other proposed RRM equations. The Claimants are requesting reimbursement twice for the same activities.

Claimant WURMP and Regional Work Group meeting attendance costs were already included in other proposed RRM equations in the Quenzer Declaration along with JUMRP, WURMP, RURMP, and LTEA effectiveness assessments and evaluations. The Quenzer Declaration proposed RRM equation for this mandated activity does not include a unique or accurate RRM formula that accurately describes the Claimants activities required under Section L of the 2007 Order that is separate and distinctly different from the other Quenzer Declaration-proposed RRM reimbursement formulas for other mandated activities.

The Quenzer Declaration duplicates reimbursement costs already proposed for the Claimants in other RRM equations. While the 2007 Order sections D, E, F, I, and L references or cross reference effectiveness assessments and evaluations of effectiveness assessments for JURMP, WURMP, and RURMP activities, the

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<sup>173</sup> 2007 Order Section I.3.b.

<sup>174</sup> Quenzer Declaration 13, 14, 15, 16, 17, and 18.

<sup>175</sup> Quenzer Declaration 13, 14, 15, 16, 17, and 18.

2007 Order and accompanying Fact Sheet are clear that these were distinctive activities the Claimants were required to implement. The Claimants are not entitled to the same reimbursement costs already calculated for the same Claimant mandated activity in other areas. For example, attendance at the same regional work group meetings by Claimants cannot be proposed for reimbursement twice.

1. Commission Specified Reimbursable Costs for Section L

The Commission identified two activities in sections L1.a.3-L.1.a.6 of the 2007 Order that were determined to be mandated activities<sup>176</sup>:

- a) Collaboration with all other Claimants as required by the first sentence in section L.1 of the 2007 Order.
- b) Jointly execute and submit to the Regional Board an MOU.

The Commission specified that the first sentence in section L.1 of the 2007 Order requiring Claimant collaboration was an ongoing reimbursable activity which was already included with collaboration required for other reimbursable activities of the 2007 Order: 1) JURMP educational component (Section D), 2) update of the WURMP (Section E), 3) the RURMP (Section F), and 4) the LTEA (Section I.5).<sup>177</sup> Therefore, reimbursable costs for these mandated activities in section L are recognized by the Commission to be inherently included in the reimbursable costs for the Claimant mandated activities in sections E, F, and I.5 of the 2007 Order. The Commission also specified that Claimants were limited to reimbursement costs for collaboration to the new activities found to mandate a new program or higher level of service. The Claimants did not specify any new programs or higher level of service.

The Commission further specified that the execution of the Claimant MOU required by sections L.1.a.3 through L.1.a.6 of the 2007 Order was a one-time activity. The Commission recognized that the Claimants were required in the 2001 Order to execute an MOU. The Commission further specified that the Claimant MOU responsibilities that were previously required by the 2001 Order were not reimbursable costs. The Commission also specified that reimbursement costs required by sections L.1a.3 through L.1.6 of the 2007 Order were limited to what the Commission determined for items 1 through 4 described above.

The Commission's Proposed Decision would limit the Claimants to reimbursable costs that were prorated to only include costs to execute and submit the

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<sup>176</sup> Proposed Decision, pg 25.

<sup>177</sup> Proposed Decision, pg 26.



November 16, 2007, MOU, for sections L.1.a.3 through L.1.a.6 of the 2007 Order. The Commission determined that executing and submitting a full MOU required under the 2007 Order was not a mandated activity eligible for reimbursement.<sup>178</sup> Therefore, the Proposed Decision limited the Claimants reimbursable costs to the time period of reimbursement from the 2007 Order adoption date of January 24, 2007 (FY 2006/2007) to the MOU execution date of November 16, 2007 (FY 2007/2008) for reimbursement costs related to sections L.1.a.3 through L.1.6 of the 2007 Order.

## 2. Quenzer Declaration Proposed RRM Equations time period for reimbursement and formula factors

The Quenzer Declaration identifies that the proposed RRM equation is based on three components of reimbursement costs that include: (1) the yearly County of San Diego costs to support the regional workgroup meetings, (2) yearly costs of Claimants to attend regional workgroup meetings, and (3) yearly regional workgroup expenditures.<sup>179</sup> For the proposed RRM equation, the Quenzer Declaration identifies that the time period of reimbursement is FY 2006/2007 (t=2007) through FY 2012/2013 (t=2013) or July 1, 2006, to June 30, 2013:

*“The time period of the reimbursement for program effectiveness is 2007 through 2013 as this is when 2007 Permit required this activity”<sup>180</sup>*

The Quenzer Declaration references that the time period of reimbursement costs is specifically for “program effectiveness.” However, as described previously, the Commission clearly specified for this mandated activity that the Claimants are only entitled to prorated reimbursement costs for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU for Sections L.1.a.3 through L.1.a.6 of the 2007 Order. The Claimants are not entitled to ongoing reimbursement costs for program effectiveness. The Proposed Decision identified that these ongoing reimbursement costs were already included in other mandated activities for the JURMP, WURMP, RURMP, and LTEA.

