



March 20, 2025

Mr. Thomas Deak
County of San Diego
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

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

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

**Re: Revised 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, 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*

Dear Mr. Deak and Ms. Sidarous:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines **by 5:00 pm on April 10, 2025**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

J:\MANDATES\2007\TC\07-TC-09 (Discharge of Stormwater Runoff)\07-TC-09-
R\Correspondence\Revised DraftPD and Ps and Gs trans.docx

<https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

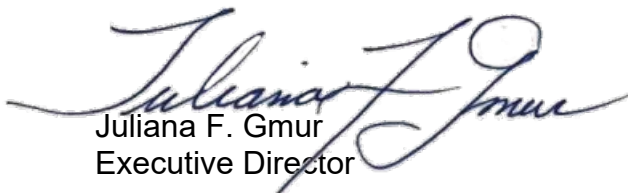
Hearing

This matter is set for hearing on **Friday, May 23, 2025** at 10:00 a.m. The Proposed Decision and Parameters and Guidelines will be issued on or about May 9, 2025.

Please notify Commission staff not later than May 22, 2025, the Tuesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

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

Very truly yours,


Juliana F. Gmur
Executive Director

ITEM ____

REVISED DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES

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

Period of Reimbursement is January 24, 2007 through December 31, 2017

EXECUTIVE SUMMARY

I. Summary of the Mandate

On March 26, 2010, the Commission on State Mandates (Commission) adopted the Test Claim Decision. The parties litigated the Decision and, in 2017 and 2022, the court affirmed the Commission's Decision except for the street sweeping requirement in part D.3.a.(5) of the test claim permit.¹ The court found the claimants have sufficient authority to levy a fee for the street sweeping requirement within the meaning of Government Code section 17556(d), so it imposes no costs mandated by the state.²

On May 26, 2023, the Commission adopted the Amended Decision on Remand consistent with the court's judgment and writ.³ The Commission partially approved the Test Claim, finding only the following reimbursable activities:

- Reporting on street sweeping and conveyance system cleaning (Part J.3.a.(3)(c)(iv)-(viii), (x)-(xv));

¹ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 574, 585-586, 595.

² *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 574, 585-586, 595.

³ Exhibit A, Amended Test Claim Decision on Remand.

- Conveyance system cleaning (Part D.3.a.(3)(b)(iii));
- Educational component (*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)*);
- Watershed activities and collaboration in the Watershed Urban Runoff Management Program (Part E.2.f & E.2.g);
- Regional Urban Runoff Management Program (Parts F.1., F.2. & F.3);
- Program effectiveness assessment (Parts I.1 & I.2);
- Long-term effectiveness assessment (Part I.5) and
- All permittee collaboration (Part L.1.a.(3)-(6)).⁴

The Commission found that street sweeping (part D.3.a.(5)), a hydromodification management plan (part D.1.g), and low-impact development (parts D.1.d.(7) & D.1.d.(8)) are not reimbursable because the copermittees have fee authority sufficient (within the meaning of Gov. Code § 17556(d)) to pay for them.⁵

The Commission also found that the following would be identified as offsetting revenue in the Parameters and Guidelines:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning; and
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.⁶

II. Procedural History

On March 26, 2010, the Commission adopted the original Test Claim Decision and served it on March 30, 2010. The claimants filed Proposed Parameters and Guidelines on June 28, 2010.⁷ The Department of Finance (Finance) filed comments on the Proposed Parameters and Guidelines on September 3, 2010.⁸ The State Water

⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 5-6, 139-151.

⁵ Exhibit A, Amended Test Claim Decision on Remand, page 6, 151.

⁶ Exhibit A, Amended Test Claim Decision on Remand on, page 6, 151.

⁷ Exhibit B, Claimants' Proposed Parameters and Guidelines.

⁸ Exhibit C, Finance's Comments on the Proposed Parameters and Guidelines, page 1.

Resources Control Board and San Diego Regional Water Quality Control Board (Water Boards) filed joint comments on the Proposed Parameters and Guidelines on September 16, 2010.⁹ The claimants filed rebuttal comments and the Revised Proposed Parameters and Guidelines on November 16, 2010.¹⁰

On July 20, 2010, Finance and the Water Boards filed a petition for a writ of mandate, requesting to set aside the Commission's Decision. On October 11, 2010, the claimants filed a cross petition for writ of mandate and complaint for declaratory relief. In 2017, the Third District Court of Appeal agreed with the Commission that the contested permit provisions are mandated by the state and not by federal law.¹¹ In 2022, the Third District Court of Appeal affirmed the remaining portion of the Commission's Decision, except for street sweeping (Permit Part D.3.a.(5)), which does not impose costs mandated by the state pursuant to Government Code section 17556(d) because of the copermittees' fee authority.¹² On May 26, 2023, the Commission adopted the Amended Decision on Remand consistent with the Court of Appeal's decision pursuant to the judgment and writ.¹³

Pursuant to section 1183.13 of the Commission's regulations, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on July 27, 2023.¹⁴

The claimants filed comments on the Draft Proposed Decision and Parameters and Guidelines on February 16, 2024, regarding whether the special districts are eligible claimants,¹⁵ and again on February 20, 2024, to propose a reasonable reimbursement methodology (RRM) and address reasonably necessary activities in the Draft Proposed Decision.¹⁶ Finance filed comments on the Draft Proposed Decision and Parameters

⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines.

¹⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines.

¹¹ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.

¹² *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581-586. See also, *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th at 192-195.

¹³ Exhibit A, Amended Test Claim Decision on Remand.

¹⁴ Exhibit F, Draft Proposed Decision and Parameters and Guidelines.

¹⁵ Exhibit G, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹⁶ Exhibit H, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM.

and Guidelines and on the claimants' RRM proposal on October 14, 2024.¹⁷ The State Controller's Office (Controller) filed a statement of no comment on the Draft Proposed Decision and Parameters and Guidelines on October 14, 2024.¹⁸ The Water Boards filed comments on the Draft Proposed Decision and Parameters and Guidelines and the claimants' comments and proposed RRM on October 14, 2024.¹⁹ The claimants filed rebuttal comments regarding the proposed RRM on December 16, 2024.²⁰

Commission staff issued the Revised Draft Proposed Decision and Parameters and Guidelines on March 20, 2025.

III. Chart of Issues Raised in Proposed Parameters and Guidelines

The following chart provides a brief summary of the issues raised in these proposed Parameters and Guidelines and staff's recommendation.

Issue	Description	Staff Recommendation
Are the San Diego County Regional Airport Authority and the San Diego Unified Port District eligible claimants (Section II. of the Parameters and Guidelines, Eligible Claimants)?	The San Diego County Regional Airport Authority and the San Diego Unified Port District are copermittees, ²¹ and both were on the claimants' proposed list of eligible claimants. ²² The parties dispute whether these special districts are eligible to claim reimbursement	No – the San Diego County Regional Airport Authority and the San Diego Unified Port District are not eligible to claim reimbursement under article XIII B, section 6 because their revenues are not proceeds of taxes subject to the appropriations limit. ²⁵ A special district is not a "local agency" eligible for

¹⁷ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs.

¹⁸ Exhibit K, State Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and the Claimant's Comments and Proposed Reasonable Reimbursement Methodology.

²⁰ Exhibit M, Claimants' Rebuttal Comments.

²¹ Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

²² Exhibit B, Claimants' Proposed Parameters and Guidelines, page 14.

²⁵ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

Issue	Description	Staff Recommendation
	<p>under article XIII B, section 6.²³</p> <p>There is no dispute that the following copermittees are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes: the County of San Diego and the Cities 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.²⁴</p>	<p>reimbursement for purposes of article XIII(B), section 6 if it: (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one hundred dollars (\$100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution.²⁶</p> <p>The San Diego County Regional Airport Authority was formed in 2001 pursuant to the Public Utilities Code, which does not permit the</p>

²³ Exhibit G, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 2-5; Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 2.

²⁴ Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

²⁶ Government Code section 7901(e), California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

Issue	Description	Staff Recommendation
		<p>Authority to levy taxes.²⁷ Rather, its sources of revenue include those “attributable to airport operations,” and “imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness,” as well as “revenues generated from enterprises” on the Authority’s property.²⁸ It also has authority to levy special benefit assessments.²⁹</p> <p>The San Diego Unified Port District was formed in 1962 pursuant to Appendix 1 of the Harbors and Navigation Code, which <i>does</i> authorize the District to impose taxes.³⁰ However, its most recent financial report indicates the District has not levied taxes since 1970.³¹</p>
<p>What is the period of reimbursement for this program (Section III. of the Parameters and Guidelines)?</p>	<p>Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that</p>	<p>The period of reimbursement is from January 24, 2007, until December 31, 2017.</p> <p>The test claim permit was adopted on</p>

²⁷ Public Utilities Code, section 17000, et seq. (Stats. 2001, ch. 946).

²⁸ Public Utilities Code, section 170064(a)-(c).

²⁹ Public Utilities Code section 170072.

³⁰ Harbors and Navigation Code, Appendix 1, sections 43-45.

³¹ Exhibit X (13), San Diego Unified Port District, Annual Comprehensive Financial Report, 2021, 2022, page 8.

<https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf> (accessed on June 15, 2023), page 8.

Issue	Description	Staff Recommendation
	<p>fiscal year. The claimants filed the test claim on June 20, 2008,³² establishing eligibility for fiscal year 2006-2007. However, since the permit has a later effective date, the period of reimbursement begins on the permit's effective date of January 24, 2007.³³</p> <p>The Water Boards assert the reimbursement period for most of the mandated activities starts March 24, 2008, rather than January 24, 2007, based on permit provisions applicable to Parts D., E., and F. requiring implementation "no later than 365 days after adoption of" the test claim permit and an Addendum adopted by the Regional Board delaying implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a</p>	<p>January 24, 2007, and became effective as law that day.³⁶ The Regional Board adopted an Addendum on December 12, 2007, allowing the permittees to delay implementation of certain activities until "on or before" the 425th day after January 24, 2007, or March 24, 2008. If a claimant delays implementation, then the claimant "shall at a minimum" implement the requirements of the prior 2001 permit.³⁷</p> <p>Reimbursement is not required to comply with the prior 2001 permit, but the date when costs were first incurred to implement the affected activities may vary by claimant, since implementation is required to occur "on or before" March 24, 2008. The language of the Addendum has been included in Section IV. Reimbursable Activities, where relevant. However, the period of reimbursement for this claim begins with the effective date of the test</p>

³² Exhibit X (14), Test Claim, page 3.

³³ Exhibit X (14), Test Claim, page 331 (Order No. R9-2007-0001).

³⁶ Exhibit X (14), Test Claim, page 331 (Order No. R9-2007-0001).

³⁷ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007. Exhibit X (14), Test Claim, page 269.

Issue	Description	Staff Recommendation
	<p>regional disaster, for a total delay of 425 days.³⁴</p> <p>The parties also dispute the date when reimbursement ends.³⁵</p>	<p>claim order on January 24, 2007.</p> <p>Beginning January 1, 2018, based on Government Code sections 57350 and 57351 as amended by Statutes 2017, chapter 536 (SB 231), there are no costs mandated by the state within the meaning of Government Code section 17556(d) for the reimbursable activities because the claimants' have the legal authority to impose a stormwater fee on property owners subject only to the voter protest provisions of article XIII D. Senate Bill 231 amended the Government Code's definition of "sewer" to include stormwater sewers within the meaning of article XIII D, thereby allowing local governments to use their constitutional police powers to impose stormwater fees on property owners without having to first seek the voter's approval of the fee and making the fee subject only to the voter protest provisions of article XIII D.</p>

³⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 3, footnote 5, and 33 and 38 (technical analysis); Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 3; Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 2, 4.

Issue	Description	Staff Recommendation
		There are no costs mandated by the state within the meaning of Government Code section 17556(d) when local government's fee authority is subject only to a voter protest. ³⁸
Should the Parameters and Guidelines authorize reimbursement for activities and costs proposed by the claimants as reasonably necessary to comply with the mandate (Section IV. of the Parameters and Guidelines, Reimbursable Activities)?	<p>The claimants request reimbursement for “reasonably necessary” activities and costs for each category of activities the Commission approved.³⁹</p> <p>The Water Boards and Finance oppose these requests.⁴⁰</p> <p>Government Code section 17557(a) and section 1183.7 of the Commission’s regulations state that the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”</p> <p>Any proposed reasonably necessary activity must be</p>	<p>No. The Proposed Parameters and Guidelines identify only those activities found to be mandated by the state.</p> <p>The proposed reasonably necessary activities and costs are either already eligible for reimbursement as a direct cost, as stated the boilerplate language in Section V. of the Parameters and Guidelines and do not need to be restated in Section IV., or are <i>not</i> supported by substantial evidence in the record explaining why the activities and costs are necessary to comply with the higher levels of service found to be mandated by the state. In addition, some of the requested costs and activities</p>

³⁸ *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195. See also *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 577, holding that SB 231 does not apply retroactively.

³⁹ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 16-28.

⁴⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 4-6, 16; Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 5-6.

Issue	Description	Staff Recommendation
	supported by substantial evidence in the record explaining why the activity is necessary to perform the state-mandate. ⁴¹ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so. ⁴²	go beyond the scope of the mandate.
Should the Commission approve reimbursement for interest, and legal and expert costs to process the Test Claim (Section IV. of the Parameters and Guidelines, Reimbursable Activities)?	The claimants request reimbursement for interest from the reimbursements, and legal and expert costs to process the Test Claim. ⁴³ Finance opposes this request. ⁴⁴	No. The Commission has no authority to approve reimbursement for interest and legal and expert costs. Government Code 17561.5 only authorizes reimbursement for interest if the Controller's payment of the claim is made more than 365 days after adoption of the statewide cost estimate. In addition, the Commission previously approved the <i>Mandate Reimbursement</i>

⁴¹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

⁴² California Code of Regulations, title 2, section 1187.5.

⁴³ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 11; Exhibit M, Claimants' Rebuttal Comments, pages 15, 20.

⁴⁴ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 5.

Issue	Description	Staff Recommendation
		<p><i>Process I and II</i> programs authorizing reimbursement for “[a]ll costs incurred by local agencies and school districts in preparing and presenting successful test claims . . . [including] the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.”⁴⁵ However, the Legislature has suspended that program for many years pursuant to Government Code section 17581, assigning a zero dollar appropriation for the program and making it voluntary during the suspended budget years.⁴⁶ Thus, there are no costs mandated by the state for expert or legal costs to file a successful test claim during the years the program is suspended.</p>
Should the Commission adopt the Reasonable Reimbursement Methodologies (RRMs)	The claimants have proposed RRM’s in the form of unit costs and formulas for each group of	No. The claimants’ proposed RRM’s are overbroad and not limited to the mandated activities, and there is no

⁴⁵ Exhibit X (2), Commission on State Mandates, Parameters and Guidelines Amendment, *Mandate Reimbursement Process I and II* (CSM 4204, 4485, 05-TC-05, 12-PGA-03), adopted May 24, 2013, <https://www.csm.ca.gov/decisions/052813a.pdf>.

⁴⁶ Statutes 2007, chapter 171 (SB 77), line item 8885-295-0001, schedule 3 (y), suspending the program for fiscal year 2007-2008, when the Test Claim was filed. The suspension continues today; see, Statutes 2024, chapter 22 (AB 107), line item 8885-295-0001, schedule 5 (aa), (bb). The suspension process in Government Code section 17581 has been upheld by the courts and determined constitutional. *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287.

