



State Water Resources Control Board

March 18, 2025

VIA DROP BOX

Juliana F. Gmur, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RECEIVED

March 18, 2025

**Commission on
State Mandates**

LATE FILING

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*

Water Boards' Comments on Claimants' Rebuttal to Draft Proposed Decision and Parameters and Guidelines, Test Claim 07-TC-09-R

Dear Director Gmur:

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) provide the following comments on Claimants' Rebuttal to Draft Proposed Decision and Parameters and Guidelines, dated December 16, 2024,¹ for the

¹ Hereinafter referred to as Claimants' Rebuttal.

Commission on State Mandates' (Commission) consideration in the above-captioned matter.²

On October 14, 2024, the Water Boards submitted comments and objections to Claimants' initial comments and proposed reasonable reimbursement methodologies (RRMs) filed with the Commission on February 16, 2024.³ As detailed below and in the attached Technical Analysis,⁴ Claimants' Rebuttal includes proposed revised RRM that not only fail to remedy the significant deficiencies identified in the Water Boards' Comments,⁵ but introduce additional uncertainty and complexity in the proposed reimbursement process. Claimants' proposed revised RRM still fail to satisfy the statutory and regulatory requirements for adoption of RRM and fail to balance simplicity with accuracy, despite the availability of actual cost information to determine reimbursement for past implementation of mandated activities during the time periods established in the Test Claim Permit.⁶ Claimants' inability to resolve these deficiencies creates substantial risk that approval of the proposed revised RRM would compensate Claimants beyond what is reasonable and constitutionally required. The Water Boards urge the Commission to reject Claimants' proposed revised RRM and, instead, to adopt the Commission staff's Proposed Decision on Parameters and Guidelines dated July 27, 2023.

I. The Proposed Revised RRM Fail to Satisfy the Statutory and Regulatory Requirements for Adoption of an RRM

As further explained below and in the attached Technical Analysis, Claimants request that the Commission approve eight separate RRM, represented in equation form.⁷ The RRM equations, in turn, consist of formulas, associated unit costs, and associated time periods for reimbursement.⁸ Despite the apparent simplicity of the proposed revised RRM as presented in equation form, the written equations are not capable of execution in isolation and, as explained below, must also take into consideration and be guided by the detailed written descriptions of the more than 30 formula factors, including each proposed time period of reimbursement for each formula factor and the written

² The Water Boards acknowledge that the Commission's regulations do not provide a specific opportunity to submit written comments on a rebuttal. The Water Boards feel compelled to provide responsive comments, however, after evaluating the revised proposed RRM and Claimants' Rebuttal.

³ Water Boards' Comments on and Objections to Claimants' Written Comments and Proposed Reasonable Reimbursement Methodologies dated February 16, 2024 (hereafter Water Boards' Comments).

⁴ The Technical Analysis is Attachment 1 to the Declaration of Erica Ryan.

⁵ Claimants' Rebuttal does not resolve the concerns identified in Department of Finance's written comments on October 14, 2024.

⁶ "Test Claim Permit" refers to San Diego Water Board Order No. R9-2007-0001 issued to Claimants.

⁷ The equations are set forth in Claimants' Rebuttal, pp. 16-17.

⁸ Claimants explicitly request "the Commission to adopt each RRM formula, the Unit Costs associated with each formula, and the time for which the formula will apply." (Claimants' Rebuttal, p. 3.)

description of each reasonably necessary activity. Further, beyond the written descriptions set forth in the Declaration of John Quenzer (Quenzer Declaration), understanding how the RRM will function in practice also requires adherence to the Attachment A Guidelines included with the Quenzer Declaration.

The Commission may not approve an RRM unless it finds, among other things, that (1) the RRM excludes or is capable of excluding costs for activities that the Commission has not determined are reasonably necessary to implement the mandated activity, (2) the RRM can be adjusted to ensure that reimbursement is allowed only for the time periods during which the Test Claim Permit *required* each mandated provision to be performed, and (3) the RRM is capable of adjustment to account for offsetting revenues that may vary for each individual claimant. As discussed in the Water Boards' Comments and as detailed below, Claimants have not demonstrated that their proposed revised RRM satisfies these standards and would result in *reasonable* reimbursement, as required.