Therefore, the reimbursement time period of FY 2006/2007 through FY 2012/2013 (t=2013) or July 1, 2006, to June 30, 2013, the Quenzer Declaration proposes for this RRM equation is not factually correct. The Commission specified time period for Claimant reimbursement costs is limited to January 24, 2007 (FY 2006/2007) to November 16, 2007 (FY 2007/2008).

### a) Support for Regional Workgroup Meetings

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<sup>178</sup> Proposed Decision p. 27

<sup>179</sup> Quenzer Declaration, 19, p.15

<sup>180</sup> Quenzer Declaration 19.a p.16

For this component of the proposed RRM equation, the Quenzer Declaration proposes a time period of reimbursement from FY 2008/2009 to FY 2012/2013 (July 1, 2008, through June 30, 2013). This proposed time period for this component of the proposed RRM equation is factually incorrect. The Proposed Decision for this mandated activity clearly states that the Claimants are only entitled to a one time prorated reimbursement for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU for sections L.1.a.3 through L.1.a.6 of the 2007 Order.

The Quenzer Declaration states that this component of the proposed RRM equation is based on “County Cost” and the Claimant’s proportional share of the “MOU.” The Quenzer Declaration also states for reimbursable costs associated with the long-term effectiveness assessment:

*“...that a reasonable reimbursement formula for the costs of the long-term effectiveness assessment.”<sup>181</sup>*

The Claimants are not entitled to reimbursement costs for the Long-Term Effectiveness Assessment under the mandated activities identified for section L of the 2007 Order by the Commission. The Commission identified that the reimbursement cost for the LTEA is included as a one-time reimbursable cost for Claimants under section I.5<sup>182</sup> of the 2007 Order, not section L. The Quenzer Declaration has already proposed reimbursements costs for the Claimants development and submittal of the LTEA for mandated activities required by section I.5 of the Order. The Claimants are not entitled to overlapping or duplicate LTEA reimbursement costs for mandated activities under section I.5 of the 2007 Order and under sections L.1.a.3 through L.1.a.6 of the 2007 Order. The Commission specified that reimbursement costs for this mandated activity are limited to a reimbursement cost time period of January 24, 2007 (FY 2006/2007) to November 16, 2007 (FY 2007/2008) to execute and submit the pro rata costs of Sections L.1.a.3 through L.1.a.6 of the 2007 Order for the November 16, 2007 (FY 2007/2008) MOU. The Quenzer Declaration already proposed RRM reimbursement costs for the LTEA under section I.5 of the 2007 Order:<sup>183</sup>

*“a reasonable reimbursement formula for the costs of the long-term effectiveness assessment”*

The Quenzer Declaration does not provide any supporting documentation for the proposed RRM methodology’s equation component to justify whether or not

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<sup>181</sup> Quenzer Declaration 19.a, p.15.

<sup>182</sup> Quenzer Declaration 18, p.15.

<sup>183</sup> Quenzer Declaration 18, p.15.

proposed reimbursable costs for activities conducted after November 16, 2007, fall under the Commission's one-time activity criteria for reimbursement. The Quenzer Declaration does not provide any explanation how ongoing yearly reimbursement costs included in the summary table<sup>184</sup> after November 16, 2007, are reimbursable pro rata costs for the mandated activity of the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU. The Quenzer Declaration does not identify or provide a methodology that supports that the Claimant's actual yearly costs are reimbursable for this mandated activity:

*"where "County Cost" are the actual costs spent to support the various all Co- Permittee meetings;*<sup>185</sup>

and

*"MOU" is the Municipal Claimant's proportional share of the cost based on the applicable MOUs."*

The Quenzer Declaration does not provide any methodology on the calculation of the totals in the summary table for each fiscal year's Cost Share for Co-Permittee Workgroup Meeting Support Costs. For example, each Claimant MOU cost share is not provided. The Quenzer Declaration does not provide a methodology for how the MOU costs were adjusted to only include reimbursable costs for the mandated activity and not include Claimant costs which were identified as not reimbursable by the Commission.