Issue	Description	Staff Recommendation
<p>proposed by the claimants for each reimbursable activity, in lieu of requiring the claimants to provide documentation of actual costs incurred to comply with the mandated program (Sections IV., V., and VI. of the Parameters and Guidelines, Reimbursable Activities, Claim Preparation and Submission, and Record Retention)?</p>	<p>reimbursable activities.⁴⁷ According to the claimants, the unit costs and formulae proposed would reimburse the claimants an estimated \$252,762,732.⁴⁸</p> <p>The Water Boards and Finance oppose the proposed RRM on several grounds, including the requirements of the RRM have not been met and all of the permit's required activities have already been performed and claimants know the costs that have actually been incurred to implement the permit activities.⁴⁹</p> <p>Government Code section 17557(b) provides that "[i]n adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology," or RRM. An RRM, as defined in Government Code section 17518.5, is generally a formula or unit cost adopted by the</p>	<p>evidence that the proposed unit costs reasonably represent the costs mandated by the state for all eligible claimants for only the higher levels of service activities the Commission approved for reimbursement. See pages 127-186 of the Proposed Decision for the analysis of the proposed RRM</p>

⁴⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM.

⁴⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 48.

⁴⁹ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 2-4; Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 2-15.

Issue	Description	Staff Recommendation
	<p>Commission for the reimbursement of an approved activity, so that the claimants do not need to provide detailed documentation of the actual costs to the State Controller's Office for its review and audit of the claimants' reimbursement claims. Rather, the Controller simply reviews the claimant's application of the RRM to the costs claimed.⁵⁰</p> <p>The Commission is required to determine if there is substantial evidence in the record that the proposed RRMs consider the variation in costs among local government claimants; the RRMs balance accuracy with simplicity; and the proposed RRMs reasonably reimburse eligible claimants the costs mandated by the state to comply with the higher levels of service approved by the Commission.⁵¹</p>	
Section V. of the Parameters and Guidelines (Claim Preparation and Submission).	No comments have been filed on this section of the Parameters and Guidelines.	Section V. contains boilerplate language that identifies the direct costs to comply with the mandate,

⁵⁰ Government Code section 17561(d)(2).

⁵¹ Government Code sections 17518.5, 17557, 17559. California Code of Regulations, title 2, sections 1183.12, 1187.5.

Issue	Description	Staff Recommendation
		which includes salaries and benefits, materials and supplies, contracted services, fixed assets, travel, and training. Only the pro-rata portion of the costs spent on the mandated activities are eligible for reimbursement.
Section VI. of the Parameters and Guidelines, Record Retention.	No comments have been filed on this section of the Parameters and Guidelines.	Section VI., Record Retention, contains boilerplate language requiring claimants to retain documentation of actual costs incurred during the period subject to the Controller's audit.
Section VII. of the Parameters and Guidelines, Offsetting Revenues	No comments have been filed on this section of the Parameters and Guidelines.	<p>Section VII. identifies the potential offsetting revenues, including funds that are not a claimant's proceeds of taxes and the following potential revenues the Commission identified in the Test Claim Decision:</p> <ul style="list-style-type: none"> Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning.

Issue	Description	Staff Recommendation
		<ul style="list-style-type: none"> Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.⁵²

IV. Staff Analysis

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

The following copermitees are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

The County of San Diego and the Cities 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.⁵³

As discussed in the Decision below, the San Diego County Regional Airport Authority and the San Diego Unified Port District are permittees, but are not eligible to claim reimbursement under article XIII B, section 6 because their revenues are not proceeds of taxes subject to the appropriations limit.⁵⁴

⁵² Exhibit A, Amended Test Claim Decision on Remand, pages 139, 151.

⁵³ Exhibit X (14), Test Claim, page 256 (Order No. R9-2007-0001).

⁵⁴ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th

A special district is not a “local agency” eligible for reimbursement for purposes of article XIII(B), section 6 if it: (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one hundred dollars (\$100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution.⁵⁵

The San Diego County Regional Airport Authority was formed in 2001 pursuant to the Public Utilities Code, which does not permit the Authority to levy taxes.⁵⁶ Rather, its sources of revenue include those “attributable to airport operations,” and “imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness,” as well as “revenues generated from enterprises” on the Authority’s property.⁵⁷ It also has authority to levy special benefit assessments.⁵⁸

The San Diego Unified Port District was formed in 1962 pursuant to Appendix 1 of the Harbors and Navigation Code, which *does* authorize the District to impose taxes.⁵⁹ However, its most recent financial report indicates the District has not levied taxes since 1970.⁶⁰

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

Government Code section 17557(e) requires a test claim to be “submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because this Test Claim was filed on June 20, 2008,⁶¹ the potential period

266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

⁵⁵ Government Code section 7901(e), California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

⁵⁶ Public Utilities Code, section 17000, et seq. (Stats. 2001, ch. 946).

⁵⁷ Public Utilities Code, section 170064(a)-(c).

⁵⁸ Public Utilities Code section 170072.

⁵⁹ Harbors and Navigation Code, Appendix 1, sections 43-45.

⁶⁰ Exhibit X (13), San Diego Unified Port District, Annual Comprehensive Financial Report, 2021, 2022, page 8.

<https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf> (accessed on June 15, 2023), page 8.

⁶¹ Exhibit X (14), Test Claim, page 3.

of reimbursement under Government Code section 17557 begins on July 1, 2006. However, the permit has a later effective date of January 24, 2007.⁶²

The Water Boards assert the reimbursement period for most of the mandated activities starts March 24, 2008, rather than January 24, 2007, based on permit provisions applicable to Parts D., E., and F. requiring implementation “no later than 365 days after adoption of” the test claim permit and an Addendum adopted by the Regional Board delaying implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a regional disaster, for a total delay of 425 days.⁶³

The Regional Board adopted an Addendum on December 12, 2007, allowing the permittees to delay implementation of certain activities until “on or before” the 425th day after January 24, 2007, or March 24, 2008. If a claimant delays implementation, then the claimant “shall at a minimum” implement the requirements of the prior 2001 permit.⁶⁴ Reimbursement is not required to comply with the prior 2001 permit, but the date when costs were first incurred to implement the affected activities may vary by claimant, since implementation is required to occur “on or before” March 24, 2008. The language of the Addendum has been included in Section IV. Reimbursable Activities, where relevant. However, the period of reimbursement for this claim begins with the effective date of the test claim order on January 24, 2007.

Beginning January 1, 2018,⁶⁵ based on Government Code sections 57350 and 57351 as amended by Statutes 2017, chapter 536, there are no costs mandated by the state because the claimants’ fee authority is subject only to the voter protest provisions of article XIII D, so the fee authority in Government Code section 17556(d) applies.⁶⁶

⁶² Exhibit X (14), Test Claim, page 331, 342 (Order No. R9-2007-0001).

⁶³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 3, footnote 5, and 33 and 38 (technical analysis); Exhibit X (14), Regional Board Addendum to Test Claim Permit, December 12, 2007.

⁶⁴ Exhibit X, Regional Board Addendum to Test Claim Permit and Minutes, December 12, 2007. Exhibit X (14), Test Claim, page 269.

⁶⁵ Government Code sections 57350 and 57351 as amended by Statutes 2017, chapter 536 (SB 231), overturning *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351.

⁶⁶ *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; see also *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408, holding that water pollution prevention is a valid exercise of government police power.

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

The Parameters and Guidelines identify the reimbursable state-mandated activities approved in the Amended Test Claim Decision on Remand.⁶⁷

The claimants request reimbursement for numerous additional reasonably necessary activities to comply with the mandated program.⁶⁸ However, there is no evidence in the record supporting the claimants' requests. Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state mandate.⁶⁹ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.⁷⁰ The record lacks any evidence that the activities the claimants propose are reasonably necessary to comply with the state-mandated program. In addition, some of the proposed reasonably necessary costs are direct costs identified in the boilerplate language in Section V. of the Parameters and Guidelines and do not need to be restated in Section IV. In addition, some of the requested costs and activities go beyond the scope of the mandate.

The claimants also request reimbursement for interest from the reimbursements, and legal and expert costs to process the Test Claim.⁷¹ The Commission, however, has no authority to approve reimbursement for interest and legal and expert costs.

Government Code 17561.5 only authorizes reimbursement for interest if the Controller's payment of the claim is made more than 365 days after adoption of the statewide cost estimate.

In addition, the Commission previously approved the *Mandate Reimbursement Process I and II* programs authorizing reimbursement for "[a]ll costs incurred by local agencies and school districts in preparing and presenting successful test claims . . . [including] the following: salaries and benefits, materials and supplies, consultant and legal costs,

⁶⁷ Exhibit A, Amended Test Claim Decision on Remand.

⁶⁸ Exhibit B, Claimants' Proposed Parameters and Guidelines; Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines; Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 13.

⁶⁹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

⁷⁰ California Code of Regulations, title 2, section 1187.5.

⁷¹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 11; Exhibit M, Claimants' Rebuttal Comments, pages 15, 20.

transportation, and indirect costs.”⁷² However, the Legislature has suspended that program for many years pursuant to Government Code section 17581, assigning a zero dollar appropriation for the program and making it voluntary during the suspended budget years.⁷³ Thus, there are no costs mandated by the state for expert or legal costs to file a successful test claim during the years the program is suspended.

D. The Claimants’ Reasonable Reimbursement Methodologies (RRMs) Proposed in Lieu of Supporting Their Claims with Documentation of Actual Costs Are Not Supported by Substantial Evidence or Evidence that the Proposals Reasonably Represent Only the Costs Mandated by the State for All Eligible Claimants to Comply with the Higher Levels of Service Approved by the Commission.

The claimants have proposed RRM in the form of unit costs and formulas for each group of reimbursable activities.⁷⁴ According to the claimants, the unit costs and formulae proposed would reimburse the claimants an estimated \$252,762,732.⁷⁵

The Water Boards and Finance oppose the proposed RRM on several grounds, including the requirements of the RRM have not been met and all of the permit’s required activities have already been performed and claimants know the costs that have actually been incurred to implement the permit activities.⁷⁶

The proposed RRM are as follows:

1. RRM Proposal for Reporting on Street Sweeping and Conveyance System Cleaning (Part J.3.a.(3)(c) (iv)-(viii), (x)-(xv))

⁷² Exhibit X (2), Commission on State Mandates, Parameters and Guidelines Amendment, *Mandate Reimbursement Process I and II* (CSM 4204, 4485, 05-TC-05, 12-PGA-03), adopted May 24, 2013, <https://www.csm.ca.gov/decisions/052813a.pdf>.

⁷³ Statutes 2007, chapter 171 (SB 77), line item 8885-295-0001, schedule 3 (y), suspending the program for fiscal year 2007-2008, when the Test Claim was filed. The suspension continues today; see, Statutes 2024, chapter 22 (AB 107), line item 8885-295-0001, schedule 5 (aa), (bb). The suspension process in Government Code section 17581 has been upheld by the courts and determined constitutional. *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287.

⁷⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM.

⁷⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 48.

⁷⁶ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 2-4; Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 2-15.

The claimants propose an RRM where each Municipal Claimant would be entitled to claim an estimated \$5,784.85 adjusted annually by the Consumer Price Index (CPI) “for each of the six-and-a-half-years Conveyance Reporting Cost was required” and \$6,143.67 adjusted annually for CPI for “each of the six and- a-half-years for Sweeping Reporting Cost was required.”⁷⁷ This totals an estimated \$87,247.59 per claimant, or an estimated \$1,657,704.21 for all eligible claimants to comply with the requirement to report on street sweeping and conveyance system cleaning from “FY 2006/2007 through FY2012/2013.”⁷⁸ In response to comments from the state agencies, the claimants revised their time period to fiscal years 2007-2008 through 2012-2013.⁷⁹

2. RRM Proposal for Conveyance System Cleaning (Part D.3.a.(3)(b)(iii))

The proposed RRM consists of unit costs (based on “reasonable values in 2007) to clean one inlet or storm basin (\$150.66), one linear foot of pipe (\$6.77/ft.), and one linear foot of the channel (\$8.52/ft.); times the total number of inlets and storm basins, feet of channel cleaned, and feet of pipe cleaned; adjusted annually by the Consumer Price Index, for fiscal years 2007-2008 through 2014-2015.⁸⁰

“When the cost of cleaning the inlets and storm basins, pipes, and channels is added across the time the mandate applied for all Municipal Claimants, the total is: Reimbursement = \$192,429,725.49.”⁸¹

3. RRM Proposal for JURMP Educational Component (Parts 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)).

The proposed RRMs are intended to reimburse claimants for the residential education program development and implementation and the jurisdictional education programs. To develop and implement the residential education program, the proposal multiplies the actual annual shared costs for developing and implementing the program, by the

⁷⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 36; Exhibit M, Claimants’ Rebuttal Comments, pages 58-59.

⁷⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 35.

⁷⁹ Exhibit M, Claimants’ Rebuttal Comments, pages 6-7, 59.

⁸⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 6-7; Exhibit M, Claimants’ Rebuttal Comments, pages 8, 61-62.

⁸¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 38.

claimant's proportional share of cost based on applicable MOUs.⁸² The yearly program development and implementation costs are as follows, and total \$3,560,171.41:

The proposed RRM for the jurisdictional education programs is calculated multiplying the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2006-2007 and fiscal year 2014-2015, which is 2.16 percent, by the Municipal Claimant's total stormwater budget each fiscal year, resulting in a reimbursement of \$16,336,242.47.⁸³ In response to the Water Boards' comments, the claimants revised the time period to fiscal year 2007-2008 through fiscal year 2014-2015.⁸⁴

4. RRM Proposal for Watershed Activities and Collaboration in the WURMP (Part E.2.f & E.2.g)

There are four proposed RRMs in this section: watershed workgroup cost share contributions; jurisdictional watershed activities; regional watershed activities; and watershed workgroup meetings. "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."⁸⁵

For the watershed workgroup cost share contributions, the RRM proposal multiplies the Municipal Claimant's proportional share of cost based on the applicable MOUs by the total actual annual shared costs for the watershed workgroup. When costs are added across fiscal year, the total reimbursement is \$616,316.21.⁸⁶

The proposed RRM for performing the watershed activities on a jurisdictional basis multiplies the average cost in fiscal year 2007-2008 to perform one jurisdictional activity per copermitttee (a unit cost of \$2,500),⁸⁷ adjusted annually for the CPI, by the number of activities required each year (assuming each jurisdiction completed the minimum four

⁸² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 39; see also, Exhibit M, Claimants' Rebuttal Comments, page 9.

⁸³ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 39-40; Exhibit M, Claimants' Rebuttal Comments, page 66.

⁸⁴ Exhibit M, Claimants' Rebuttal Comments, pages 9, 66.

⁸⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 8, 40.

⁸⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41.

⁸⁷ Exhibit M, Claimants' Rebuttal Comments, pages 11, 71.

watershed activities).⁸⁸ The total watershed activity cost is then divided by the number of watersheds in which the copermittee is located to account for copermittees in multiple watersheds implemented different or duplicative activities in different watersheds.⁸⁹ When “added across the time the mandate applied and all the Municipal Claimants, the total is: Reimbursement = \$4,207,768.50.”⁹⁰

The proposed RRM for performing the watershed activities on a regional basis is each claimant’s proportional share of costs based on applicable MOUs multiplied by the actual annual costs for the Regional Watershed Urban Runoff Management Plan Working Group’s costs to develop and maintain the Regional Watershed Activities Database.⁹¹ “When the WURMP Costs are added across the time the mandate applied and all the Municipal Claimants, the total” reimbursement is \$6,025.14.”⁹²

And, finally, the proposed RRM for the Watershed Workgroup Meetings is calculated by multiplying the average cost of an employee to attend a meeting by the number of attendees the claimant had attend the meeting by the number of meetings per year.⁹³ The claimants state the average cost to attend a meeting in fiscal year 2007-2008 was \$262.88.⁹⁴

Assuming one attendee per meeting, total costs for all Municipal Claimants is \$560,630.93.⁹⁵

⁸⁸ Exhibit M, Claimants’ Rebuttal Comments, page 71.

⁸⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 41; Exhibit M, Claimants’ Rebuttal Comments, pages 11, 71.