A. *Reasonable Reimbursement Cannot Be Determined Without Reference to Identifiable Underlying Documentation and Assumptions.*

The Commission's regulations require that RRM "include *any documentation or assumption* relied upon to develop the proposed methodology" and require that representations of fact to support a proposed RRM "be supported by documentary evidence or testimonial evidence in accordance with section 1187.5 of these regulations."⁹ Claimants contend that identification of specific documentation and assumptions in the record to support a proposed RRM is not required by statute or regulation and also assert that the Water Boards fail to cite any legal authority for their position that RRM must be capable of reproduction. Claimants conclude, "For each item for which reimbursement is proper, the Municipal Claimants used all available applicable information to create the RRM."¹⁰

While the Commission's laws and regulations do not specify that formulas *must* be capable of reproduction, the Commission found in its 2015 Decision approving an RRM¹¹ that the proposed RRM was verifiable, accurate, and capable of reproduction.¹² Failure to identify the particular underlying documentation and assumptions on which Claimants rely effectively prevents the Commission and affected state agencies from verifying and assessing the accuracy of the documentation and assumptions relied upon and prevents validation of the proposed revised RRM through reproduction.

⁹ Cal. Code Regs., tit. 2, § 1183.12 (emphasis added).

¹⁰ Claimants' Rebuttal, p. 4.

¹¹ Decision 14-PGA-01, *In Re Parameters and Guidelines Amendment*, adopted Sept. 25, 2015, p. 23 (2015 Decision).

¹² See Water Boards' Comments, pp. 12-13.

Under these circumstances, the Commission is unable to determine that each proposed revised RRM will result in reimbursement that is *reasonable*.

B. Variation in Cost Must Be Considered in the Development of an RRM, Not Demonstrated Only as a Result of the Reimbursement Process.

Government Code section 17518.5, subdivision (c), provides that an RRM “shall consider the variation in costs among local agencies . . . to implement the mandate in a cost-efficient manner.” The Water Boards previously observed that there was only a singular reference to “variation in costs” in the entirety of the original February 14, 2024 proposal. In their Rebuttal, Claimants state that the RRMs will “inherently consider variation in costs among local agencies” as a result of individual claimants submitting specific information for reimbursement pursuant to an approved RRM.¹³ In its 2015 Decision, the Commission approved an RRM that appropriately considered the variation in costs among eligible school districts statewide.¹⁴ Claimants’ suggestion here that the statutory requirement can be satisfied through the outcome of the reimbursement process rather than considered in the development of the methodologies in the first instance is not supported by the statutory language and should be rejected.

C. Absent Identification of the Claimants Whose Cost Data Was Considered in Development of Each RRM, the Commission Cannot Determine the Claimants Are Representative of All Eligible Claimants

Government Code section 17518.5, subdivision (b), requires that an RRM be based on cost data from a representative sample of eligible claimants. Claimants assert the Water Boards “cite to no legal authority requiring the RRM to explicitly indicate which entities were considered in the representative sample.”¹⁵ While the Claimants identify several lists¹⁶ of eligible claimants that were used to develop the proposed revised RRMs, Claimants still do not identify the associated cost data samples relied upon to develop each RRM formula for each eligible claimant list. Three of the proposed revised RRM formulas rely upon unit costs developed by the Claimants from these samples of eligible claimant costs.¹⁷ For example, the proposed RRM formula for *Conveyance System Cleaning (Part D.3.a.(3)(b)(iii))* relies entirely upon unit costs developed by the Claimants from the list of eligible claimant sample cost data. This proposed RRM formula alone was approximately 70 percent of the \$250 million total reimbursement

¹³ Claimants’ Rebuttal, p. 4.

¹⁴ *Ibid.*

¹⁵ Claimants Rebuttal, p. 4.

¹⁶ Quenzer Declaration, p. 7, fn. 5, p. 8, fn. 6, p. 11, fns. 8 and 9, p. 20, fn. 11, p. 23, fn. 12, and p. 26, fn. 14.