*b) Regional Workgroup Meetings*

For this component of the proposed RRM equation, the Quenzer Declaration proposes a time period of reimbursement from FY 2006/2007 to FY 2012/2013 (July 1, 2006, through June 30, 2013). The proposed time period for this component of the proposed RRM equation is factually incorrect. For this mandated activity, the Commission's Proposed Decision clearly states that the Claimants are only entitled to a one-time prorated reimbursement for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU for sections L.1.a.3 through L.1.a.6 of the 2007 Order.

The Quenzer Declaration states that this component of the proposed RRM equation is based on 1) an average cost for a Claimant to attend each regional workgroup meeting (*Rate*) and 2) the total number of times a Claimant or Claimant's representative attended a regional workgroup per fiscal year ("*# Meeting Attendances*):

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<sup>184</sup> Quenzer Declaration 19.a, p.15.

<sup>185</sup> Quenzer Declaration 19.a, p.15.

*“where “Rate” is the cost of the Municipal Claimant employee time per regional workgroup meeting; “# Meeting Attendances” is the number of times a representative from a Municipal Claimant attend a regional workgroup meeting. The value of the Rate represents the average cost for a Municipal Claimant employee to attend a meeting between FY 2007/2008. The Rate was two hundred and sixty-two dollars and eighty-eight cents (\$262.88).“*

The Quenzer Declaration does not provide any data sources or explanation in the proposed RRM methodology regarding how the average rate of Claimant attendance was calculated. The Quenzer Declaration also does not provide the data sources used to calculate the total number of meetings, the data sources used to calculate the total number of Claimants for each fiscal year, or the methodology for calculating the total number of meetings for each fiscal year.

The Quenzer Declaration states that the reimbursable costs per fiscal year in the summary table are associated with Claimant watershed activities and collaboration in the WURMP meetings:

*“a reasonable reimbursement formula for the costs of the watershed activities and collaboration in the WURMP meetings<sup>186</sup>”*

However, the Claimants are not entitled to reimbursement costs for ongoing watershed activities and collaboration in WURMP meetings under the mandated activity identified for section L of the 2007 Order. The Commission identified for the ongoing mandated WURMP activities for the 2007 Order section L, that the activities listed in the “first sentence,” were included in the reimbursement costs for mandated activities under Sections E.2.f and E.2.g<sup>187</sup> of the 2007 Order. The Quenzer Declaration has already previously proposed a RRM equation for reimbursements costs due to the mandated WURMP activity for sections E.2.f and E.2.g of the 2007 Order.<sup>188</sup>

The Claimants are not entitled to overlapping or duplicate WURMP reimbursement costs for mandated activities under sections E.2.f and E.2.g of the 2007 Order and also under section L, “first sentence”, of the 2007 Order. The Commission specified that reimbursement costs for this mandated activity are limited to a reimbursement cost time period of January 24, 2007 (FY 2006/2007) to November 16, 2007 (FY 2007/2008) to execute and submit the pro rata costs of Sections L.1.a.3 through L.1.a.6 of the 2007 Order for the November 16, 2007 (FY 2007/2008) MOU. The Quenzer Declaration already

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<sup>186</sup> Quenzer Declaration 19.b. p.16.

<sup>187</sup> Quenzer Declaration 15, p.9..

<sup>188</sup> Quenzer Declaration 15.a -d. pp. 9-12.

proposed RRM reimbursement costs for mandated WURMP activities under sections E.2.f and E.2.g of the 2007 Order<sup>189</sup>:

*“15. Watershed Activities and Collaboration in the WURMP (Part E.2.f & E.2.g). The total reimbursable for watershed activities and collaboration in the WURMP is Reimbursement: = \$5,390,740.78 The total is determined by combining the cost share contributions, jurisdictional watershed activities, regional WURMP costs and meeting costs as described in detail below. The time period of the reimbursement for watershed activities and collaboration in the WURMP is halfway through FY 2006/2007 through FY 2012/2013 as this is when 2007 Permit required this activity.”*

The Quenzer Declaration does not provide any supporting documentation for the proposed RRM methodology for this equation component to justify whether or not the proposed reimbursable costs beyond November 16, 2007, fall under the Commission’s one-time activity criteria. The Quenzer Declaration does not provide any explanation as to how ongoing yearly reimbursement costs included in the summary table<sup>190</sup> after November 16, 2007, are reimbursable pro rata costs for mandated activities associated with the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU. Further the Quenzer Declaration does not identify which regional workgroup meeting is referred to in this component of the proposed RRM equation. The Quenzer Declaration does not identify or provide a methodology supporting that the Claimant’s actual yearly costs are allowable Claimant reimbursable costs for this mandated activity:

The Quenzer Declaration also does not provide any methodology on how the total reimbursement was calculated. The Quenzer Declaration does not provide a methodology explaining how the total number of meetings in the summary table for each fiscal year were adjusted to only include reimbursable costs for the mandated activity and not Claimant costs which were identified as not reimbursable by the Commission. Without such an explanation, the Quenzer Declaration proposes reimbursement for activities that are not reimbursable

*c) Workgroup Expenditures*

For this component of the proposed RRM equation, the Quenzer Declaration proposes a time period of reimbursement from FY 2006/2007 to FY 2016/2017 (July 1, 2006, through June 30, 2017). This time period is inconsistent with the narrative description in the Quenzer Declaration for this component of the proposed RRM equation which states the time period of reimbursement is FY 2006/2007 to FY 2012/2013 (July 1, 2006, through June 30, 2013):

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<sup>189</sup> Quenzer Declaration 18, p.14.

<sup>190</sup> Quenzer Declaration 19.b, p.16.

*“Although reimbursement would be proper from halfway through FY 2006/2007 through FY 2012/2013, there were only actual costs for a portion of this time<sup>191</sup>.”*

The table summary in the Quenzer Declaration identifies that the actual time period of reimbursement is FY 2008/2009 to FY 2009/2010; i.e. July 1, 2008, through June 30, 2010. The proposed time period for this component of the proposed RRM equation is factually incorrect as stated in the table summary. The Commission specified for this mandated activity clearly states that the Claimants are only entitled to a one-time prorated reimbursement for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU for Sections L.1.a.3 through L.1.a.6 of the 2007 Order.

The Quenzer Declaration does not provide the data sources or methodology used to calculate the total “*Cost Share for Regional Working Group Coordination Costs*” for each fiscal year listed in the summary table. In addition, the Quenzer Declaration states that the reimbursable costs per fiscal year in the summary table are associated with the costs of the long-term effectiveness assessment:

*“Using this information, I have determined that a reasonable reimbursement formula for the costs of the long-term effectiveness assessment is as follows:”<sup>192</sup>*

The Quenzer Declaration does not provide any supporting documentation for the proposed RRM methodology for this equation component to explain why the proposed reimbursable costs after November 16, 2007, are reimbursable contrary to the Commission’ that reimbursement for this section is a one-time activity. The Quenzer Declaration does not provide any explanation as to how ongoing yearly reimbursement costs included in the summary table<sup>193</sup> after November 16, 2007, are reimbursable pro rata costs for mandated activities for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU. Further, the Quenzer Declaration does not identify which regional workgroup meeting is referred to in this component of the proposed RRM equation. The Quenzer Declaration does not identify or provide a methodology that supports that the Claimant’s actual yearly costs are for reimbursable activities allowed by the Commission.

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<sup>191</sup> Quenzer Declaration 19.c. p.16.

<sup>192</sup> Quenzer Declaration 19.c. p.15-16.

<sup>193</sup> Quenzer Declaration 19.b, p.15.

The Quenzer Declaration states that this component of the proposed RRM equation is based on the actual costs of activities performed by the workgroup<sup>194</sup> and Claimant proportional share of the cost based on the applicable MOUs (labeled as “MOU” in the equation).

*The formula and components of the formula were determined by reviewing them Regional Cost Sharing Documentation. Using this information, I have determined that a reasonable reimbursement formula for the costs of the long-term effectiveness assessment*

and

*where “Workgroup Cost” are the actual costs of activities performed by the workgroup; and “MOU” is the Municipal Claimant’s proportional share of the cost based on the applicable MOUs.*

The Claimants are not entitled to reimbursement costs for the Long-Term Effectiveness Assessment (LTEA) under the mandated activities identified for section L of the 2007 Order. The Commission’s Proposed Decision specified that the reimbursement cost for the LTEA is a one-time mandated activity reimbursable cost for Claimants under Section I.5<sup>195</sup> of the 2007 Order. The Quenzer Declaration has already proposed reimbursement for the Claimants development and submittal of the LTEA for mandated activities required in section I.5 of the 2007 Order. The Claimants are not entitled to overlapping or duplicate LTEA reimbursement costs for mandated activities under section I.5 of the 2007 Order also under sections L.1.a.3 through L.1.a.6 of the 2007 Order.