⁹⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 41-42.

⁹¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42; Exhibit M, Claimants’ Rebuttal Comments, pages 11, 72.

⁹² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42.

⁹³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42; Exhibit M, Claimants’ Rebuttal Comments, page 74.

⁹⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 42-43; Exhibit M, Claimants’ Rebuttal Comments, page 74.

⁹⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 43.

5. RRM Proposal for the Regional Urban Runoff Management Plan (Parts F.1., F.2. & F.3).

The proposed RRM for the Regional Urban Runoff Management Plan is a claimant's proportional share of costs based on the applicable MOUs for fiscal year 2006-2007 through fiscal year 2012-2013, multiplied by the actual annual costs invoiced by the County.⁹⁶ This results in total reimbursement of \$10,086.39.⁹⁷

6. RRM Proposal for the Program Effectiveness Assessment (Parts I.1 and I.2).

The proposed RRM for the Jurisdictional Program Effectiveness Assessment is based on the percentage of the total stormwater budget all copermitees spent assessing the effectiveness of the jurisdiction program (which is 3.72%) times the Municipal Claimant's total stormwater budget, from fiscal year 2007-2008 through fiscal year 2012-2013, for a total of \$26,804,749.26.⁹⁸

The proposed RRM for the "Regional Fiscal, Reporting, and Assessment Workgroup is the proportional share of costs based on MOUs times the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup, from fiscal year 2006-2007 through 2012-2013.⁹⁹ "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: *Reimbursement* = \$129,873.60."¹⁰⁰

7. RRM Proposal for Long-term Effectiveness Assessment (Part I.5).

The proposed formula for reimbursement for the long-term effectiveness assessment is the proportional share of costs based on applicable MOUs multiplied by the "actual annual costs of the contractors needed to assess the long term effectiveness of the

⁹⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

⁹⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44.

⁹⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44; Exhibit M, Claimants' Rebuttal Comments, page 77.

⁹⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45; Exhibit M, Claimants' Rebuttal Comments, page 78.

¹⁰⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45.

projects reported by [the] County,” which totals \$344,539.21 from fiscal year 2007-2008 through fiscal year 2012-2013.¹⁰¹

8. RRM Proposal for All Permittee Collaboration (Part L.1.a.(3)-(6)).

The proposed RRM contains three formulas to reimburse eligible claimants for “support of regional workgroup meeting”; regional workgroup meetings; and workgroup expenditures, for a total of \$2,315,471.69 from fiscal year 2006-2007 through fiscal year 2012-2013.¹⁰²

The proposed RRM for “Support for Regional Workgroup Meeting” is the proportional share of costs based on applicable MOUs multiplied by the actual costs spent to support the various all copermittee meetings. “When the costs for preparing the plan is added across the time the mandate applied, the total is: *Reimbursement* = \$277,839.07.”¹⁰³

The proposed RRM for “Regional Workgroup Meetings” multiplies the number of employees from a Municipal Claimant that attended a regional workgroup meeting, by the average costs to attend one meeting in fiscal year 2007-2008 of \$262.88, by the number of meetings attended.¹⁰⁴ “When the meeting costs are added across the time the mandate applied for all Municipal Claimants, the total is: *Reimbursement* = \$2,087,214.52.”¹⁰⁵

The proposed RRM for the “Workgroup Expenditures” is the proportional share of costs based on applicable MOUs multiplied by the actual costs of activities performed by the

¹⁰¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs pages 10, 45-46; Exhibit M, Claimants’ Rebuttal Comments, page 80.

¹⁰² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46; Exhibit M, Claimants’ Rebuttal Comments, pages 14-15.

¹⁰³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46.

¹⁰⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47; Exhibit M, Claimants’ Rebuttal Comments, page 82.

¹⁰⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 47.

workgroup in fiscal years 2006-2007 through 2012-2013.¹⁰⁶ The actual costs in 2008-2009 and 2009-2010 for these activities is \$418.10.¹⁰⁷

The claimants developed the proposals by hiring John Quenzer, a principal scientist at D-Max Engineering, Inc. to evaluate the following data relating to the test claim permit: 2011 county surveys, declarations from copermitees, JURMP annual reports, WQIP annual reports, WURMP annual reports, county fiscal analysis documents, MOUs, county watershed workgroup expenditure records, regional cost sharing documentation, and “D-Max proposal records relating to JRMP annual reporting services (‘D-Max Files’).”¹⁰⁸ Mr. Quenzer is a certified professional in stormwater quality and stormwater pollution prevention planning, has focused on stormwater management for municipal agencies within San Diego County, and has worked to implement the test claim permit.¹⁰⁹ The claimants provide Mr. Quenzer’s declarations,¹¹⁰ and those of County employee Lara Barrett,¹¹¹ along with 14 volumes of documentation to support the proposed RRM’s.¹¹²

Government Code section 17557(b) provides that “[i]n adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology,” or RRM. An RRM, as defined in Government Code section 17518.5, is generally a formula or unit cost adopted by the Commission for the reimbursement of an approved activity, so that the claimants do not need to provide detailed documentation of the actual costs to the State Controller’s Office for its review and audit of the claimants’ reimbursement

¹⁰⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, pages 11, 47.

¹⁰⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s page 48; Exhibit M, Claimants’ Rebuttal Comments, page 83.

¹⁰⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, pages 4, 32.

¹⁰⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 32.

¹¹⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, pages 32-49 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 52-102 (Quenzer Declaration).

¹¹¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, pages 27-31 (Barrett Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 21-22 (Barrett Declaration).

¹¹² Exhibit M, Claimants’ Rebuttal Comments, pages 52-102 (Quenzer Declaration); Exhibit I (1-14), Claimants’ Supporting Documentation for Proposed RRM’s.

claims. Rather, the Controller simply reviews the claimant's application of the RRM to the costs claimed.¹¹³

The Commission is required to determine if there is substantial evidence in the record that the proposed RRMs consider the variation in costs among local government claimants; balance accuracy with simplicity; and reasonably reimburses eligible claimants the costs mandated by the state to comply with the higher levels of service approved by the Commission.¹¹⁴

Staff finds that the claimants' proposed RRMs are overbroad and not limited to the mandated activities, and there is no evidence that the proposed unit costs reasonably represent the costs mandated by the state for all eligible claimants for only the higher levels of service activities the Commission approved for reimbursement. See pages 127-186 of the Proposed Decision for the analysis of the proposed RRMs.

Accordingly, the Parameters and Guidelines require the claimants to retain documentation of actual costs incurred for the Controller's review and audit.

E. Sections V. and VII. of the Parameters and Guidelines

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement, including training and travel costs, which are supported by the state-mandated program.

In addition, Section VII. of the Parameters and Guidelines (Offsetting Revenues and Reimbursements) identifies the following potential offsetting revenues identified in the Commission's Amended Test Claim Decision on Remand:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning.
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.¹¹⁵

¹¹³ Government Code section 17561(d)(2).

¹¹⁴ Government Code sections 17518.5, 17557, 17559; California Code of Regulations, title 2, sections 1183.12, 1187.5.

¹¹⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 139, 151.

V. Staff Recommendation

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES

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)

The period of reimbursement is January 24, 2007 through December 31, 2017.

Case No.: 07-TC-09-R

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)

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

(Adopted May 23, 2025)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on May 23, 2025. [Witness list will be included in the adopted Decision.]

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

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

Member	Vote
Lee Adams, County Supervisor	
Karen Greene Ross, Public Member	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	

Member	Vote
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	

I. Summary of the Mandate

On March 26, 2010, the Commission on State Mandates (Commission) adopted the Test Claim Decision. The parties litigated the Decision and, in 2017 and 2022, the court affirmed the Commission's Decision, except for the street sweeping requirement in part D.3.a.(5) of the test claim permit, finding the copermitees¹¹⁶ have sufficient authority to levy a fee for street sweeping within the meaning of Government Code section 17556(d), so it imposes no costs mandated by the state.¹¹⁷

On May 26, 2023, the Commission adopted the Amended Decision on Remand consistent with the court's judgment and writ.¹¹⁸ The Commission partially approved the Test Claim for the following reimbursable activities:

- Reporting on street sweeping and conveyance system cleaning (Part J.3.a.(3)(c) (iv)-(viii), (x)-(xv));
- Conveyance system cleaning (Part D.3.a.(3)(b)(iii));
- Educational component (Parts 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));
- Watershed activities and collaboration in the Watershed Urban Runoff Management Program (Part E.2.f. & E.2.g.);
- Regional Urban Runoff Management Program (Parts F.1., F.2. & F.3);
- Program effectiveness assessment (Parts I.1. & I.2.);
- Long-term effectiveness assessment (Part I.5.) and

¹¹⁶ In this Decision, 'copermitee' and 'claimant' are used interchangeably.

¹¹⁷ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 574, 585-586, 595.

¹¹⁸ Exhibit A, Amended Test Claim Decision on Remand, pages 4-6.

- All permittee collaboration (Part L.1.a.(3)-(6)).¹¹⁹

The Commission also found that street sweeping (part D.3.a.(5)), hydromodification management plan (part D.1.g), and low-impact development (parts D.1.d.(7) & D.1.d.(8)) are not reimbursable because the copermitees have fee authority sufficient (within the meaning of Gov. Code § 17556(d)) to pay for them.¹²⁰

Further, the Commission found that the following would be identified as offsetting revenue in the Parameters and Guidelines:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning; and
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.¹²¹

II. Procedural History

On March 26, 2010, the Commission adopted the original Test Claim Decision and served it on March 30, 2010. The claimants filed Proposed Parameters and Guidelines on June 28, 2010.¹²² The Department of Finance (Finance) filed comments on the Proposed Parameters and Guidelines on September 3, 2010.¹²³ The State Water Resources Control Board and San Diego Regional Water Quality Control Board (Water Boards) filed joint comments on the Proposed Parameters and Guidelines on September 16, 2010.¹²⁴ The claimants filed rebuttal comments and the Revised Proposed Parameters and Guidelines on November 16, 2010.¹²⁵

¹¹⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 5-6.

¹²⁰ Exhibit A, Amended Test Claim Decision on Remand, page 6.

¹²¹ Exhibit A, Amended Test Claim Decision on Remand, page 6.

¹²² Exhibit B, Claimants' Proposed Parameters and Guidelines.

¹²³ Exhibit C, Finance's Comments on the Proposed Parameters and Guidelines, page 1.

¹²⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines.

¹²⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines.

On July 20, 2010, Finance and the Water Boards filed a petition for a writ of mandate, requesting to set aside the Commission’s Decision. On October 11, 2010, the claimants filed a cross petition for writ of mandate and complaint for declaratory relief. In 2017, the Third District Court of Appeal agreed with the Commission that the contested permit provisions are mandated by the state and not by federal law.¹²⁶ In 2022, the Third District Court of Appeal affirmed the remaining portion of the Commission’s Decision, except for street sweeping (Permit Part D.3.a.(5)), which does not impose costs mandated by the state pursuant to the copermittees’ fee authority under Government Code section 17556(d).¹²⁷ On May 26, 2023, the Commission amended the Decision consistent with the Court of Appeal’s decision pursuant to the judgment and writ.¹²⁸

Pursuant to section 1183.13(a) of the Commission’s regulations, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on July 27, 2023.¹²⁹

The claimants filed comments on the Draft Proposed Decision and Parameters and Guidelines on February 16, 2024, regarding whether the special districts are eligible claimants,¹³⁰ and again on February 20, 2024, to propose reasonable reimbursement methodologies (RRMs) and address reasonably necessary activities in the Draft Proposed Decision and Parameters and Guidelines.¹³¹

Finance filed comments on the Draft Proposed Decision and Parameters and Guidelines and opposition to the proposed RRM on October 14, 2024.¹³² The State Controller’s Office (Controller) filed a statement of no comment on the Draft Proposed Decision and Parameters and Guidelines on October 14, 2024.¹³³ The Water Boards filed comments on the Draft Proposed Decision and Parameters and Guidelines and

¹²⁶ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.

¹²⁷ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581-586. See also, *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th at 192-195.

¹²⁸ Exhibit A, Amended Test Claim Decision on Remand.

¹²⁹ Exhibit F, Draft Proposed Decision and Parameters and Guidelines.

¹³⁰ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹³¹ Exhibit H, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM.

¹³² Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM.

¹³³ Exhibit K, State Controller’s Comments on the Draft Proposed Decision and Parameters and Guidelines.

opposition to the proposed RRM s on October 14, 2024.¹³⁴ The claimants filed rebuttal comments on December 16, 2024.¹³⁵

Commission staff issued the Revised Draft Proposed Decision and Parameters and Guidelines on March 20, 2025.

III. Positions of the Parties

A. County of San Diego and Cities, Claimants

The claimants' comments are organized by the following issues and requests raised in their pleadings.

1. The Claimants Contend that San Diego County Regional Airport Authority and the San Diego Unified Port District Be Considered Eligible Claimants.

The claimants argue that the San Diego County Regional Airport Authority and the San Diego Unified Port District, which are funded with fees and assessments, should be eligible to claim reimbursement for this program on the ground that section 8(d) of article XIII B expressly defines local governments to include "special district, authority or other political subdivision of or within the State" and that definition governs the interpretation of eligibility under article XIII B, section 6.¹³⁶ Their specific arguments on this issue are addressed in the analysis.

2. The Claimants Request Reimbursement for Proposed Reasonably Necessary Activities and Costs to Comply with the Mandate.

In their originally submitted Proposed Parameters and Guidelines filed June 28, 2010, the claimants proposed reasonably necessary costs for each category of activities the Commission approved. For reporting on street sweeping and conveyance system cleaning, the claimants propose "reporting and tracking policies and procedures," "data tracking and analysis," "report writing," "employee supervision and management," and "contracted services."¹³⁷

For conveyance system cleaning, the claimants request reimbursement for "conveyance system inspection," "conveyance system cleaning operations," "vehicles and equipment," "vehicle and equipment maintenance," "materials disposal," "fuel," "program development," "employee and vendor training," "parking signage and enforcement,"

¹³⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM s.

¹³⁵ Exhibit M, Claimants' Rebuttal Comments.

¹³⁶ Exhibit G, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 2-6.

¹³⁷ Exhibit B, Claimants' Proposed Parameters and Guidelines, page 16, 18.

“employee supervision and management,” and “contracted services.”¹³⁸ Under the educational component, the claimants request reimbursement for the costs of “program development,” “reporting and tracking policies and procedures,” “data tracking and analysis,” “educational materials,” “employee and vendor annual training,” “education of target audiences,” “report writing,” “employee supervision and management,” and “contracted services.”¹³⁹

For the Watershed Urban Runoff Management Program (WURMP), the claimants allege activities and costs for “working body support and representation,” “collaborative watershed work product development,” (to include: Watershed Urban Runoff Management Programs, watershed activities lists, annual WURMP work plans and budgets, WURMP annual reports, watershed-specific standards, working body status reports, and other watershed work products). The claimants also propose “watershed implementation of programs and activities” (including, watershed water quality activities, watershed education activities, and other programs and activities required to implement the WURMP). Other WURMP-related costs and activities the claimants propose are materials, equipment, vehicle and equipment maintenance, fuel, reporting and tracking policies and procedures, data tracking and analysis, report writing, employee and vendor annual training, cost accounting and documentation, external coordination, employee supervision and management, and contracted services.¹⁴⁰

The claimants contend that the following parts of the permit approved by the Commission are carried out through the same regional structure as a defined set of working bodies: (1) all copermitttee collaboration (permit part L), (2) Regional Urban Runoff Management Program (RURMP) (permit part F.1.-F.3) and (3) the Long Term Effectiveness Assessment (LTEA, part I.5.).¹⁴¹ The claimants’ request reimbursement for costs and combined activities for these parts, which include “regional coordination of copermitttees and regional working bodies,” “working body support and representation,” “regional work product development,” (including status reports, annual work plans, RURMP annual reports, regional standards, and other regional work products, such as a formal agreement, report of waste discharge, by-laws, a standardized method for annually conducting and reporting fiscal analyses of urban runoff management programs, and a long-term effectiveness assessment). The claimants further request reimbursement for “regional implementation of programs and activities,” “cost accounting and documentation,” “external coordination,” “employee supervision and management,” and “contracted services.”¹⁴²

¹³⁸ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 19-20.