¹⁷ Claimant’s Rebuttal, pp. 16 and 17.

cost that was estimated by the Claimants.¹⁸ Claimants fail to identify specific eligible claimants and corresponding data sample sets to demonstrate how they derived the unit costs purported to be representative for all eligible claimants in developing the proposed revised RRM. Under these circumstances, Claimants have failed to satisfy the statutory requirement for *representative* cost data under Government Code section 17518.5, subdivision (b).

D. Failure to Retain Actual Cost Information Is Not a Legal Basis for Approval of an RRM

Even if Claimants were correct that it is unreasonable to expect them to have retained actual cost information to support reimbursement due to the passage of time, the absence of actual cost information is not a recognized basis for approving an RRM. Further, Claimants' contention is perplexing in that three of the eight proposed revised RRMs purport to be based exclusively on actual costs, with two more RRMs based on a combination of actual costs and approximations of local costs.¹⁹ Under these circumstances, it is reasonable to conclude that Claimants have, or should have, retained actual cost information for the mandated activities. Additionally, reimbursement under the revised proposed RRMs²⁰ would depend on individual claimants submitting information regarding specific reasonably necessary activities they performed to implement mandated provisions. For example, the proposed revised RRM for conveyance system cleaning costs is solely dependent on the submittal of actual records of each claimants' total number of conveyance system storm drain inlets, channels, and pipes cleaned for each fiscal year in which the permit requirement was effective.²¹ It is likewise reasonable to expect that if local agency Claimants have retained documentation of the specific reimbursable activities they performed during allowable timeframes for submittal, they also should have retained associated cost information.

Finally, in the absence of an approved RRM, the ordinary reimbursement approach depends upon claimants' submittal of cost information through claiming instructions issued by the State Controller.²² Claimants filed the underlying test claim in June 2008, just months after they began implementing certain Test Claim Permit provisions. Through the test claim process, Claimants have sought mandates determinations for purposes of securing reimbursement and engaged in litigation in this matter through most of 2022. Under these circumstances, Claimants' assertion that it is unreasonable to expect them to have retained necessary cost information through the duration of this

¹⁸ Claimants' Written Comments and Proposed Reasonable Reimbursement Methodologies dated February 16, 2024.

¹⁹ Claimant's Rebuttal, pp. 16 and 17.

²⁰ Claimants' Rebuttal, Attachment A Guidelines.

²¹ Claimants' Rebuttal, p. 3.

²² Gov. Code, § 17558.

matter for purposes of supporting their reimbursement requests rings hollow. In any event, lack of actual cost information is not an appropriate basis for approving an RRM that is otherwise unsupported by substantial evidence.

II. Claimants Have Not Demonstrated that the Proposed Revised RRMs Will Confine Reimbursement to Only the Reasonable Amount.

- A. *Claimants fail to explain how the proposed revised RRMs confine, or are capable of confining, reimbursement to reasonably necessary activities and only for the time periods in which the performance of the mandated activities was required.*

Claimants have not explained, and based on the proposed revised RRMs cannot explain, how the proposed revised RRMs will confine reimbursement to only those “reasonably necessary activities to comply with the mandate pursuant to section 1183.8(d)” and only for the appropriate time periods. In the absence of such a demonstration, the proposed revised RRMs are expected to result in improper and excessive reimbursement for activities the Commission has not determined are reasonably necessary to implement the mandated permit provisions. Adoption of RRMs that fail to satisfy the conditions in section 17518.5, subdivision (c), risk reimbursement beyond what is constitutionally required.

1. Time Periods of Reimbursement

Reimbursement is only available for reasonably necessary activities to implement mandated permit provisions and only during the time periods in which the mandate was enforceable. Claimants’ proposed revised RRMs fail to adhere to these legal constraints and, if adopted, would result in reimbursement beyond what is constitutionally required. Claimants’ proposed revised RRMs perpetuate proposed time periods for reimbursement that exceed the time periods during which the Test Claim Permit actually required implementation of mandated activities. For example, Claimants’ have proposed incorrect time periods for reimbursement for each proposed revised RRM formula factor, improperly relying on permit adoption dates, permit effective dates or Jurisdictional Urban Runoff Management Program (JURMP) effective dates.²³ The proposed time periods do not align with the timeframes in which the Claimants were required to implement the mandated activities. The actual time periods corresponding to required implementation of various mandated activities are clearly set forth in the Test Claim Permit and its December 12, 2007, Addendum, and are recognized in the