The Commission specified that reimbursement costs for this mandated activity are limited to a reimbursement cost time period of January 24, 2007 (during FY 2006/2007) to November 16, 2007 (during FY 2007/2008) to execute and submit the pro rata costs of Sections L.1.a.3 through L.1.a.6 of the 2007 Order for the November 16, 2007 (FY 2007/2008) MOU. The Quenzer Declaration already proposed RRM reimbursement costs for the LTEA under section I.5 of the 2007 Order<sup>196</sup>:

*“a reasonable reimbursement formula for the costs of the long-term effectiveness assessment”*

The Quenzer Declaration does not provide any supporting documentation for the proposed RRM methodology for this equation component that justifies whether or not the proposed reimbursable costs after November 16, 2007, are eligible for reimbursement under the Commission’s one-time activity criteria. The Quenzer

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<sup>194</sup> See Attachment 2 - labeled “Workgroup Cost” in the equation.

<sup>195</sup> Quenzer Declaration 18, p.14-15.

<sup>196</sup> Quenzer Declaration 18, p.14-15.

Declaration does not provide any explanation how ongoing yearly reimbursement costs included in the summary table<sup>197</sup> after November 16, 2007, are reimbursable pro rata costs for the execution and submittal of the November 16, 2007 (FY 2007/2008) MOU. Further the Quenzer Declaration does not identify which regional workgroup or other workgroup is referred to in this component of the proposed RRM equation. The Quenzer Declaration does not identify or provide a methodology that supports that the Claimant's actual yearly costs are allowable reimbursable costs for this mandated activity:

*“When the costs for preparing the plan is added across the time the mandate applied for all Municipal Claimants, the total is ,,,”<sup>198</sup>*

Last, the Quenzer Declaration states that *“MOU is the Municipal Claimant's proportional share of the cost based on the applicable MOUs.”* The Quenzer Declaration does not provide any methodology to explain how the totals in the summary table for each fiscal year for the *“Cost Share for Regional Working Group Coordination Costs”* were calculated. For example, each Claimant MOU cost share is not provided. The Quenzer Declaration does not provide a methodology explaining how the MOU costs were adjusted to only include reimbursable costs for the mandated activity and to not include Claimant costs which were identified as not reimbursable by the Commission.

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<sup>197</sup> Quenzer Declaration 19.c, p.16.

<sup>198</sup> Quenzer Declaration 19.c, p.16.



### III. Proposed RRM Equation Methodology Assessment

#### A. Claimants' Use of "Best Professional Judgement" as Basis for Development of Proposed RRMS

The Quenzer Declaration states that the basis for the development of the proposed RRM equations, formulas, and formula factors relied on from "consideration", or "determined by reviewing", and professional "opinion" of the various Claimant supporting documents:

*"These documents included cost information from a representative sample of the Co-Permittees. I considered these documents and the variation in costs among Municipal Claimants to implement the state mandates to develop reasonable reimbursement methodologies for each reimbursable activity described in the Draft Proposed Decision and Parameters and Guidelines for Test Claim 07-TC-09-R ("Test Claim Mandate") based on **general allocation formulas, uniform cost allowances, and other approximations** of Municipal Claimants costs to implement the Test Claim Mandates."<sup>199</sup>*

and

*"In my opinion, the total cost spent on reporting for each Co-Permittee is comparable to the amounts reported in the NPDES Stormwater Cost Survey Final Report from January 2005 ("2005 State Survey")."<sup>200</sup>*

and

*"The formula and components of the formula were determined by reviewing the County 2011 Co-Permittee Surveys. Using this information, I have determined that a reasonable reimbursement formula for the costs of reporting on street sweeping for each Co-Permittee is."<sup>201</sup>*

The Claimants methodology of consideration of documents, professional opinion, and determination by reviewing documents for development of the proposed RRMs were cited for all of the proposed RRM equations. The Claimants described methodology for development of the RRMs do not meet either the universal accepted engineering or scientific method for the development of unique factors for specific cases or other approximations.

The universally accepted engineering or scientific method for the development and approximation of unique factors for specific or unique cases has been established as a specific protocol by US EPA as "Best Professional Judgement"

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<sup>199</sup> Quenzer Declaration, p. 3.

<sup>200</sup> Quenzer Declaration, p. 4.

<sup>201</sup> Quenzer Declaration, p. 5.

Best Professional Judgement is applicable as an approximation method and is especially appropriate for adaptation to development of the proposed RRM's.