¹³⁹ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 20-21.

¹⁴⁰ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 21-24.

¹⁴¹ Exhibit B, Claimants’ Proposed Parameters and Guidelines, page 24.

¹⁴² Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 24-27.

For the program effectiveness assessment (part I.1.-I.2.), the claimants propose “program development,” program implementation,” employee and vendor annual training,” “Jurisdictional Urban Runoff Management Program (JURMP) and Watershed Urban Runoff Management Program (WURMP) modifications,” “report writing,” “employee supervision and management,” and “contracted services.”¹⁴³

3. The Claimants Request the Parameters and Guidelines Delete References to Senate Bill 231.

The claimants contend that Senate Bill 231, which exempted stormwater property related fees from the voter approval requirement in Proposition 218, is not relevant to these Parameters and Guidelines as follows:

As the Commission and two Courts of Appeal have determined, the Municipal Claimants are entitled to subvention for the unfunded mandates required by the 2007 Permit. The Municipal Claimants performed the mandates contained in the 2007 Permit from 2007 until the end of fiscal year (“FY”) 2014/2015, by which time the mandates of the 2013 Permit were in full force. In this reimbursement process, the Municipal Claimants are entitled to and seek reimbursement only for the state mandates during this period from 2007 until the end of FY 2014/2015 when they were required by the 2007 Permit. The Municipal Claimants will seek reimbursement for the mandates performed under the 2013 Permit, including, but not limited to, mandates that were in the 2007 Permit but were continued in the 2013 Permit, in that separate action. The Municipal Claimants therefore reserve all rights regarding mandates in the 2013 Permit.

For this reason, the Municipal Claimants object to and disagree with the portions of the Proposed Decision that improperly seek to address an issue that is not currently before the Commission— the possible impact of Senate Bill 231 (“SB 231”). The Municipal Claimants contend that the Commission must delete these portions of the Proposed Decision for multiple reasons. First, SB 231 is not at issue in this Test Claim because the mandated activities under the 2007 Permit were all completed prior to the time SB 231 was enacted in 2017 and before it became effective in 2018. SB 231 is therefore not relevant to this Test Claim, as the most recent Court of Appeal opinion in this matter concluded. [Citation omitted.] Since SB 231 has no application to this Test Claim, the Proposed Decision should not address it. Whatever its relevance to future matters, it has no place in this proceeding.

Second, the Municipal Claimants contend that the Commission’s analysis regarding SB 231 is inconsistent with *Department of Finance v.*

¹⁴³ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 27-28.

Commission on State Mandates (2022) 85 Cal.App.5th 535 and *City of Salinas* (2002) 98 Cal.App.4th 1351. Although it is irrelevant to this proceeding and should not be addressed at all by the Commission here, the Municipal Claimants reserve all rights regarding the applicability of SB 231 and its constitutionality. The Municipal Claimants believe that even if SB 231 were applicable, which it is not, the appropriate approach for the Commission to take regarding SB 231 would be to wait until a court of competent jurisdiction resolves the constitutionality of SB 231 in the context of an actual fee enacted under its provisions. Since SB 231 is irrelevant here, the Commission should just delete all references to it in the Proposed Decision.¹⁴⁴

4. The Claimants Request Reimbursement for Interest, Legal, and Expert Costs to Process the Test Claim.

The claimants also request reimbursement for any owed interest from the reimbursements, as well as recoverable legal and expert costs to process the Test Claim.¹⁴⁵

5. The Claimants Propose Several RRM's in the Form of Unit Costs and Formulae in lieu of Providing Documentation of Actual Costs for the Controller's Review and Audit.

The claimants request the Commission adopt several RRM's in the form of unit costs and formulae pursuant to Government Code section 17518.5 in lieu of providing detailed documentation of actual costs mandated by the state for the Controller's review and audit in order "to allow for the timely and efficient reimbursement of the mandated activities previously approved by the Commission and confirmed in two Courts of Appeal decisions."¹⁴⁶

According to the claimants, the unit costs and formulae proposed would reimburse the claimants an estimated \$252,762,732.¹⁴⁷

The claimants argue that an RRM is proper in this case since providing receipts going back to 2007, when the test claim permit was adopted, is not reasonable:

¹⁴⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 3.

¹⁴⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 11; Exhibit M, Claimants' Rebuttal Comments, pages 15, 20.

¹⁴⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 1.

¹⁴⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 48.

The activities required by the 2007 Permit that are challenged in the Test Claim occurred starting in 2007. The State Responses indicate that the only reasonable way to handle the reimbursement is through receipts. The Municipal Claimants wish to remind the Commission that due to the State's decision to contest all possible legal issues through years of unnecessary litigation, fourteen years have passed since the 2007 Permit and its unfunded mandates were adopted. Requiring Municipal Claimants to come up with receipts fourteen years after the work began is unreasonable in light of the RRM and improperly incentivizes the state to continue challenging unfunded mandates. The total cost of the 2007 Permit's mandated activities does not change the fact that these activities were required and that the Municipal Claimants were not properly reimbursed for these activities. Using the RRM process would be a fair way to finally provide the Municipal Claimants with reimbursement for funds that the State required them to expend years ago.¹⁴⁸

If the Commission does not adopt the proposed RRMs, claimants request that the Commission include in the Parameters and Guidelines all activities that they contend are reasonably necessary to implement the state mandated activities, as described in their February 20, 2024 comments.¹⁴⁹

The proposed RRMs are summarized below and are supported by 14 volumes of documentation that contain over 80,000 pages.

a. RRM Proposal for Reporting on Street Sweeping and Conveyance System Cleaning (Part J.3.a.(3)(c) (iv)-(viii), (x)-(xv))

The claimants propose an RRM where each Municipal Claimant would be entitled to claim an estimated \$5,784.85 adjusted annually by the Consumer Price Index (CPI) "for each of the six-and-a-half-years Conveyance Reporting Cost was required" and \$6,143.67 adjusted annually for CPI for "each of the six and- a-half-years for Sweeping Reporting Cost was required."¹⁵⁰ This totals an estimated \$87,247.59 per claimant, or an estimated \$1,657,704.21 for all eligible claimants to comply with the requirement to report on street sweeping and conveyance system cleaning from "FY 2006/2007

¹⁴⁸ Exhibit M, Claimants' Rebuttal Comments, pages 4-5.

¹⁴⁹ Exhibit M, Claimants' Rebuttal Comments, page 20.

¹⁵⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 36; Exhibit M, Claimants' Rebuttal Comments, pages 58-59.

through FY2012/2013.”¹⁵¹ In response to comments from the state agencies, the claimants revised their time period to fiscal years 2007-2008 through 2012-2013.¹⁵²

b. RRM Proposal for Conveyance System Cleaning (Part D.3.a.(3)(b)(iii))

The proposed RRM consists of unit costs (based on “reasonable values in 2007) to clean one inlet or storm basin (\$150.66), one linear foot of pipe (\$6.77/ft.), and one linear foot of the channel (\$8.52/ft.); times the total number of inlets and storm basins, feet of channel cleaned, and feet of pipe cleaned; adjusted annually by the Consumer Price Index, for fiscal years 2007-2008 through 2014-2015.¹⁵³

“When the cost of cleaning the inlets and storm basins, pipes, and channels is added across the time the mandate applied for all Municipal Claimants, the total is:

Reimbursement = \$192,429,725.49.”¹⁵⁴

c. RRM Proposal for JURMP Educational Component (Parts 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)).

The proposed RRMs are intended to reimburse claimants for the residential education program development and implementation and the jurisdictional education programs. To develop and implement the residential education program, the proposal multiplies the actual annual shared costs for developing and implementing the program, by the claimant’s proportional share of cost based on applicable MOUs.¹⁵⁵ The yearly program development and implementation costs are as follows, and total \$3,560,171.41:

Fiscal Year	County Costs for Regional Residential Education Program Development and Implementation
FY 2007/2008	\$219,226.90
FY 2008/2009	\$438,452.75
FY 2009/2010	\$876,907.50

¹⁵¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 35.

¹⁵² Exhibit M, Claimants’ Rebuttal Comments, pages 6-7, 59.

¹⁵³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 6-7; Exhibit M, Claimants’ Rebuttal Comments, pages 8, 61-62.

¹⁵⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 38.

¹⁵⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 39; see also, Exhibit M, Claimants’ Rebuttal Comments, page 9.

Fiscal Year	County Costs for Regional Residential Education Program Development and Implementation
FY 2010/2011	\$920,752.90
FY 2011/2012	\$966,791.36
FY 2012/2013	\$138,040.00 ¹⁵⁶

The proposed RRM for the jurisdictional education programs is calculated multiplying the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2006-2007 and fiscal year 2014-2015, which is 2.16 percent, by the Municipal Claimant’s total stormwater budget each fiscal year, resulting in a reimbursement of \$16,336,242.47.¹⁵⁷ In response to the Water Boards’ comments, the claimants revised the time period to fiscal year 2007-2008 through fiscal year 2014-2015.¹⁵⁸

d. RRM Proposal for Watershed Activities and Collaboration in the WURMP (Part E.2.f & E.2.g)

There are four proposed RRMs in this section: watershed workgroup cost share contributions; jurisdictional watershed activities; regional watershed activities; and watershed workgroup meetings. “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.”¹⁵⁹

For the watershed workgroup cost share contributions, the RRM proposal multiplies the Municipal Claimant’s proportional share of cost based on the applicable MOUs by the total actual annual shared costs for the watershed workgroup. When costs are added across fiscal year, the total reimbursement is \$616,316.21.¹⁶⁰

The proposed RRM for performing the watershed activities on a jurisdictional basis multiplies the average cost in fiscal year 2007-2008 to perform one jurisdictional activity

¹⁵⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 39. Exhibit M, Claimants’ Rebuttal Comments, pages 64-65.

¹⁵⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 39-40; Exhibit M, Claimants’ Rebuttal Comments, page 66.

¹⁵⁸ Exhibit M, Claimants’ Rebuttal Comments, pages 9, 66.

¹⁵⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 8, 40.

¹⁶⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41.

per copermitttee (a unit cost of \$2,500),¹⁶¹ adjusted annually for the CPI, by the number of activities required each year (assuming each jurisdiction completed the minimum four watershed activities).¹⁶² The total watershed activity cost is then divided by the number of watersheds in which the copermitttee is located to account for copermitttees in multiple watersheds implemented different or duplicative activities in different watersheds.¹⁶³ When “added across the time the mandate applied and all the Municipal Claimants, the total is: Reimbursement = \$4,207,768.50.”¹⁶⁴

The proposed RRM for performing the watershed activities on a regional basis is each claimant’s proportional share of costs based on applicable MOUs multiplied by the actual annual costs for the Regional Watershed Urban Runoff Management Plan Working Group’s costs to develop and maintain the Regional Watershed Activities Database.¹⁶⁵ “When the WURMP Costs are added across the time the mandate applied and all the Municipal Claimants, the total” reimbursement is \$6,025.14.”¹⁶⁶

And, finally, the proposed RRM for the Watershed Workgroup Meetings is calculated by multiplying the average cost of an employee to attend a meeting by the number of attendees the claimant had attend the meeting by the number of meetings per year.¹⁶⁷ The claimants state the average cost to attend a meeting in fiscal year 2007-2008 was \$262.88.¹⁶⁸ The number of meetings each year are as follows:

FY 2007/2008 369

¹⁶¹ Exhibit M, Claimants’ Rebuttal Comments, pages 11, 71.

¹⁶² Exhibit M, Claimants’ Rebuttal Comments, page 71.

¹⁶³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41; Exhibit M, Claimants’ Rebuttal Comments, pages 11, 71.

¹⁶⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 41-42.

¹⁶⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42; Exhibit M, Claimants’ Rebuttal Comments, pages 11, 72.

¹⁶⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42.

¹⁶⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42; Exhibit M, Claimants’ Rebuttal Comments, page 74.

¹⁶⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 42-43; Exhibit M, Claimants’ Rebuttal Comments, page 74.

FY 2008-2009	312
FY 2009-2010	334
FY 2010-2011	338
FY 2011-2012	355
FY 2012-2013	320 ¹⁶⁹

Assuming one attendee per meeting, total costs for all Municipal Claimants is \$560,630.93.¹⁷⁰

e. RRM Proposal for the Regional Urban Runoff Management Plan (Parts F.1., F.2. & F.3).

The proposed RRM for the Regional Urban Runoff Management Plan is a claimant's proportional share of costs based on the applicable MOUs for fiscal year 2006-2007 through fiscal year 2012-2013, multiplied by the actual annual costs invoiced by the County.¹⁷¹ Based on the County Watershed Workgroup Expenditure Records, the annual costs are as follows:

FY 2008/2009	\$2,928.91
FY 2009/2010	\$5,230.98
FY 2010/2011	\$1,926.50 ¹⁷²

This results in total reimbursement of \$10,086.39.¹⁷³

f. RRM Proposal for the Program Effectiveness Assessment (Parts I.1 and I.2).

The proposed RRM for the Jurisdictional Program Effectiveness Assessment is based on the percentage of the total stormwater budget all copermittees spent assessing the effectiveness of the jurisdiction program (which is 3.72%) times the Municipal

¹⁶⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

¹⁷⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

¹⁷¹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

¹⁷² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43; Exhibit M, Claimants' Rebuttal Comments, page 75.

¹⁷³ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44.

Claimant's total stormwater budget, from fiscal year 2007-2008 through fiscal year 2012-2013, for a total of \$26,804,749.26.¹⁷⁴

The proposed RRM for the "Regional Fiscal, Reporting, and Assessment Workgroup is the proportional share of costs based on MOUs times the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup, from fiscal year 2006-2007 through 2012-2013.¹⁷⁵ The claimants state the actual shared costs for developing and implementing the program was as follows for three fiscal years:

FY 2008/2009	\$24,466.92
FY 2009/2010	\$32,423.11
FY 2010-2011	\$72,983.57 ¹⁷⁶

"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: *Reimbursement* = \$129,873.60."¹⁷⁷

g. RRM Proposal for Long-term Effectiveness Assessment (Part I.5).

The proposed formula for reimbursement for the long-term effectiveness assessment is the proportional share of costs based on applicable MOUs multiplied by the "actual annual costs of the contractors needed to assess the long term effectiveness of the projects reported by [the] County," which totals \$344,539.21 from fiscal year 2007-2008 through fiscal year 2012-2013.¹⁷⁸

¹⁷⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44; Exhibit M, Claimants' Rebuttal Comments, page 77.

¹⁷⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45; Exhibit M, Claimants' Rebuttal Comments, page 78.

¹⁷⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs pages 44-45; Exhibit M, Claimants' Rebuttal Comments, page 79.

¹⁷⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45.

¹⁷⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs pages 10, 45-46; Exhibit M, Claimants' Rebuttal Comments, page 80.

h. RRM Proposal for All Permittee Collaboration (Part L.1.a.(3)-(6)).