²³ Claimants’ Rebuttal, p. 6.

subsequent 2013 MS4 Permit.^{24, 25} As proposed, the revised RRM formulas exceed the correct time periods for implementation and would, if adopted, unreasonably over-compensate Claimants.²⁶

2. Total Budgets

Claimants' proposed revised RRMs continue to rely on "budgeted costs" or "total budgets" to document costs to perform mandated activities as inputs to the RRM formulas. A total of six of the proposed revised RRM formulas rely on Claimant "total stormwater budgets" or "total MOU budgets." In addition, Claimants have not established that use of "budgeted costs" correlates only to reasonably necessary activities to implement mandated permit provisions. Further, Claimants do not identify in any of the proposed revised RRM formulas whether the referenced Stormwater or MOU budgets are actual, reconciled, or estimated budget costs. Total budgets do not isolate or separate costs for reimbursable mandated activities. By relying on stormwater budgets and cost sharing budgets through a memorandum of understanding among local agencies for purposes of developing RRM factors, Claimants are incapable of demonstrating that the proposed RRMs will reimburse Claimants *only* for reasonably necessary activities to perform the mandates. This failure risks reimbursement to Claimants beyond what is reasonable and constitutionally required.

3. Duplication of Reimbursement Costs

Claimants have not proposed any revisions to the RRM formula for *All-Permittee Collaboration (Part L. 1.a.(3)-(6))*. As proposed, Claimants seek reimbursement not only for revising the cost-sharing MOU *development*, which the Test Claim Permit required as a one-time activity early in the permit term and which the Commission determined to be eligible for reimbursement. Instead, they also seek reimbursement for activities which the Commission *has not* determined are reasonably necessary to implement this MOU development mandate. Additionally, this proposed revised RRM for *All-Permittee Collaboration* would improperly reimburse Claimants for other activities that are proposed for reimbursement through other RRM formulas.²⁷ If approved, the proposed revised RRM for *All-Permittee Collaboration* would reimburse Claimants for mandated

²⁴ San Diego Water Board Order R9-2013-0001, as amended by Orders 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*.

²⁵ See Attachment 4 to the Water Boards' Comments and also included as Attachment 2 to Declaration of Erica Ryan supporting these comments.

²⁶ See Water Boards' Comments, Declaration of Erica Ryan, Att. 1, Technical Analysis, pp. 1-3, 4, 10-13.

²⁷ Declaration of Erica Ryan, Att. 1, Technical Analysis, p. 3.

as well as non-mandated activities and for activities that would be reimbursed separately.²⁸

4. Accounting for Offsetting Revenues

For all proposed revised RRM, Claimants do not provide any written explanation of how each claimant would account for and ensure they deduct all prior offsetting revenues for the mandated activities from the total requested reimbursement. For example, the Claimants propose detailed instructions for filling out tables to be submitted for reimbursement that include percent adjustments and time periods of reimbursement in the proposed Attachment A Guidance document, but there is no explanation as to if or how these tables are to be adjusted for offsetting revenues for individual claimants.²⁹

5. Requests for Additional Cost Reimbursement

As with the original submittal, Claimants have not provided a supportable rationale or any legal or regulatory justification for applying a CPI annual adjustment factor to all RRM formula factor unit costs in the RRM formulas for recovery of wholly past expenditures.³⁰ Likewise, Claimants have provided no legal basis for recovering interest due to the passage of time or legal or expert fees to compensate them for engaging in the test claim process. For example, three of the eight proposed revised RRM purport to be based exclusively on actual costs. CPI adjustments are generally used to account for inflation; however, actual costs already represent the true cost of a service. Therefore, applying CPI adjustments to the RRM formula factor unit costs is beyond what is reasonable and legally required. Claimants' request for this unauthorized reimbursement should be rejected.