The US EPA developed Best Professional Judgement as a specifically defined protocol to be used for the development of NPDES permits in the 2010 NPDES Permit Writer's Guide (see Attachment 6). USEPA established and defined Best Professional Judgement" specifically for application to NPDES permits to determine or develop a numeric factor when one has not already been established with a specific technical process and protocol to be used when determining a proposed method to calculate numeric factors. Best Professional Judgement has been well established as an approximate technical determination method since 1977 for NPDES permit authorities to make decisions implementing CWA section 316(b) on a case-by-case basis using best professional judgment (BPJ) (§§ 125.90(b) and 401.14). The US EPA defines Best Professional Judgement as:

*"Best Professional Judgment (BPJ) -The method used by permit writers to develop technology-based NPDES permit conditions on a case-by-case basis using all reasonably available and relevant data."*<sup>202</sup>

The US EPA further clarifies the appropriate implementation of Best Professional Judgement (BPJ) methodology throughout the NPDES Permit Writers's Guide as a technical assessment with a statement of the factor development procedures, approach, facts, calculations and limitations which are reproducible and transparent:

*"When establishing case-by-case effluent limitations using BPJ, the permit writer should cite in the fact sheet or statement of basis both the approach used to develop the limitations, which is discussed further below, and how the limitations carry out the intent and requirements of the CWA and the NPDES regulations"*<sup>203</sup>

and

*"The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the BPJ limitations comply with the CWA and EPA regulations."*<sup>204</sup>

and

*permit conditions should be developed on a case-by-case basis using best professional judgment (BPJ) to fulfill the statutory requirement.*<sup>205</sup>

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<sup>202</sup> 2010 US EPA NPDES Permit Writers Manual, p. A-6, see Attachment 6.

<sup>203</sup> 2010 US EPA NPDES Permit Writers Manual, p. 5-45, see Attachment 6.

<sup>204</sup> 2010 US EPA NPDES Permit Writers Manual, p. 5-48, see Attachment 6.

<sup>205</sup> 2010 US EPA NPDES Permit Writers Manual, p. 9-15, see Attachment 6.

*“The permit writer should also be thoroughly familiar with the technical basis for the permit conditions. For example, if final effluent limitations are based on water quality standards, the permit writer should thoroughly study the applicable water quality standards, water quality models, and procedures used to develop the effluent limitations and be prepared to defend all assumptions and decisions made in the effluent limitation calculations.”*

and

*“For case-by-case limitations based on BPJ, the permit writer should carefully review all applicable data and procedures used to calculate the effluent limitations and should be sure that the information on which case-by-case limitations are based is unimpeachable, the limitations were derived from the data in a logical manner in accordance with established procedures, and the limitations are technically sound and meet applicable standards for economic reasonableness”.<sup>206</sup>*

and

*“A statement of basis describes the derivation of the effluent limitations and the reasons for special conditions...a prudent permit writer will develop the detailed rationale required in a fact sheet for any permit that includes complex calculations or special conditions (e.g., case-by-case effluent limitations based on best professional judgment [BPJ])”<sup>207</sup>*

In summary, Best Professional Judgement is a long-standing technical protocol that requires showing all the data, calculations, equations, assumptions, and work completed to arrive at a conclusion for a factor or final result. None of the Claimants’ proposed RRM’s meet the Best Professional Judgement approximation method that has been standardized for engineers and technical staff by USEPA or is required for development of an RRM. The Claimants do not provide any of the data, calculations, equations, assumptions, and work completed to arrive at the proposed RRM’s equations, formulas, and formula factors.

#### **B. 2005 State Cost Survey Conclusions and Claimants’ Comparison to Proposed RRM’s Unit Costs and Percent of Stormwater Budget**

For the following proposed RRM equations, formulas and formula factors, the Claimants use a comparison of proposed RRM formula factors for unit costs and percent of each Claimant’s stormwater budget proposed in the RRM’s to the to

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<sup>206</sup> 2010 US EPA NPDES Permit Writers Manual, p. 11-17, see Attachment 6.

<sup>207</sup> 2010 US EPA NPDES Permit Writers Manual, p. 11-10, see Attachment 6.

2005 State Cost Survey to validate that the Claimants' reimbursement costs are appropriate. (see Attachments 2 and 7).:

- 1) Reporting on Street Sweeping and Conveyance System Cleaning;
- 2) Conveyance System Cleaning; and
- 3) Educational Component.