The proposed RRM contains three formulas to reimburse eligible claimants for “support of regional workgroup meeting”; regional workgroup meetings; and workgroup expenditures, for a total of \$2,315,471.69 from fiscal year 2006-2007 through fiscal year 2012-2013.¹⁷⁹

The proposed RRM for “Support for Regional Workgroup Meeting” is the proportional share of costs based on applicable MOUs multiplied by the actual costs spent to support the various all copermittee meetings. Based on a review of the “Regional Cost Sharing Documentation,” the yearly county costs are as follows:

FY 2008/2009	\$57,285.40
FY 2009/2010	\$69,576.92
FY 2010/2011	\$44,665.30
FY 2011/2012	\$56,311.45 ¹⁸⁰

“When the costs for preparing the plan is added across the time the mandate applied, the total is: *Reimbursement* = \$277,839.07.”¹⁸¹

The proposed RRM for “Regional Workgroup Meetings” multiplies the number of employees from a Municipal Claimant that attended a regional workgroup meeting, by the average costs to attend one meeting in fiscal year 2007-2008 of \$262.88, by the number of meetings attended.¹⁸² The number of meetings each year were as follows:

FY 2007/2008	1179
FY 2008/2009	1386
FY 2009/2010	1238
FY 2010/2011	1263
FY 2011/2012	1260

¹⁷⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46; Exhibit M, Claimants’ Rebuttal Comments, pages 14-15.

¹⁸⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 46; Exhibit M, Claimants’ Rebuttal Comments, page 81.

¹⁸¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46.

¹⁸² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47; Exhibit M, Claimants’ Rebuttal Comments, page 82.

“When the meeting costs are added across the time the mandate applied for all Municipal Claimants, the total is: *Reimbursement* = \$2,087,214.52.”¹⁸⁴

The proposed RRM for the “Workgroup Expenditures” is the proportional share of costs based on applicable MOUs multiplied by the actual costs of activities performed by the workgroup in fiscal years 2006-2007 through 2012-2013.¹⁸⁵ The actual costs in 2008-2009 and 2009-2010 for these activities is \$418.10.¹⁸⁶

i. Claimants’ Rebuttal Comments on the Proposed RRMs.

Claimants state in rebuttal comments filed December 16, 2024, that although they satisfied the requirements to create an RRM, they provide additional detail and revisions in response to the state’s comments and a few minor revisions mostly regarding “the time when reimbursement was proper and the format of the time for which the summation is applied.”¹⁸⁷ However, the claimants believe that cut-off years should be interpreted in the following ways:

- FY 2006/2007 claimed costs should be reduced to 43.29% of the total cost for the year to reflect that 158 of the 365 days in FY 2006/2007 were on or after January 24, 2007, which is the effective date of the 2007 Permit.
- FY 2007/2008 claimed costs should be 27.05% of the total cost for the year to reflect that 99 days of the 366 days in FY 2007/2008 were on or after March 24, 2008, which is the date that Co-Permittees were required to begin implementing JURMP developed per the 2007 Permit requirements.
- FY 2012/2013 claimed costs should be 98.90% of the total cost for the year to reflect that 361 of the 365 days in FY 2012/2013 were on or before June 26, 2013, which is the day before the effective date of the 2013 Permit.
- FY 2014/2015 claimed cost should be 98.90% of the total cost for the year which reflects that 361 of the 365 days in FY 2014/2015 were on or before June 26, 2015, which is the day before Co-Permittees were required to submit

¹⁸³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 47.

¹⁸⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 47.

¹⁸⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47.

¹⁸⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs page 48; Exhibit M, Claimants’ Rebuttal Comments, page 83.

¹⁸⁷ Exhibit M, Claimants’ Rebuttal Comments, page 5.

and begin implementing JRMPs that reflected requirements of the 2013 Permit.¹⁸⁸

B. Department of Finance

Finance argues the Commission should reject the proposed RRM because they fail to meet the statutory requirements for adoption of an RRM and would result in more reimbursement than required by law for the following reasons:¹⁸⁹

- All of the permit's required activities have already been performed, and claimants know the costs that have actually been incurred to implement the permit activities. Only reliance on claimed costs supported by source documents created at or near the time the actual costs were incurred, together with corroborating evidence, will ensure that reimbursement is not in excess of what is required by law.¹⁹⁰
- The evidence shows that claimants may have additional offsetting revenues that must be accounted for. The differences in revenues and costs among the various claimants are reason enough to reject a one-size-fits-all approach to reimbursement. The claimants must submit actual costs claims identifying all offsetting revenues and deduct those revenues from the costs submitted for reimbursement.¹⁹¹
- The requirements for adoption of a reasonable reimbursement methodology have not been met.

The claimants do not identify which individual claimants make up a representative sample of eligible claimants and the claimants vary widely in their size, populations, and other characteristics, which results in a wide variation in costs.

In addition, the proposed RRM do not consider the variation in costs among local agencies and make no specific references to how this variation is accounted for. For example, many of the proposed RRM's components are based on an individual claimant's percentage share of a "total stormwater budget." There is nothing in the supporting documentation to validate that the proposed percentage share of a total stormwater budget "is even generally representative of any historic annual expenditures from any claimant, which

¹⁸⁸ Exhibit M, Claimants' Rebuttal Comments, page 6.

¹⁸⁹ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 2-4.

¹⁹⁰ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 2.

¹⁹¹ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 2.

could otherwise be determined if actual historic expenditures were provided.” Further, the activities included in the category “total stormwater budgets” can vary widely among claimants as to what costs are included or not included, and there is no identification and analysis provided for how the RRM consider that variation.¹⁹²

- Although the claimants submitted 14 volumes and 80,000 pages of supporting documents, they did not include sufficient and complete information on the datasets, calculations, and methodologies used to develop the proposed RRM. Finance was unable to determine which information in the supporting documents was used to develop or inform the RRM, or which information was excluded and why it was excluded.¹⁹³
- The proposed RRM do not demonstrate that they limit reimbursement to the activities determined to be reimbursable by the Commission.¹⁹⁴

Finance also argues that SB 231 is relevant and should not be deleted from the analysis of the claimants’ costs mandated by the state.¹⁹⁵

Finance agrees with the Draft Proposed Decision that reimbursement for the claimants’ proposed reasonably necessary activities, such as developing policies and procedures to report street sweeping and conveyance system cleaning, and developing educational programs, should be denied because there is no substantial evidence in the record to support these requests.¹⁹⁶

Finance further contends that the Commission has no authority to approve reimbursement for interest, or for any legal and expert costs to process the Test Claim, as requested by the claimants.¹⁹⁷ Finally, Finance supports the finding in the Draft Proposed Decision that the Port District and Airport Authority special district are not

¹⁹² Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 3.

¹⁹³ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 4.

¹⁹⁴ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 4.

¹⁹⁵ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 2, 4.

¹⁹⁶ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 5-6.

¹⁹⁷ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 5.

eligible to claim mandate reimbursement because they are not subject to the taxing and spending restrictions in the California Constitution.¹⁹⁸

C. State Water Resources Control Board and Regional Water Quality Control Board

In comments submitted on September 16, 2010, the Water Boards specifically comment on and oppose each of the claimants' requests for reimbursement of proposed reasonably necessary activities as discussed in the analysis below.¹⁹⁹

In their October 14, 2024 comments, the Water Boards request the Parameters and Guidelines be modified to change the beginning period of reimbursement from January 24, 2007 (the effective date of the test claim permit) to March 24, 2008, based on several permit provisions requiring implementation "no later than 365 days after adoption of" the test claim permit, and a permit Addendum adopted by the Regional Board delaying that implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a regional disaster, for a total delay of 425 days.²⁰⁰

Except for the proposed change to the period of reimbursement, the Water Boards urge the Commission to adopt the Draft Proposed Decision and Parameters and Guidelines issued July 27, 2023, and reject the claimants' proposed RRM for the following reasons:²⁰¹

- The Water Boards argue the claimants' proposed RRM fails to satisfy the statutory requirements and are not supported by substantial evidence in the record.²⁰² The claimants do not show that their RRM conforms to Government Code section 17518.5(b) because they are not based "on a representative sample of eligible claimants" nor identify which claimants constitute a

¹⁹⁸ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition Proposed RRM, page 2.

¹⁹⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 4-6, 16.

²⁰⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 3, footnote 2, and 33 (technical analysis) and 38; Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁰¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 3.

²⁰² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 2.

representative sample so the parties cannot verify whether the purported sample of eligible claimants and costs are representative.²⁰³

- The RRM's do not comply with section 17518.5(c) regarding the variation in costs among local agencies. The claimants' declaration does not specify whether costs of all or a subset of claimants were considered, and if a subset, which claimants make up the subset. Nor do the RRM's propose to implement the mandate in a cost-effective manner in that variations in costs are not identified, nor are the costs necessarily confined to those the Commission determined were reimbursable or reasonably necessary to comply with the mandate.²⁰⁴
- The RRM's do not comply with section 17518.5(d), which requires RRM's to 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." According to the Water Boards:

Claimants do not identify or explain the documentation or assumptions relied upon to develop each of the proposed RRM's. Moreover, claimants fail to demonstrate that the RRM's 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's 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 [sic] offsetting revenues that reduce an individual claimant's reimbursement amount.²⁰⁵

- The claimants' reliance on the 2005 state survey to validate values in the proposed RRM's is inappropriate because that survey's costs were not isolated to only the mandated activities and the survey is not representative because it included six permittees, only one of which (Encinitas) is an eligible claimant under this claim. In addition, the 2005 survey involved compliance with a 2001 San Diego County permit rather than the test claim permit.²⁰⁶ Further, the 2005 survey's purpose was not to approximate local costs of permit implementation

²⁰³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 5.

²⁰⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 6.

²⁰⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 7.

²⁰⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 8.

but primarily to understand costs per household associated with permit implementation, and one of the survey's conclusions was that stormwater budgets that vary with local operations make it challenging to isolate, and are unreliable to determine, expenses for specific permit activities.²⁰⁷

- The 2011 county copermittee survey is also not reliable because it “does not support an accurate or verifiable approximation of local costs” because individual claimants responded to the surveys with different types of inputs based on subjective determinations, so the survey data are not comparable and cannot be used to develop a reliable, accurate, or verifiable methodology.²⁰⁸
- Reliance on stormwater budgets is inherently inaccurate because it is unclear whether the budgets are proposed budgets, locally approved budgets, reconciled budgets or those submitted to the Regional Board for permit reporting, or what years' budgets are used. According to the Water Boards, “[u]se 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.”²⁰⁹
- The proposed RRMs are exceedingly complex and incapable of reproduction, objective evaluation, and validation, the Water Boards note:

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

[REDACTED] . . . [REDACTED]

²⁰⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 8-9.

²⁰⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, page 9.

²⁰⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 9.

For each of the 34 factors that comprise the proposed RRM methodology, . . . 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 . . .

..²¹⁰

- The proposed RRMs rely on time periods that may reimburse the claimants before the effective date of the permit (or before the implementation that delayed by 365 days implementing permit parts D., E., and F, and another 60-day delay due to a December 12, 2007 Addendum to the permit) until March 24, 2008, so the RRMs may provide reimbursement under the preceding 2001 MS4 permit during the transitional period.²¹¹
- The claimants' formula descriptions and summary table are internally inconsistent. And the formulas do not reflect or allow for prorating the costs to compare the prior (2001) permit.²¹²
- The proposed RRMs fail to balance simplicity with accuracy and ignore accuracy, although it can be achieved.²¹³ Rejecting the proposed RRMs in favor of reimbursement based on fully known costs "is the only practical approach to reimburse eligible claimants for implementing activities mandated in the varied and complex MS4 permit context."²¹⁴ According to the Water Boards, "the level of effort to implement [MS4-related] mandated activities is not consistent across claimants and does not lend itself to a single methodology, unit cost or otherwise, per mandated activity."²¹⁵

²¹⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 10-11, 23 (Ryan Declaration).

²¹¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 12.

²¹² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 12.

²¹³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 2, 13.

²¹⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 2-3, 14-15.

²¹⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 15.

- The proposed RRM do not account for “offsetting revenues on a claimant-by-claimant basis to assure that claimants are only reimbursed for mandated activities actually performed.”²¹⁶

The Water Boards also submitted a declaration from Erica Ryan, a Water Resource Control Engineer at the San Diego Regional Water Quality Control Board since 2015, who prepared a technical analysis of each proposed RRM formula.²¹⁷

The Water Boards contrast the proposed RRM with one the Commission adopted in 2015 (14-PGA-01) that was supported by a declaration from the Controller that two years of data relied on was true and correct, and a school district declaration regarding how the data was obtained and how the methodology was formulated based on the data.²¹⁸ The Commission found the RRM was based on a representative statistical analysis of various school districts constituting a representative state sample that considered the variation in costs that was tied to the number of students.²¹⁹ As the Water Boards note:

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 RRM here incapable of a determination that the proposed RRM are supported by substantial evidence.²²⁰

²¹⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 15.

²¹⁷ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, pages 20 et seq.

²¹⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, pages 12-13.

²¹⁹ See Commission on State Mandates, Parameters and Guidelines Amendment on *Immunization Records – Pertussis* 14-PGA-01 (11-TC-02), adopted September 25, 2015, <https://csm.ca.gov/decisions/doc25.pdf> (accessed on October 24, 2024), pages 8-25.

²²⁰ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 13.

D. State Controller's Office

The Controller's Office states it reviewed the Draft Proposed Decision and Parameters and Guidelines and has no comments.²²¹ The Controller's Office did not file comments on the proposed RRM's.

IV. Discussion

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

The following copermittees are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

The County of San Diego and the Cities 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.²²²

The San Diego County Regional Airport Authority and the San Diego Unified Port District are also copermittees,²²³ and both were on the claimants' proposed list of eligible claimants.²²⁴ However, neither are eligible to claim reimbursement under article XIII B, section 6 because their revenues are not proceeds of taxes subject to the appropriations limit.

Adopted by the voters in 1979, article XIII B, section 6 of the California Constitution was specifically designed to protect the tax revenues of local governments from state mandates that would require spending those revenues. The purpose is to prevent "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill-equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²²⁵

²²¹ Exhibit K, State Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines.

²²² Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

²²³ Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

²²⁴ Exhibit B, Claimants' Proposed Parameters and Guidelines, page 14.

²²⁵ *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763, quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185, holding that reimbursement under article XIII B, section 6 is only required when a mandated

Article XIII B does not reach beyond taxation and does not restrict the growth in appropriations financed from nontax sources, such as bond funds, user fees based on reasonable costs, or revenues from local assessments, fees, and charges.²²⁶ Local agencies funded by revenues other than “proceeds of taxes” cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.²²⁷

Article XIII B and the statutes that implement it also expressly state that special districts that are funded entirely by “other than proceeds of taxes” (such as from bond funds, fees or assessments) are not subject to the appropriations limit. Article XIII B, section 9(c) provides, “appropriations subject to limitation” do *not* include those appropriations of any special district that existed on January 1, 1978, and did not levy ad valorem property taxes as of the 1977-1978 fiscal year:

Appropriations subject to limitation” for each entity of government do not include: [¶] . . . [¶]

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

Government Code section 7901(e) implements article XIII B,²²⁸ and clarifies that special districts that existed on January 1, 1978, and did not levy a property tax in excess of 12 ½ cents per \$100 of assessed value in 1977-1978, are not “local agencies” for purposes of article XIII B:

The term “special district” [as part of the definition of “local agency”] shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one

new program or higher level of service forces local government to incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.”

²²⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

²²⁷ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

²²⁸ Government Code section 7900(a) states: “The Legislature finds and declares that the purpose of this division is to provide for the effective and efficient implementation of Article XIII B of the California Constitution.”

hundred dollars (\$100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.²²⁹

Therefore, a special district is not a “local agency” eligible for reimbursement for purposes of article XIII(B), section 6 if it: (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one hundred dollars (\$100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution.²³⁰

The San Diego County Regional Airport Authority was formed in 2001 pursuant to the Public Utilities Code, Division 17, commencing with section 170000, which does not permit the Authority to levy taxes.²³¹ Rather, its sources of revenue include those “attributable to airport operations,” and “imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness,” as well as “revenues generated from enterprises” on the Authority’s property.²³² It also has authority to levy special benefit assessments.²³³ Pursuant to Government Code section 7901(e), the Authority is not a “local agency” for purposes of article XIII, section B. This comports with the Authority’s financial report for fiscal years 2021 and 2022 that states it is not

²²⁹ Article XIII B, section 8(c) states: “proceeds of taxes shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, “proceeds of taxes” shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude such subventions.”