III. Conclusion

While Claimants purport to have addressed the Water Boards' and Department of Finance's prior comments, they have not demonstrated that their revisions resolve, or are capable of resolving, the deficiencies that are perpetuated in their proposed revised RRM. Instead, Claimants have only introduced additional complexities. The lack of substantial evidence supporting the proposed revised RRM, coupled with the many incorrect reimbursement time periods and the additional complexities in the formulas and reimbursement processes, underscore that the alternative RRM approach is not well-suited to reasonably reimburse Claimants for implementation of mandated MS4 permit provisions. The Water Boards urge the Commission instead to adopt the

²⁸ See Water Boards' Comments, Declaration of Erica Ryan, Technical Analysis, § II.H, pp. 43-55.

²⁹ Claimants' Rebuttal, Quenzer Declaration Appendix A Guidelines, pp. 34-51.

³⁰ Claimants' Rebuttal, Quenzer Declaration sections 11.e (i) – (iii) and 11.f.

Proposed Decision on Parameters and Guidelines for reimbursement, retaining the discussion on Senate Bill 231.

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

Sincerely,



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

Attachments:

Declaration of Erica Ryan in Support of Water Boards' Comments

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

**DECLARATION OF ERICA RYAN
IN SUPPORT OF WATER BOARDS' COMMENTS
ON CLAIMANTS' REBUTTAL**

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, constrictor 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 submitted with the Water Boards' October 14, 2024, Comments and Objections and included as Exhibit 1 to my Declaration submitted concurrently with these Water Boards Comments on Claimants' Rebuttal.
 - 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. Claimants' Rebuttal, inclusive of Claimants' request that the Commission adopt each proposed revised RRM formula, the unit costs associated with each formula, and the time period for which the formula will apply. (Claimants' Rebuttal, p. 3), and inclusive of the supporting declarations.
 - d. 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.
 - 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. CAS0108758 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 (2013 Order).
- 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 (Test Claim Permit) Implementation Timeline Summary included as Attachment 4 to the original Technical Analysis and included as Attachment 2 to this Declaration for ease of reference.

Preparation of Technical Analysis

To prepare the Technical Analysis for the Water Boards' Comments, I performed a review of each of the Claimants' eight (8) revised 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' Rebuttal. My review and technical analysis that I completed for each of the Claimants' proposed revised 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 Claimants' 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 supporting declaration of Lara Barrett and its attachments in Claimants' Rebuttal.
7. Review and evaluation of the supporting declaration of John Quenzer in Claimants' Rebuttal, including the narrative descriptions of the proposed revised RRM equations and including Appendix A, "Guidance on Process for Co-Permittee to Calculate Reimbursable Amounts."
8. Review of calculation methods used in the proposed RRMs for total reimbursement costs.
9. Comparison review of the proposed RRM equation summary tables and proposed RRM equation methodology for consistency.
10. Comparison review of the proposed RRM equation methodology text for consistency with the proposed RRM equation methodology equations.

Attachment 1. Technical Analysis

Attachment 2. Summary Timeline of Order 2007 Implementation Dates for Claimant Reimbursable Activities A-H (also included as Attachment 4 to Declaration of Erica Ryan in support of October 14, 2024 Water Boards' Comments in this matter).

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

3/7/25 San Diego, CA 
[Date and Place] [Signature]

Erica Ryan
[Printed Name]

ATTACHMENT 1

TECHNICAL ANALYSIS

Prepared by Erica Ryan

In Support of the Water Boards' Comments on Claimants' Rebuttal

07-TC-09-R

The Revisions Identified in Claimants' Rebuttal Do Not Cure the Deficiencies the Water Boards Identified in their October 14, 2024 Comments and Objections (Water Boards' Comments)

With the exception of revising *one* proposed RRM formula factor,¹ the Claimants did not revise the actual equation format for any of the proposed RRM formulas.² The Claimants are requesting that the Commission adopt the revised proposed RRM formulas, RRM formula unit costs and the RRM formula factor time periods of reimbursement.³ The Claimants state that the proposed RRM formula revisions are minor.⁴ The Claimants also state that no significant changes were made to the proposed RRM formulas in response to the Water Boards Comments.⁵ However, the Claimants did in fact make significant changes to the revised proposed RRM *formulas* through the written narrative that accompanies and is included within Claimants' Rebuttal. The Claimants' written narrative to the revised proposed RRM formulas ignores the factual language for the start and end dates of each mandated activity as specified in the Test Claim Permit, its December 2012 Addendum and Order No. R9-2013-0001 (the 2013 MS4 Permit). For each proposed RRM formula factor, Claimants also disregard the Water Boards' Comments identifying with specificity the *correct* start and end date for each mandated activity and the correct time period for reimbursement.