The Claimants state for Reporting on Street Sweeping and Conveyance System Cleaning, Conveyance System Cleaning, and the Educational Component that the 2005 State Cost Survey (see Attachment 7) validates the methodology and conclusion for these proposed RRM's which comprise over 75 percent of the total reimbursement cost of \$252.1 million for these three mandated activities. The Claimants further assert that using a methodology comparing the proposed RRM formula factors to the 2006 State Cost Survey makes the proposed unit costs and percent of each Claimant stormwater budget "...reasonable to apply to the..." Claimants:

*"In my opinion, the total cost spent on reporting for **each Co-Permittee is comparable to the amounts** reported in the NPDES Stormwater Cost Survey Final Report from January 2005 ("2005 State Survey")."*<sup>208</sup>

*"The (Unit Cost)S, (Unit Cost)P, and (Unit Cost)C align with those found in the NPDES Stormwater Cost Survey Final Report from January 2005 ("2005 State Survey"). The 2005 State Survey determined that the average cost of basin cleaning in Santa Clarita was one hundred and seventy dollars (\$170) per basin which is more than the 2007 (Unit Cost)S.<sup>21</sup> Additionally, the State Survey found that the average cost of drain line and channel cleaning in the City of Corona was eight dollars per linear foot (\$8/ft), which is more than the weighted average of the 2007 (Unit Cost)P and 2007 (Unit Cost)C.<sup>22</sup> Given that all of the proposed unit costs are lower than those from the 2005 Survey despite being two years later, the proposed unit costs are **reasonable to apply to all Co-Permittees.**"*<sup>209</sup>

and

*"The 2005 State Survey found that permittees spent between two and seven percent of the annual stormwater budget on education. The Education Costs are **within the range found by the state supporting that this average percentage is reasonable to apply to the Co-Permittees.**"*<sup>210</sup>

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<sup>208</sup> Quenzer Declaration p.5.

<sup>209</sup> RRM, p. 6 and Quenzer Declaration p. 6.

<sup>210</sup> Quenzer Declaration p.9.

The Claimants' application of the 2005 State Cost Survey (see Attachment 7) to validate the proposed RRM equation factors and these mandated activities reimbursement costs are inappropriately applied. The 2005 State Cost Survey is neither representative of Claimant local costs nor does it support that local agency's stormwater budgets within the State can be consistently applied to any other local agency in the State.

The purpose and scope of work for the 2005 State Cost Survey was to document an annual cost per household for six stormwater programs that were surveyed for NPDES Permit programs that were implemented in 2005 under MS4 permit requirements from fiscal year 2002-2003.<sup>211</sup> The assumption by the Claimants that the cost information is only a two years old is factually incorrect. The 2005 State Cost Survey did not develop average unit costs Statewide for NPDES permit activities or the mandated activities of the Claimants. Last the 2005 State Cost Survey was peer reviewed and recognized that stormwater budgets varied significantly across the State and included other hidden costs that were either not permit requirements or were above and beyond the permit requirements:<sup>212</sup>

*“All programs may still have hidden costs that could not be identified by Cities”*

Further, the 2005 State Cost Survey ranked the reliability of the agencies stormwater budgets that were surveyed and noted that a standardized system was not used by the agencies to collect budget information:

1. There were large variations in the municipal category;
2. Categories are not consistent across cities;
3. Cities place different costs in different stormwater budget categories
4. Overall management of the stormwater program is the largest category of the stormwater budget cost.

For the three mandated activities that were most closely related to the proposed RRMs, the 2005 State Cost Survey found that a large component consisted of labor and development of the program. The costs identified in the 2005 State Cost Survey included other activities in the stormwater budget that are not mandated activities that makes the cost information in the 2005 State Cost Survey substantially higher. This significantly affect the Claimants' using the unit costs and percent of stormwater budget in the 2005 State Cost Survey to validate that the Claimants costs are reasonable.

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<sup>211</sup> 2005 State Cost Survey p. I, See Attachment 7.

<sup>212</sup> 2005 State Cost Survey Appendices A-1 through G-1, Appendix J-1, p j-9. See Attachment 7.

Last, the Claimants did not use any local cost information from the City of Encinitas, the only Claimant in the survey that was included in the 2005 State Cost Survey.<sup>213</sup> The City of Encinitas was implementing the 2001 Order at the time of the survey. It is clear in the Survey that local agencies have actual costs for their stormwater programs. However, each City in the State may categorize costs differently. Like Encinitas and the findings of the 2005 State Cost Survey, among the Claimants there is also no unified cost reporting and activities that are not eligible for reimbursement are included in the costs for overall stormwater budgets proposed for the RRM.

In summary, the categories used by the 2005 State Cost Survey do not align with the Claimant mandated activities and do not support the Claimant conclusion that there is consistency among municipal stormwater budgets in the State that can be uniformly and categorically applied to the proposed RRMs as validation for the unit costs or percent of Claimant stormwater budget proposed

### **C. Claimants' Proposed Use of CPI-U Index in RRM Equations**

The Claimants propose to apply a CPI-U index to adjust for an increase in the value of the dollar for the following proposed RRM equations:

- 1) Street Sweeping and Conveyance System Cleaning; and
- 2) Conveyance System Cleaning; and
- 3) Watershed Activities and Collaboration in the Watershed Urban Runoff Management Program.