²³⁰ Government Code section 7901(e), California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

²³¹ Public Utilities Code, section 17000, et seq. (Stats. 2001, ch. 946).

²³² Public Utilities Code, section 170064 (a)-(c).

²³³ Public Utilities Code section 170072.

funded by tax revenues.²³⁴ Therefore, the Airport Authority's revenues are not subject to the taxing and spending limitations of articles XIII A and B, so it is not an eligible claimant.

The San Diego Unified Port District was formed in 1962 pursuant to Appendix 1 of the Harbors and Navigation Code, which *does* authorize the District to impose taxes.²³⁵ However, its most recent financial report indicates the District has not levied taxes since 1970:

The District's maritime, real estate, and parking operations generate billions of dollars for the region's economy and allow the District to operate without the benefit of tax dollars. The District has the authority to levy a tax but has not done so since 1970.²³⁶

As a special district that has not levied taxes since 1970 (and absent any evidence it levied tax dollars in fiscal year 1977-1978 or after), the District is not subject to an appropriations limit because it existed on January 1, 1978 and did not levy a property tax in excess of 12 ½ cents per \$100 of assessed value in fiscal year 1977-1978. Additionally, it is totally funded by revenues other than the proceeds of taxes.²³⁷ Therefore, the San Diego Unified Port District is not subject to the appropriations limit of article XIII B and is not an eligible claimant.

The claimants, however, argue that the special districts should be able to claim reimbursement under article XIII B, section 6 because section 8(d) of article XIII B expressly defines local governments to include "special district, authority or other political subdivision of or within the State" and is a specific definition that governs the interpretation of eligibility under article XIII B, section 6.²³⁸ The claimants also assert that the taxation requirements in Government Code section 7901's definition of local

²³⁴ Exhibit X (12), San Diego County Regional Airport Authority, Annual Comprehensive Financial Report, Fiscal Year Ended June 30, 2022, https://www.san.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?EntryId=16004&Command=Core_Download&language=en-US&PortalId=0&TabId=197 (accessed on June 15, 2023), page 14.

²³⁵ Harbors and Navigation Code, Appendix 1, sections 43-45.

²³⁶ Exhibit X (13), San Diego Unified Port District, Annual Comprehensive Financial Report, 2021, 2022, <https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf> (accessed on June 15, 2023), page 8.

²³⁷ California Constitution, article XIII B, section 9(c). Government Code section 7901(e).

²³⁸ Exhibit G, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines, page 2.

agency do not apply to section 6 of article XIII B.²³⁹ The claimants further argue recovery should be granted because special districts are subject to a vote requirement before they can levy any taxes or fees.²⁴⁰ In addition, the Airport Authority has the power to levy assessments.²⁴¹ Finally, the claimants argue that equity requires that special districts receive the same reimbursement as municipalities.²⁴²

Section 8(d) of article XIII B defines local government to include “special district, authority or other political subdivision of or within the State” as does Government Code section 17518.²⁴³ However, not all special districts are funded with proceeds of taxes subject to the appropriations limit, as shown by article XIII B, section 9(c) and Government Code section 7901. Those special districts funded by *other* than proceeds of taxes cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.²⁴⁴

Despite the claimants’ arguments to the contrary, Government Code section 7901(e) directly applies to article XIII B, section 6, and must be considered in interpreting the Constitution because Government Code section 7900(a) states the division (§ 7900 et seq.) of which section 7901 is a part, “is to provide for the effective and efficient implementation of Article XIII B of the California Constitution.” In addition, a specific definition only governs a general one if they are inconsistent,²⁴⁵ but there is no inconsistency between article XIII B, section 8’s definition of local agency and section 7901(e), which defines local agencies consistent with section 9(c) of article XIII B to

²³⁹ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 3-4.

²⁴⁰ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 2-4.

²⁴¹ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 4.

²⁴² Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 5.

²⁴³ “Local agency” is defined in Government Code section 17518 as “any city, county, special district, authority, or other political subdivision of the state.” According to Government Code section 17500, “It is the intent of the Legislature in enacting this part [Gov. Code, § 17500 et seq.] to provide for the implementation of Section 6 of Article XIII B of the California Constitution.”

²⁴⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

²⁴⁵ Code of Civil Procedure section 1859.

include special districts subject to the appropriations limit *except those* “that existed on January 1, 1978, and did not levy ad valorem property taxes as of the 1977-1978 fiscal year” or that “existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes.” The Commission is required to read the constitutional and statutory provisions together so they are “construed in a manner that gives effect to each, yet does not lead to disharmony with the others.”²⁴⁶

The claimants also maintain that the Airport Authority has taxing authority under the Public Utilities Code that authorizes it to levy special benefit assessments.²⁴⁷ According to the claimants, “both [taxes and benefit assessments] are relevant to the purposes of purpose of Article XIII B to protect local property owners from funding unfunded state mandates.”²⁴⁸

The claimants are incorrect. Since 1980, courts have held that local special assessments for public improvements are not “proceeds of taxes” subject to the article XIII B appropriations limit.²⁴⁹ Under article XIII B, section 6, assessments are treated the same as fees and other non-tax revenue.²⁵⁰ This is why the Commission is prohibited by statute from finding that a local government incurs costs mandated by the state if it “has the authority to levy service charges, fees, or *assessments* sufficient to pay for the mandated program or increased level of service.”²⁵¹

Finally, the Commission does not have the authority to provide equitable remedies to these special districts as asserted by the claimants.²⁵² The reimbursement requirement of article XIII B, section 6 is a question of law,²⁵³ and the courts have held, “there is no basis for applying section 6 [of article XIII B] as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁵⁴

²⁴⁶ *Lacy v. City and County of San Francisco* (2023) 94 Cal.App.5th 238, 251. Code of Civil Procedure, section 1859.

²⁴⁷ Public Utilities Code section 170072.

²⁴⁸ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 4.

²⁴⁹ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

²⁵⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

²⁵¹ Government Code section 17556(d), emphasis added.

²⁵² Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 5.

²⁵³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

²⁵⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281.

Accordingly, the San Diego County Regional Airport Authority and the San Diego Unified Port District are not eligible to claim reimbursement under article XIII B, section 6.

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

1. The Period of Reimbursement Begins January 24, 2007, and the Operative Date for Some Mandated Activities May Be Delayed by a Claimant 425 days After the Effective Date, or until March 24, 2008.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim on June 20, 2008,²⁵⁵ establishing eligibility for fiscal year 2006-2007. However, since the permit has a later effective date, the period of reimbursement begins on the permit's effective date of January 24, 2007.²⁵⁶

The Water Boards assert the reimbursement period for most of the mandated activities starts March 24, 2008, rather than January 24, 2007, based on permit provisions applicable to Parts D., E., and F. requiring implementation "no later than 365 days after adoption of" the test claim permit and an Addendum adopted by the Regional Board delaying implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a regional disaster, for a total delay of 425 days.²⁵⁷ The Addendum was adopted December 12, 2007, and modified the following relevant test claim provisions:

- a. Jurisdictional Urban Runoff Management Program, Section D, . . . "Each Copermittee shall implement all requirements of section D of this Order no later than ~~365~~ **425** days after adoption of the Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of the Order each Copermittee shall at a minimum implement is Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01."

[¶]

- c. Watershed Urban Runoff Management Program, Section E.1, . . . "Each Copermittee shall implement all requirements of section E of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of this Order,

²⁵⁵ Exhibit X (14), Test Claim, page 3.

²⁵⁶ Exhibit X (14), Test Claim, page 331 (Order No. R9-2007-0001).

²⁵⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 3, footnote 5, and 33 and 38 (technical analysis); Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

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.”

- d. Regional Urban Runoff Management Program, Section F, . . . “The Copermittees shall implement all requirements of section F of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order.”²⁵⁸

The Addendum affects the following mandated activities:

- Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)).
- Educational Component (Parts 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)).
- Watershed Urban Runoff Management Program (WURMP) activities (Parts E.2.f. and E.2.g.).
- Regional Urban Runoff Management Program (Parts F.1-F.3).

An analysis of the delayed effective date and the various due dates is in the discussion of the reimbursable activities in the next section below.

However, the Water Boards’ request to change the period of reimbursement conflicts with the plain language of the test claim permit and the Addendum.

The test claim permit is an executive order and requires interpretation like a statute.²⁵⁹ When interpreting a statute, “our fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. . . . If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”²⁶⁰ The California Supreme Court said:

Our office is simply to ascertain and declare what the statute [or permit] contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the

²⁵⁸ Exhibit X (14), Test Claim, pages 112, 143, 147 (Order No. R9-2007-0001). Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁵⁹ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920. *KB Salt Lake III, LLC v. Fitness Internat., LLC* (2023) 95 Cal.App.5th. 1032, 1048. The permit is an “executive order” as defined in Government Code section 17516(c).

²⁶⁰ *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.

statute [or permit] to conform to an assumed intention that does not appear in its language.”²⁶¹

Instead of the permit language to “implement all requirements . . . no later than 425 days after adoption of the Order,”²⁶² the Water Boards urge an opposite interpretation of “no earlier than” 425 days after permit adoption. However, the courts have interpreted “no later than” to mean “on or before.”²⁶³ This is consistent with Webster’s Dictionary definition of “no later than” to mean “by (a specified time): at, in, on, or before (a specified time).”²⁶⁴ Thus, the “no later than” language functions as a delayed operative date for those affected activities, but it does not change the effective date of the test claim permit. The California Supreme Court explained the difference between effective and operative dates:

[T]he postponement of the operative date of the legislation . . . does not mean that the Legislature intended to limit its application to transactions occurring after that date. (Stats.1993, ch. 887, § 5, p. 4831.) “The effective date [of a statute] is . . . the date upon which the statute came into being as an existing law.” (*People v. McCaskey* (1985) 170 Cal.App.3d 411, 416, 216 Cal.Rptr. 54.) “[T]he operative date is the date upon which the directives of the statute may be actually implemented.” (*Ibid.*) Although the effective and operative dates of a statute are often the same, the Legislature may “postpone the operation of certain statutes until a later time.” (*People v. Henderson* (1980) 107 Cal.App.3d 475, 488, 166 Cal.Rptr. 20.) The Legislature may do so for reasons other than an intent to give the statute prospective effect. For example, the Legislature may delay the operation of a statute to allow “persons and agencies affected by it to become aware of its existence and to comply with its terms.” (*People v. Palomar* (1985) 171 Cal.App.3d 131, 134-135, 214 Cal.Rptr. 785.) In addition, the Legislature may wish “to give lead time to the governmental authorities to establish machinery for the operation of or implementation of the new law.” (*Estate of Rountree* (1983) 141 Cal.App.3d 976, 980, fn. 3, 192 Cal.Rptr. 152.)²⁶⁵

²⁶¹ *Vazquez v. State of California* (2023) 45 Cal.4th. 243, 253.

²⁶² Exhibit X (14), Test Claim, pages 112, 143, 147 (Order No. R9-2007-0001). Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁶³ *City of Pasadena v. A.T & T Communications of California, Inc.* (2002) 103 Cal.App.4th 981, 986 (“no later than” means “on or before.”); see also, *Blue Shield Life and Health Insurance v. Superior Court* (2011) 192 Cal.App.4th 727, 736-738.

²⁶⁴ Exhibit X (7), Merriam-Webster Dictionary, no/not later than, <https://www.merriam-webster.com/dictionary/no%20later%20than> (accessed February 18, 2025).

²⁶⁵ *Preston v. State Board of Equalization* (2001) 25 Cal.4th. 197, 224.

The test claim permit was adopted on January 24, 2007, and became effective as law that day.²⁶⁶ With the adoption of the Addendum on December 12, 2007, a claimant may delay implementation of the affected activities until 425 days after January 24, 2007, or until March 24, 2008. If a claimant delays implementation, then the claimant “shall at a minimum” implement the requirements of the prior 2001 permit.²⁶⁷ Reimbursement is not required to comply with the prior 2001 permit, but the date when costs were first incurred to implement the affected activities may vary by claimant, since implementation is required to occur “on or before” the 425th day after January 24, 2007. The language of the Addendum has been included in Section IV. Reimbursable Activities, where relevant. However, the period of reimbursement for this claim begins with the effective date of the test claim order on January 24, 2007.

2. The Period of Reimbursement Ends December 31, 2017, and Reimbursement for the State-mandated Activities Is Required Until that Date as Long as the Activities Remain Reimbursable State-mandated Activities.

The claimants’ Proposed Parameters and Guidelines state that the permit term ends January 23, 2012.²⁶⁸ However, reimbursement under article XIII B, section 6, for all programs continues to be required for each fiscal year that local agencies incur actual increased costs to comply with the reimbursable state-mandated program.²⁶⁹

Under the Clean Water Act, the term of an NPDES permit is five years.²⁷⁰ However, states authorized to administer the NPDES program may continue the state-issued permit until the effective date of a new permit, if state law allows.²⁷¹ California’s regulations provide that the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits have been complied with.²⁷² This comports with Attachment B of the test claim permit that states the permit expires five

²⁶⁶ Exhibit X (14), Test Claim, page 331 (Order No. R9-2007-0001).

²⁶⁷ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007. Exhibit X (14), Test Claim, page 269.

²⁶⁸ Exhibit B, Claimants’ Proposed Parameters and Guidelines, page 16. Exhibit X (14), Test Claim, page 174 (Order No. R9-2007-0001).

²⁶⁹ California Constitution, article XIII B, section 6; Government Code sections 17514, 17560, 17561.

²⁷⁰ 33 United States Code section 1342(b).

²⁷¹ Code of Federal Regulations, title 40, section 122.6(d).

²⁷² California Code of Regulations, title 23, section 2235.4.

years after adoption, but is automatically continued pending issuance of a new permit.²⁷³

On May 8, 2013, the San Diego Regional Water Quality Control Board adopted a new permit, which, by its terms, became effective June 27, 2013 (Order No. R9-2013-0001). The state-mandated requirements imposed by the test claim permit may continue uninterrupted under the 2013 permit, so reimbursement for those requirements continues until the activity is no longer mandated by the state or an exception to reimbursement becomes applicable.²⁷⁴ However, any *new* activities required by Order R9-2013-0001 are not reimbursable under this test claim permit and will not become reimbursable unless they are the subject of a later-approved test claim decision on that permit.

Beginning January 1, 2018, based on Government Code sections 57350 and 57351 as amended by Statutes 2017, chapter 536 (SB 231, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351), there are no costs mandated by the state within the meaning of Government Code section 17556(d) for the reimbursable activities because the claimants' have the legal authority to impose a stormwater fee on property owners subject only to the voter protest provisions of article XIII D. Senate Bill 231 amended the Government Code's definition of "sewer" to include stormwater sewers within the meaning of article XIII D, thereby allowing local governments to use their constitutional police powers to impose stormwater fees on property owners without having to first seek the voter's approval of the fee and making the fee subject only to the voter protest provisions of article XIII D.²⁷⁵ As the court in *Paradise Irrigation Dist.* held, there are no costs mandated by the state within the meaning of Government Code section 17556(d) when local government's fee authority is subject only to a voter protest.²⁷⁶ Under these circumstances, the claimant has "authority, i.e., the right or power, to levy fees sufficient to cover the costs" of a state mandated program, and reimbursement is not required, notwithstanding other factors

²⁷³ Exhibit X (14), Test Claim, page 185 (Order No. R9-2007-0001).

²⁷⁴ The 2013 permit is at issue in a pending Test Claim, *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001*, 14-TC-03.