Instead, the Claimants create alternative time periods of reimbursement for each formula factor on the basis of four separate time periods for proposed reimbursement start and end dates. Three of these time periods of reimbursement are not supported by the language in either the Test Claim Permit or the subsequent 2013 MS4 Permit as to when the Claimants were required to implement each mandated activity. For example, the Claimants continue to include a time period of reimbursement for fiscal year 2006/2007 to submit reimbursement costs for mandated activities because they continue to assert that the effective date of the Test Claim Permit equates to the mandated activity required implementation date. Yet, it is wholly inaccurate to assert

¹ Watershed activities and collaboration in the Watershed Urban Runoff Management Program (Part E.2.f & E.2.g).

² Claimants' Rebuttal, p.16.

³ Claimants' Rebuttal, p. 3.

⁴ Claimants' Rebuttal, p. 5.

⁵ Claimants' Rebuttal Section III, p. 5.

the Test Claim Permit effective date equates to the mandated period. Due to the fact that the Claimants continue to propose multiple time periods of reimbursement for the RRM formula factors that are not supported by the Test Claim Permit language, the Claimants' proposed reductions for partial implementation of mandated activities during a fiscal year for each RRM formula factor are also inaccurate. The Claimants have not made any revisions to the proposed RRM formulas to address Water Boards' comments on the deficiencies associated with the formula factors utilizing proposed unit costs, percent of total claimant stormwater budgets, and Claimant percentage of total MOU budgets.

1. The Claimants' Proposed Revised RRM Formulas Cannot Be Separated from the Entirety of the Claimants' Written Rebuttal

The revised written narrative that accompanies each of the 35 RRM formula factors, unit costs, time periods of reimbursement, and guidelines for Claimant submissions for reimbursement to the Commission are not identified in either the written RRM formula equations or footnotes as part of the proposed RRM formulas. The written narrative for each of the Claimant proposed RRM formulas is required to 1) accurately submit the unit costs, budgets, time periods of reimbursement and 2) accurately calculate and review the costs of reimbursement.

The adoption of the proposed revised RRM formulas cannot be made without considering and including as part of the proposed RRM formulas the written narrative that accompanies each of the 35 RRM formula factors in the Claimant Rebuttal. The Claimants' proposed revised RRM formula written equations cannot be separated from the written narrative for each of the RRM formula factors, unit costs, time periods of reimbursement for each unit cost included with the Claimants Rebuttal. In addition, the RRM factors cannot be separated from the descriptions for each RRM factor in the Quenzer Declaration and the Quenzer Declaration *Appendix A. Guidance on Process for Co-Permittees to Calculate Reimbursable Amounts* (Appendix A Guidelines) for Claimant submittal of reimbursement requests to the Commission. The Claimants' proposed written narrative revisions for each proposed RRM formula factor further complicate an already complicated set of proposed RRM formulas.

2. Claimants' Revision to the Proposed RRM Formula for Watershed Activities and Collaboration in the Watershed Urban Runoff Management Program (Part E.2.f & E.2.g) will result in reimbursement costs beyond what is constitutionally required.

The Claimants' proposed revisions to the RRM formula for *Watershed Activities and Collaboration in the Watershed Urban Runoff Management Program (Part E.2.f & E.2.g)*, now includes an adjustment to the second RRM formula factor. This formula factor adjusts the number of jurisdictional activities to include the total number of watersheds in which a Claimant is geographically located and for which it is required to

perform the mandated activity. The revised RRM does not identify how the number of watersheds in which a Claimant is located would be determined. However, as explained in the Water Boards' Comments, the Test Claim Permit identifies which Claimants are located in each watershed.