The Claimant's state for these three mandated activities, the proposed RRM reimbursement costs will be increased annually. However, the table provided is by fiscal year from FY2006-2007 to FY 2014/2015 with a calculated CPI adjustment factor:

*"Where the costs are increased annually by the San Diego-Carlsbad Consumer Price Index for all urban consumers, not seasonally adjusted ("CPI"), the annual increase shall follow the adjustment in the table below..."<sup>214</sup>*

The Claimants did not provide the referenced CPI-U source data used or the calculation method for the table provided. Based on the reference to the "San Diego-Carlsbad Consumer Price Index for all urban consumers, not seasonally adjusted". I obtained the data (see Attachment 8) for the Consumer Price Index, All Urban Consumers San Diego-Carlsbad, CA, All items (CPI-U) from the publicly accessible website for the United States Bureau of Labor Statistics at <https://www.bls.gov/cpi/data.htm>.

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<sup>213</sup> 2005 State Cost Survey Section 4, Appendix B, Table B-2, See Attachment 7.

<sup>214</sup> Quenzer Declaration, 11.c. p. 5.

The CPI-U data was obtained by downloading the archive data sets by selecting calendar years 2005 to 2024. The archived data are all designated by the United States Bureau of Labor Statistics as “Data Series CUURS49ESA0” with a Base Period of 1982-84=100. (see Attachment 8)

The United States Bureau of Labor Statistics website generates the data download for the selected years 2005 to 2024 in an Excel spreadsheet format with CPI-U indices for the first half and second half of the calendar year for each year from 2005 to 2024 and an average CPI-U index for the year. (see Attachment 8)

I then created from the archived United States Bureau of Labor Statistics data a CPI-U Index summary Excel spreadsheet on a fiscal year basis. I created this by using the first and second half of the calendar year United States Bureau of Labor Statistics data to coincide with the first and second half of each fiscal year. For example, the first half of FY 2006/2007 is July 1, 2006. through December 31, 2006 which corresponds to the second half of the CPI-U archive data from 2006. The second half of FY 2006/2007 is January 1, 2007. through June 30, 2007 which corresponds to the first half of the CPI-U archive data from 2007, and so on from FY 2006/2007 through FY 2016/2017. I then did a mathematical average each fiscal year CPI-U data to arrive at a CPI-U index for each fiscal year.

I then reviewed both the calendar based and fiscal year based CPI-U data and compared it to the CPI-U data included in the proposed RRM CPI table.<sup>215</sup> I was unable to reproduce or calculate the values included in the Claimants’ summary table. Although the Claimants state that the proposed RRMS for the three mandated will also be applied to the equations and formula factors, this is not shown in any of the proposed RRM. Further, the Claimants propose to apply the CPI adjustment factor, which is based on a calendar year, to each of the mandated activity RRM, which are calculated on a fiscal year for the total cost of reimbursement.

The CPI factor can be calculated on a fiscal year basis (see attachment 8). However, this will result in different CPI factors than proposed by the Claimants especially for FYs 2006.2007 through 2009/2010 which was a significant economic downturn event during the 2007 Order implementation and shows up in the archived data from the Bureau of Labor Statistics data. These three mandated activities are over 73 percent of the total reimbursement cost requested by the Claimants for all mandated activities. Application of a CPI index factor, methodology especially to the conveyance system cleaning RRM, must be demonstrate to be accurately calculated and applied properly.

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<sup>215</sup> Quenzer Declaration, 11.c. p. 5.

**DOCUMENTS IN SUPPORT OF WATER BOARDS' COMMENTS ON  
PROPOSED REASONABLE REIMBURSEMENT METHODOLOGIES DOCUMENTS**

**07-TC-09**

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## 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 October 17, 2024, I served the:

- **Current Mailing List dated September 26, 2024**
- **Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines (Volumes 1-3) filed October 14, 2024**

*San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R County of San Diego, Cites of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, San Diego, and Vista, Claimants*

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 17, 2024 at Sacramento, California.



David Chavez  
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## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 9/26/24

**Claim  
Number:** 07-TC-09-R

**Matter:** San Diego Regional Water Quality Control Board Order No. R9-2007-0001 Permit CAS0108758 Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L.

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City of Escondido  
City of Imperial Beach  
City of La Mesa  
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City of San Marcos  
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City of Vista

### **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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