²⁷⁵ Government Code sections 53750; 53751 (Stats. 2017, ch. 536); see also *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408, holding that water pollution prevention is a valid exercise of government police power.

²⁷⁶ *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195. See also *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 577, holding that SB 231 does not apply retroactively.

that may make the exercise of that authority impractical or undesirable.²⁷⁷ Therefore, reimbursement for this state-mandated program ends on December 31, 2017.

The claimants contend, however, that SB 231 is not at issue and is not relevant since the mandated activities were all completed before SB 231 was enacted in 2017, and in any event they reserve their right to argue that SB 231 is unconstitutional as follows:

First, SB 231 is not at issue in this Test Claim because the mandated activities under the 2007 Permit were all completed prior to the time SB 231 was enacted in 2017 and before it became effective in 2018. SB 231 is therefore not relevant to this Test Claim, as the most recent Court of Appeal opinion in this matter concluded. [Footnote omitted.] Since SB 231 has no application to this Test Claim, the Proposed Decision should not address it. Whatever its relevance to future matters, it has no place in this proceeding.

Second, the Municipal Claimants contend that the Commission's analysis regarding SB 231 is inconsistent with *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 and *City of Salinas* (2002) 98 Cal.App.4th 1351. Although it is irrelevant to this proceeding and should not be addressed at all by the Commission here, the Municipal Claimants reserve all rights regarding the applicability of SB 231 and its constitutionality. The Municipal Claimants believe that even if SB 231 were applicable, which it is not, the appropriate approach for the Commission to take regarding SB 231 would be to wait until a court of competent jurisdiction resolves the constitutionality of SB 231 in the context of an actual fee enacted under its provisions.²⁷⁸

First, there is no evidence in this record that the reimbursable activities, most of which are ongoing, were completed and no longer mandated by the state as of January 1, 2018, the effective date of SB 231. That determination requires an analysis of the 2013 permit when the Commission hears and determines the Test Claim in *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001, 14-TC-03*. Thus, the state-mandated requirements imposed by the 2007 test claim permit may continue uninterrupted in the 2013 permit, and remain reimbursable under article XIII B, section 6, *as part of these Parameters and Guidelines*

²⁷⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

²⁷⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 3.

each fiscal year that local agencies incur actual increased costs to comply with the reimbursable state-mandated program.²⁷⁹

In addition, although the claimants allege that SB 231 is unconstitutional, the Commission is required to presume that SB 231 is valid and constitutional. The California Constitution prohibits administrative agencies, including the Commission, from refusing to enforce or declaring a statute unconstitutional.²⁸⁰

Accordingly, the Parameters and Guidelines identify the period of reimbursement from January 24, 2007, through December 31, 2017, the day before the effective date of SB 231.

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

According to Government Code section 17557(a) and section 1183.7 of the Commission's regulations, the Parameters and Guidelines must identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." As the Commission's regulation states:

(d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence in accordance with section 1187.5 of these regulations.²⁸¹

In accordance with the Government Code and the Commission's regulations, any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state-mandate.²⁸² In

²⁷⁹ California Constitution, article XIII B, section 6; Government Code sections 17514, 17560, 17561.

²⁸⁰ California Constitution, article III, section 3.5.

²⁸¹ California Code of Regulations, title 2, section 1183.7(d).

²⁸² Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

addition, the Commission’s regulations require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.²⁸³

1. All Copermittee Collaboration (Section IV.A and B. of the Parameters and Guidelines)

The Commission found that Part L.1.a.3.-6. of the test claim permit, addressing copermittee collaboration, mandated new requirements that are reimbursable. These activities are analyzed out of the order listed in the permit and Test Claim Decision to help explain the Commission-approved activities, as well as the reasonably necessary activities the claimants propose. The Commission approved the following two activities:

- Collaborate with all other Copermittees 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 the permit, as required by the first sentence in Part L.1.
- Jointly execute and submit to the Regional Board, no later than 180 days after adoption of the permit, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement which at a minimum: (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, as required by Part L.1.a.3.-6.²⁸⁴

Reimbursement to “collaborate with the other copermittees to address common issues” and to “plan and coordinate activities required under the permit” is limited to what the Commission approved in its Decision. Reimbursement is not required for activities or requirements not pled in the Test Claim, imposed by the prior (2001) permit, or expressly denied by the Commission (e.g., collaboration with the other copermittees to develop and implement a Hydromodification Management Plan or developing urban runoff activities related to municipal activities, like low impact development (LID) BMPs (Best Management Practices) and plans).²⁸⁵ The Commission found the prior permit also required the parties to enter into a Memorandum of Understanding (MOU) and expressly limited reimbursement for collaboration to the new activities found to mandate a new program or higher level of service.²⁸⁶ Thus, collaboration required by the first

²⁸³ California Code of Regulations, title 2, section 1187.5.

²⁸⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 109-112, 150.

²⁸⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112, 118-126.

²⁸⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112. The Decision states: “Part L.1. of the 2007 permit, the first paragraph in L requiring collaboration, is

sentence in Part L.1. is an ongoing reimbursable activity and is identified in the Parameters and Guidelines for other approved sections of the test claim permit where collaboration is expressly required (i.e., the Educational Component of the Jurisdictional Urban Runoff Management Program, the requirement to update the Watershed Urban Runoff Management Program, the Regional Urban Runoff Management Program, and the Long Term Effectiveness Assessment).

By contrast, the requirement to execute and submit an MOU or formal agreement to the Regional Board no later than 180 days after adopting the permit, as required by Part L.1.a.3.-6., is a one-time activity and is limited to the four items specifically listed above. The Commission found that under the MOU required by the prior permit, identifying and defining the responsibilities of the principal permittee, copermittees, and lead watershed copermittees, and including in the MOU any other collaborative arrangement to which the parties agreed to comply with the prior permit were not reimbursable because they were not new.²⁸⁷

In compliance with Part L.1.a.3.-6. of the permit, the copermittees entered into a new MOU dated November 16, 2007.²⁸⁸ The MOU establishes a regional management committee, a regional planning subcommittee and nine regional workgroups or sub-workgroups to support the regional coordination of programs.²⁸⁹ The MOU also includes the copermittees' fiscal and cost sharing responsibilities²⁹⁰ a management structure for regional activities;²⁹¹ and a dispute resolution process for non-compliance.²⁹²

identical to part N of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e, not in the 2001 permit) including the Regional Urban Runoff Management Program.”

²⁸⁷ Exhibit A, Amended Test Claim Decision on Remand, page 111.

²⁸⁸ Exhibit X (14), Test Claim, filed June 20, 2008, pages 495 -579 (MOU).

²⁸⁹ Exhibit X (14), Test Claim, pages 517-525, 535. The MOU's nine regional workgroups or sub-workgroups include: fiscal, reporting, and assessment workgroup; education and residential sources workgroup; regional monitoring workgroup and two sub-workgroups for dry weather and coastal monitoring; regional watershed URMP workgroup; land development workgroup; municipal activities workgroup; and industrial and commercial sources workgroup.

²⁹⁰ Exhibit X (14), Test Claim, pages 501-507 (MOU).

²⁹¹ Exhibit X (14), Test Claim, pages 507-521 (MOU).

²⁹² Exhibit X (14), Test Claim, pages 529-531 (MOU).

Thus, Section IV.A.1. of the Parameters and Guidelines identifies the following one-time activity eligible for reimbursement:

1. Jointly execute and submit to the Regional Board no later than 180 days after adoption of the permit, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement that (Part L.1.a.3.-6) that:
 - Establishes a management structure to promote consistency and develop and implement regional activities;
 - Establishes standards for conducting meetings, decisions-making, and cost-sharing;
 - Provides guidelines for committee and workgroup structure and responsibilities;
 - Lays out a process for addressing Copermitttee non-compliance with the formal agreement.

*Reimbursement is limited to the pro rata costs to execute and submit an MOU or formal agreement on only the four topics identified above. Executing and submitting a full MOU, JPA, or other formal agreement is not reimbursable.*²⁹³

2. Jurisdictional Urban Runoff Management Program and Reporting

- a. JURMP Reporting on Street Sweeping and Conveyance System Cleaning (Section IV.B.1.a. of the Parameters and Guidelines)

The Commission found that reporting on street sweeping (Part J.3.a.(3)(c)(x.-xv.) and on conveyance system cleaning (Part J.3.a.(3)(c)(iv.-viii.)) are reimbursable. Specifically, the Commission approved reimbursement to include the following street-sweeping information in the Jurisdictional Urban Runoff Management Program (JURMP) annual report:

- Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating the highest volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
- Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating moderate volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
- Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating low

²⁹³ Exhibit A, Amended Test Claim Decision on Remand, page 111.

volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.

- Identification of the total distance of curb-miles swept.
- Identification of the number of municipal parking lots, the number of municipal parking lots swept, and the frequency of sweeping.
- Amount of material (tons) collected from street and parking lot sweeping.²⁹⁴

The Commission also approved reimbursement to include in the JURMP annual report the following conveyance system cleaning information:

- Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.
- Identification of the total distance (miles) of the MS4 [Municipal Separate Storm Sewer System], the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.
- Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open channels found with anthropogenic litter, and the distance of open channels cleaned.
- Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.
- Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.²⁹⁵

Part J.3.a.2. explains that the principal permittee (which is the County of San Diego) is required to submit the “unified” JURMP annual report by September 30 of each year, *beginning September 30, 2008*, and that the report shall contain the individual annual reports from the copermitees required to be provided under Part J.3.a.1. to the principal permittee by a date specified by the principal permittee.²⁹⁶

Part J.3.a. of test claim permit explains that “Each Jurisdictional Urban Runoff Management Program Annual Report shall contain a comprehensive description of all

²⁹⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 64-67.

²⁹⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 70-73.

²⁹⁶ Exhibit X (14), Test Claim, page 319 (Order No. R9-2007-0001).

activities conducted by the Copermitee to meet all requirements of section D. The reporting period for these annual reports shall be the previous fiscal year. For example, the report submitted September 30, 2008 shall cover the reporting period July 1, 2007 to June 30, 2008.”²⁹⁷

Section D. of the test claim permit addresses the substantive requirements for the JURMP and, as relevant here, requires the permittees to implement a schedule of maintenance activities and inspections of the catch basins, storm drain inlets, and open channels (as required by section D.3.a.3.b.)²⁹⁸ and sweeping of municipal roads, streets, highways, and parking facilities (as required by section D.3.a.5.)²⁹⁹ The Commission found that the street sweeping activities required by section D were new requirements when compared to the prior permit and federal law, but the claimants had fee authority sufficient as a matter of law to pay for those requirements.³⁰⁰ The Commission also found that the conveyance system inspection activities were not new but were required by the prior permit, and the requirements related to the conveyance system cleaning (as required by Part D.3.a.3.b.iii. of the test claim permit and discussed in the next section below) were new, mandated requirements.³⁰¹ The reimbursable state-mandated activity at issue here to *report* the conveyance system inspection and cleaning and street sweeping information comes from the permittees’ implementing their JURMPs.

As originally adopted, each permittee had 365 days after adoption of the test claim permit, or until January 24, 2008, to implement their JURMPs. Prior to that time, the permittees were required to comply with the JURMP document prepared under the prior permit (Order No. 2001-01).³⁰² Since implementation of the street sweeping requirements and conveyance system cleaning requirements are new, the permittees had until January 24, 2008, to implement those requirements. The conveyance system

²⁹⁷ Exhibit X (14), Test Claim, page 319 (Order No. R9-2007-0001 Part J.3.a. Thereafter, the permittees had the option of integrating the JURMP, WURMP, and RURMP annual reports into one report, which would be due the first January 31 after approval of the report form, and each January 31 thereafter. “The reporting period for Integrated Annual Reports shall be the previous fiscal year. For example, a report submitted January 31, 2010 shall cover the reporting period July 1, 2008 to June 30, 2009.” Exhibit X (14), Test Claim, pages 328-329 (Order No. R9-2007-0001, Part J.3.a.).

²⁹⁸ Exhibit X (14), Test Claim, pages 287-288 (Order No. R9-2007-0001).

²⁹⁹ Exhibit X (14), Test Claim, page 288 (Order No. R9-2007-0001).

³⁰⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 67-68, 131-134.

³⁰¹ Exhibit A, Amended Test Claim Decision on Remand, pages 70-72.

³⁰² Exhibit X (14), Test Claim, page 269 (Order No. R9-2007-0001).

inspection activities required under the prior permit, however, had to be implemented as required by the prior permit without delay.

As indicated above, the requirements in Part D to implement the JURMPs were extended by an Addendum of the Regional Board from the January 24, 2007 effective date, to the March 24, 2008 operative date, as follows:

- a. Jurisdictional Urban Runoff Management Program, Section D, . . . “Each Copermittee shall implement all requirements of section D of this Order no later than ~~365~~ **425** days after adoption of the Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of the Order each Copermittee shall at a minimum implement is Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.”³⁰³

Thus, the claimants had until March 24, 2008, to implement their JURMPs with respect to conveyance system cleaning and street sweeping.

The JURMP annual reporting requirements were not delayed, however. The first report was due September 30, 2008, and had to cover the reporting period from July 1, 2007, to June 30, 2008, and every September 30 thereafter so that the report due September 30, 2009, covered the reporting period from July 1, 2008, to June 30, 2009.³⁰⁴ The first report due September 30, 2008, may only cover a three and a half month time period from March 2008 through June 30, 2008, for the information reported about street sweeping and conveyance system cleaning since those activities were delayed until no later than March 24, 2008. However, the information required to be reported on conveyance system *inspections*, which are bulleted again below, would address the entire 2007-2008 fiscal year:

- Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.
- Identification of the total distance (miles) of the MS4 [Municipal Separate Storm Sewer System], the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.
- Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open

³⁰³ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³⁰⁴ Exhibit X (14), Test Claim, page 319 (Order No. R9-2007-0001, Parts J.3.a. & J.3.a.2.).

channels found with anthropogenic litter, and the distance of open channels cleaned.

These activities are identified in Section IV.B.1.a. of the Parameters and Guidelines, with clarification that the annual report was due by September 30, 2008, and each September 30th thereafter for the previous fiscal year, and a footnote to indicate that the street sweeping and conveyance system cleaning requirements were delayed until no later than March 24, 2008.

The claimants also request reimbursement for the following costs and additional activities, alleging they are reasonably necessary to comply with the mandate to report on street sweeping and conveyance system cleaning:

Reporting and Tracking Policies and Procedures: Claimants' personnel costs to develop, update and implement street sweeping reporting and tracking policies and procedures;¹

Data Tracking and Analysis: Claimant's costs, to develop, update, and implement data tracking and analysis methods and procedures and personnel costs to develop and maintain data tracking methods or systems, and performing data tracking and analysis for reports to the Regional Water Quality Control Board. Also included are the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.

Report Writing: Claimant's personnel costs, to develop and write reports to the Regional Water Quality Control Board.

Employee Supervision and Management: Time spent by supervisory and management personnel supervising personnel directly responsible for performing the mandated-activities. (Hereinafter referred to as "Employee Supervision and Management".)

Contracted Services: Any of the costs described above may be incurred through the use of vendors, contractors, consultants, or other service providers. In such case, only actual costs to the claimant will be claimed, and will only include that portion of the cost that is related to the reimbursable mandate. Claimants may also include the costs of preparing requests for proposals or requests for bids, negotiating and drafting third party contracts, and subsequently administering service contracts for the time they are performing these tasks using the claimant's Personnel rates. (Hereinafter referred to as "Contracted Services".)³⁰⁵

³⁰⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 36, 37, 40-41.