This revision proposed by the Claimants also does not account for stormwater program costs that were conducted region-wide, enabling shared cost savings and efficiencies amongst all Claimants (i.e., a single program conducted in multiple watersheds or region wide) or demonstrate how reimbursement through this formula does not duplicate reimbursement costs for mandated activities already accounted for in the other RRM formulas. Similarly, Claimants do not provide documentation of, or otherwise explain, how all jurisdictional activity efforts would have been conducted equally, or even approximately equally, by all Claimants in all watersheds at the same cost. In practice, Claimants' prioritized activities in watersheds and watershed jurisdictional activities do not cost the same, and in fact may vary significantly, for all Claimants since Claimants do not have equal percentage by area or land use in every watershed. For example, the claimant City of Solana Beach's jurisdictional boundaries are within two watersheds, but only a very small portion of the City's boundary (less than 10 percent) is located in the second watershed. The same would also be true for the claimant City of Vista, which is physically located in two watersheds, However, the area of the City located in the second watershed is also substantially smaller in this watershed. In addition, the land use in the second watershed is predominately open space. In either of these cases, the Claimants would not have expended the same amount of effort and expenditure for jurisdictional activities on the basis of the number of watersheds they were located in. The Claimants would have focused and conducted the mandated jurisdictional activities in the watersheds based on the percent of urban land use and potential pollutants of concern to be addressed in each watershed. Therefore, not all claimants conducted jurisdictional activities in all watersheds solely because some portion of the jurisdictional boundary was included in the watershed. This is true for almost all of the Claimants with the exception of a few that are entirely located in a single watershed.

3. *The Appendix A Guidelines in the Quenzer Declaration lack clarity and do not explain how the submittals for reimbursement would be confined to implementation of mandated activities only as required by the Test Claim Permit*

The Appendix A Guidelines in the Claimants' Rebuttal purport to provide a summary table to be filled for each mandated activity by fiscal year for each Claimant to be submitted to the Commission to determine reimbursement. If the RRMs are approved, each table is to be filled out by each Claimant to calculate each Claimant's total RRM reimbursement cost for each RRM formula by fiscal year. For example, for storm drain inlet cleaning,⁶ each Claimant would be relied upon to accurately fill in the total number

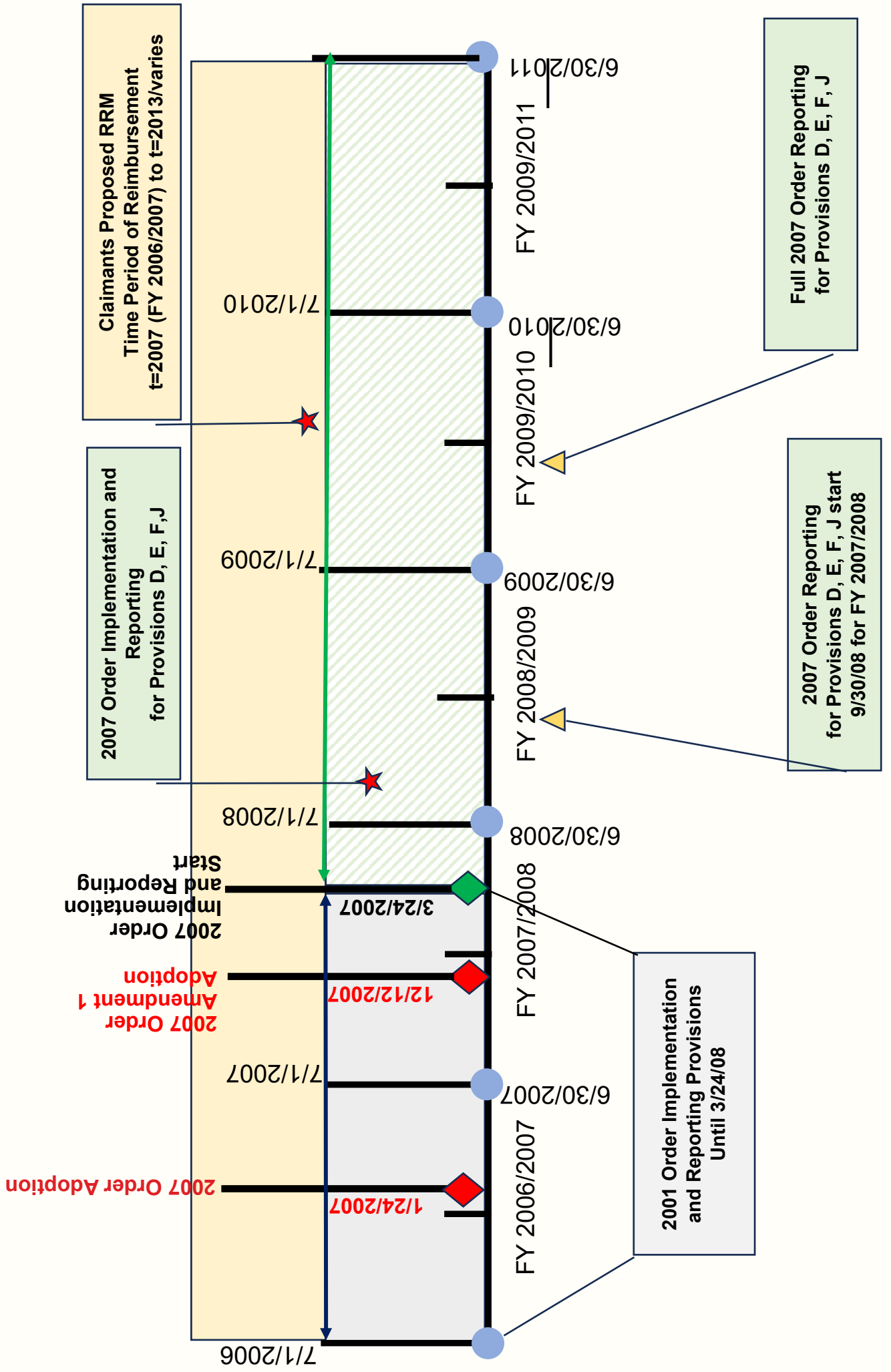
⁶ Claimants' Rebuttal, Quenzer Declaration, Appendix A, p. 36.

of inlets required to be cleaned for each fiscal year by the Test Claim Permit within the time period the mandated activity was required to be implemented. This process relies on Claimants to manually make the proposed percent reductions for each mandated activity for the correct fiscal year. For each reimbursement cost table, the Claimant must also read the Claimants' proposed Appendix A Guidelines text, apply each footnote for each table, and the written narrative in the Quenzer Declaration. However, none of the tables provide additional narrative guidance to ensure that the information Claimants submit in the tables exclude activities which are not eligible for reimbursement or reimbursement costs for activities conducted outside of the correct time period of reimbursement.

In addition, no specific percent reduction is included in the actual tables as proposed by the Claimants. Also, multiple dates and exceptions for some fiscal years are not explicitly written into the tables or proposed as part of the RRM formulas. Last, the fiscal years in the table do not accurately reflect when the mandated activity was actually required to be implemented under the Test Claim Permit. These errors result in reimbursement costs to which Claimants are not entitled. The Claimants also do not provide in the Appendix A Guidelines any guidance or methodology to ensure that for each eligible mandated activity, each Claimant will submit an accurate number that represents the number of instances in which each eligible mandated activity was in fact implemented as required. As demonstrated by the Claimant 2011 surveys and identified as a critical observation of the 2005 State Survey,⁷ significant variation exists among Claimants in interpretation of what reimbursement costs may include. So much variation exists that this is still a concern of the Water Boards.

⁷ Water Boards' Comments, Exhibit 1, Section B, pp. 58-61.

Attachment 2 Summary Timeline of Order 2007 Implementation Dates for Claimant Reimbursable Activities A- H



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 March 19, 2025, I served the:

- **Current Mailing List dated March 12, 2025**
- **Water Boards' Late Comments on Claimants' Rebuttal filed March 18, 2025**

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, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, 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 March 19, 2025 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/12/25

**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.

Claimants: City of Carlsbad
City of Chula Vista
City of Del Mar
City of Encinitas
City of Escondido
City of Imperial Beach
City of La Mesa
City of Lemon Grove
City of National City
City of Oceanside
City of Poway
City of San Diego
City of San Marcos
City of Santee
City of Solana Beach
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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