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.³⁰⁶ As to data tracking and analysis, the Water Boards object to purchasing computer equipment and upgrades unless they are limited to what is necessary to comply with the test claim permit and used only for the reimbursable activities.³⁰⁷ Regarding report writing, the Water Boards repeat their objection to computer equipment and upgrade purchases, and repeat their objection to unspecified personnel costs.³⁰⁸ As to employee supervision and management and contracted services, the Water Boards assert that the claimants should demonstrate how their supervisors' and managers' time is spent supervising work only on mandated provisions.³⁰⁹ Further, the Water Boards argue that claimants should only be allowed to claim 'contracted services' costs to prepare requests for bids, negotiate and draft third party contracts, and administer service contracts if the claimants can demonstrate that these costs, together with the costs of the contracted service, is the most cost effective and reasonable manner, through a cost-benefit analysis, of complying with the street sweeping reporting mandate.³¹⁰

The claimants respond to the Water Boards' concern regarding the lack of detail by removing from their original proposal phrases such as "costs other than personnel costs" and they now identify specific reimbursable activities that are reasonably necessary for reporting.³¹¹ Regarding computer systems and upgrades, the claimants state that they incorporated references to sections of the Mandated Cost Manual relating to "capital outlays."³¹² Regarding report writing, the claimants removed the term "loaded hourly rate" and simply use the term "personnel costs" and they incorporated reference to sections of the Mandated Cost Manual relating to "capital outlays."³¹³ As to

³⁰⁶ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

³⁰⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

³⁰⁸ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

³⁰⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

³¹⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 8-9, 12, 21-22.

³¹¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

³¹² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 14.

³¹³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 14.

employee supervision and contracted services, the claimants say they will follow the Mandated Cost Manual in identifying supervisory costs and will not claim those costs as both direct and indirect. The claimants disagree with the Water Boards regarding performing a cost-benefit analysis to determine whether contracting out is the most cost-effective method to comply with the mandate. Rather, the claimants rely on the Mandated Cost Manual, which they quote as saying that contracted services are allowable if “the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity.”³¹⁴

In comments on the Draft Proposed Decision and Parameters and Guidelines, the claimants argue that policies and procedures to track and report street sweeping and conveyance system cleaning should be reimbursable:

In order for the Municipal Claimants to report on street sweeping and conveyance system cleaning, they had to have policies and procedures as to how the reporting should be done. Without policies and procedures, it would not be clear to the reporting staff what needed to be reported. As such, the costs to update and implement street sweeping reporting and tracking policies and procedures is necessary to accurately report on the street sweeping and conveyance system cleaning and should be subject to reimbursement. As part of the claims process, the Municipal Claimants should be permitted to submit evidence of these reasonable and necessary costs.³¹⁵

The Commission finds that the proposed reasonably necessary activities and costs are either already eligible for reimbursement as a direct cost, as stated the boilerplate language in Section V. of the Parameters and Guidelines and do not need to be restated in Section IV., or are not supported by evidence in the record.

First, the claimants’ requests for “personnel,” “contracted services” and “computer hardware and software” are addressed as direct costs in Section V.A. of the Parameters and Guidelines, governing salaries and benefits, contracted services, and fixed assets (expressly including “computer equipment”). The pro rata share of these costs attributable to the mandated activities are eligible for reimbursement, and are subject to the Controller’s review and audit.³¹⁶ Section V.A. of the Parameters and Guidelines states in pertinent part:

³¹⁴ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

³¹⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 13.

³¹⁶ Government Code section 17561(d)(1) authorizes the State Controller’s Office to audit the records of any local agency to verify the actual amount of the mandated costs, and to reduce any claim the Controller determines is excessive or unreasonable.

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

1. Salaries and Benefits

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

[¶] . . . [¶]

3. Contracted Services

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

4. Fixed Assets

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

However, there is no evidence in the record supporting the claimants' alleged reasonably necessary activities to develop policies and procedures, or develop, update and implement data tracking and analysis methods and procedures for reports to the Regional Board. The mandate is limited to identifying and reporting specific information, such as the amount of waste and material collected for the annual report. There is nothing vague about the information to be reported and, although this information is newly mandated by the state, the claimants were previously required by federal law and the prior permit to submit an annual report to the Regional Board on their program.³¹⁷ Thus, it is not clear why developing policies and procedures or data tracking and analysis methods are necessary to comply with the mandate to include the new information in the annual report. Moreover, any proposed reasonably necessary activity

³¹⁷ Code of Federal Regulations, title 40, section 122.42(c). Exhibit X (10), Order No. 2001-01, pages 41-42.

must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state mandate.³¹⁸ The Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.³¹⁹ The record lacks any evidence that the activities the claimants propose are reasonably necessary to comply with the state-mandated reporting.³²⁰

Therefore, Section IV.B.1.a. of the Parameters and Guidelines authorizes reimbursement for the claimants to:

- a. By September 30, 2008, and each September 30th thereafter, include in the JURMP Annual Report the following information for the prior fiscal year:
 - i. Street Sweeping Information (Part J.3.a.(3)(c)(x.-xv))
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating the highest volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating moderate volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating low volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles swept.

³¹⁸ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

³¹⁹ California Code of Regulations, title 2, section 1187.5.

³²⁰ The claimants' declarations contain no mention of the necessity of policies and procedures. Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 13.

- Identification of the number of municipal parking lots, the number of municipal parking lots swept, and the frequency of sweeping.
 - Amount of material (tons) collected from street and parking lot sweeping.³²¹
- ii. Conveyance System Cleaning Information (Part J.3.a(3)(c)(iv.-viii.))
- Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.
 - Identification of the total distance (miles) of the MS4, the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.
 - Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open channels found with anthropogenic litter, and the distance of open channels cleaned.
 - Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.
 - Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.³²²
- b. JURMP Conveyance System Cleaning (Section IV.B.1.b. of the Parameters and Guidelines)

The Commission approved reimbursement for the following activity in Part D.3.a.(3)(b)(iii) of the test claim permit:

Conveyance system cleaning

³²¹ The requirements for street sweeping were delayed until no later than March 24, 2008. Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³²² The requirements for conveyance system cleaning were delayed until no later than March 24, 2008. Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc). The maintenance activities shall, at a minimum, include:

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.³²³

As indicated above, the implementation of these activities was delayed under the December 12, 2007 Permit Addendum by the Regional Board until no later than March 24, 2008.³²⁴

In addition, the test claim permit explains that the cleaning requirements are annual, but can be *reduced* for facilities (defined above as catch basins, storm drain inlets, open channels, etc.) that are *not* self-cleaning, to every other year following two years of inspections if the facility requires less than annual cleaning, which at the earliest would be in fiscal year 2010-2011.³²⁵ Thus, the following activities represent the higher level of service and are reimbursable beginning no later than March 24, 2008:

- Cleaning catch basins and storm drain inlets when accumulated trash and debris is greater than 33% of design capacity.
- Cleaning those MS4 facilities designed to be self-cleaning immediately of any accumulated trash and debris.
- Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the

³²³ Exhibit A, Amended Test Claim Decision on Remand, pages 70-71. The conclusion in the Decision (p. 140) incorrectly states that the following in Part D.3.a.(3)(a) of the test claim permit is reimbursable: "Implement a schedule of inspection and maintenance activities to verify proper operation of all municipal structural treatment controls designed to reduce pollutant discharges to or from its MS4s and related drainage structures." This activity was expressly denied by the Commission on page 72: "[P]art D.3.a(3)(a) is not a new program or higher level of service because the 2001 permit also required maintenance and inspection in part F.3.a.(5)(b) and (c)." Thus, the Parameters and Guidelines identify the Commission's findings to authorize reimbursement only for Part D.3.a.3.b.iii.

³²⁴ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³²⁵ Exhibit X (14), Test Claim, page 287 (Order No. R9-2007-0001, Parts J.3.a. & J.3.a.2.).

earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

Section IV.B.1.b. of the Parameters and Guidelines tracks these activities accordingly, with a clarification that the activities were delayed under the December 12, 2007 Addendum by the Regional Board until no later than March 24, 2008, as follows:

- b. Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:³²⁶
 - i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc).
 - ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which 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.
 - Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

The claimants also propose the following “reasonably necessary” activities and costs, and propose clarifying some non-reimbursable activities:

- Conveyance System Inspection. Claimant’s personnel costs to inspect the conveyance system for the purpose of assessing the accumulation of trash, debris, or litter, or for verifying the proper operation of structural treatment controls.
- Conveyance System Cleaning Operations. Claimant’s personnel costs to clean any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, to clean accumulated trash and debris from any MS4 facility that is designed to be self cleaning, or to clean open channels of observed anthropogenic litter.
- Vehicles and Equipment. Claimant’s costs to purchase, rent, lease, or contract for vehicles and equipment to perform conveyance system inspection or cleaning (including vector [sic] trucks or other cleaning equipment), and to transport and dispose of collected material. This

³²⁶ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

includes one-time costs for equipment purchases and corresponding equipment depreciation costs.

- Vehicles and Equipment Maintenance. Annual maintenance costs, including parts, supplies (e.g. water), and personnel costs. This also includes the costs for operating, renting, leasing, or contracting for facilities to store and maintain vehicles, equipment and supplies.
- Fuel. The actual costs of the fuel necessary to run the vehicles and equipment, to inspect and clean the MS4 facilities, and to transport and dispose of collected materials.
- Program Development. Claimant's costs, to develop and update the claimant's conveyance system cleaning program including specific criteria, policies, procedures, manuals and forms. This includes the development and utilization of inspection and maintenance schedules. Program development tasks are generally one-time costs with annual reviews and periodic updates.
- Employee and Vendor Training. Claimant's costs, to develop, update, and conduct training on conveyance system inspection, cleaning, and disposal policies and practices. The costs include training of all claimant and vendor employees who perform tasks necessary to implement conveyance system cleaning and related functions during the life of the Permit.
- Parking Signage and Enforcement. Claimant's costs to purchase and install signage and to enforce parking prohibitions in areas where conveyance system cleaning is scheduled and costs to purchase, installation, or replacement of signage to inform the public of applicable parking restrictions, as well as their surveillance and enforcement.
- Employee Supervision and Management. (See Section IV.A.)
- Contracted Services. (See Section IV.A.)

Non-reimbursable Activities

Conveyance System Cleaning (part D.3.a.(3)): reimbursable activities and costs do not include:

1. Part D.3.a.(3)(a) of the 2007 permit;
2. Part D.3.a.(3)(b)(i), (iv) - (vi) of the 2007 permit;
3. Annual inspection of MS4 facilities (D.3.a.(3)(b)(i));
4. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (D.3.a.(3)(b)(iv));

5. Proper disposal of waste removed pursuant to applicable laws (D.3.a.(3)(b)(v));
6. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (D.3.a.(3)(b)(vi)). Part D.3.a.(3)(b)(ii) of the 2007 Permit.³²⁷

The Water Boards comment that the Commission found that many conveyance system cleaning activities are not reimbursable because they were in the prior permit, so only the costs incurred beyond those to comply with the prior permit should be reimbursable.³²⁸ The Water Boards also state that inspections were required under the 2001 permit, so they should not be reimbursable.³²⁹ As to cleaning system operations, the Water Boards argue that phrases such as “including Personnel Costs” are not specific enough.³³⁰ Regarding vehicles and equipment and maintenance, the Water Boards assert that if they are acquired for materials disposal they should not be reimbursable because disposal was required under the prior permit. Further, costs must be incurred during the permit term, and for contracts, not already included in contract costs. According to the Water Boards, it is unclear what equipment the claimants would need to clean conveyance systems they did not already own prior to the permit. If the vehicles and equipment are solely dedicated to conveyance system cleaning, the Water Boards question whether the single-purpose use is the most reasonable method to comply with the mandate.³³¹

The Water Boards further argue to the extent that conveyance system cleaning is contracted, fuel should be included in the contract cost.³³² Regarding program development, the Water Boards state that it is unclear what “internal conveyance

³²⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 38-39.

³²⁸ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 9-10.

³²⁹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

³³⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

³³¹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

³³² Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

system cleaning program” means, and request specificity to allow meaningful evaluation.³³³

The Water Boards also disagree that vendor training is necessary because vendors should be well versed in the services they provide. And vendors’ costs should be prorated if necessary to only the reimbursable activities in the permit.³³⁴ In addition, the Water Boards question whether parking enforcement signs would be the same as for street sweeping. To the extent the signage overlaps with other types of parking enforcement unrelated to the permit, costs should be segregated. And the claimants should be required to offset any reimbursement for signage enforcement with enforcement revenue.³³⁵

Regarding the last two activities, employee supervision and management and contracted services, the Water Boards assert that the claimants should demonstrate how their supervising work is prorated to only mandated provisions. Further, the claimants should only be allowed to claim costs to negotiate and prepare contract-related documents if they can demonstrate through a cost-benefit analysis that these costs, together with the cost of the service, are the most cost-effective and reasonable way to comply with the conveyance system cleaning mandate.³³⁶

The claimants acknowledge that they may not claim activities that were required under the prior permit, and propose listing non-reimbursable activities in the Parameters and Guidelines to ensure that erroneous claims are not filed.³³⁷ The claimants also acknowledge that MS4 inspections are not reimbursable because they were required under the prior permit.³³⁸ The claimants removed “including Personnel Costs” from its Revised Proposed Parameters and Guidelines.³³⁹ The claimants disagree with the Water Boards regarding the most reasonable method to comply with the mandate,

³³³ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

³³⁴ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 11.

³³⁵ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

³³⁶ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 8-9.

³³⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 15-16.

³³⁸ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 16.

³³⁹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 5, 16, 38-39.

stating that their revised Parameters and Guidelines closely follow the Commission's regulations and the "most reasonable methods" to comply are necessary to carry out the mandated program. The claimants acknowledge the need to prorate the cost of vehicles, equipment, maintenance, storage of vehicles and equipment used for multiple purposes in accordance with the Controller's Mandated Cost Manual. Claims for equipment are limited to the permit term "with the proviso that . . . depreciation and use allowance costs are also allowable even if the initial purchase was made in a prior period and accounting requirements found in SCO's Manual are met."³⁴⁰ The claimants concur that disposal of materials is not reimbursable.³⁴¹ In response to the assertion that fuel should be included in any contracted costs for conveyance system cleaning, the claimants acknowledge that vendors must accurately account for their reimbursement requests as limited by the claiming requirements in the Mandated Cost Manual.³⁴² In response to the Water Boards' comments on program development, the claimants state that they removed "internal" from the term "conveyance system cleaning program."³⁴³ The claimants disagree with the Water Boards regarding vendor training, stating that they may recover training costs "as may be necessary in utilizing new types of equipment and/or protocols".³⁴⁴ The claimants acknowledge that signage should only be reimbursed once, and that unrelated parking enforcement costs should not be claimed. The claimants argue that they cannot use enforcement revenue to offset the cost of signage because of Proposition 26, which exempts fines and penalties from the definition of taxes and requires that the amount charged bears a fair or reasonable relationship to the payor's burden on, or benefit received from the government activity. The claimants argue that the cost of signage does not bear a fair or reasonable relationship to the payor's burden or benefit received from the conveyance system cleaning.³⁴⁵ In response to the comments on employee supervision and contract services, the claimants state that they will follow the Mandated Cost Manual on supervisory costs and will not claim them as both direct and indirect. The claimants disagree with the Water Boards regarding a cost benefit analysis to determine whether

³⁴⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 17-18.

³⁴¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 18.

³⁴² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 6, 18-19.

³⁴³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 19, 39.

³⁴⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 6.

³⁴⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 11-12, 20.

contracting is the most cost-effective method to comply with the mandate. Rather, the claimants rely on the Mandated Cost Manual, which authorizes contracting without a cost-benefit analysis.³⁴⁶

The Commission finds that the proposed activities and costs are either eligible for reimbursement under the boilerplate language of the Parameters and Guidelines, or are overbroad and not supported by evidence in the record.

First, direct costs like employee supervision and management, materials and supplies, fixed assets, and contracted services that directly relate to the state-mandated activities may be claimed under Section V.A. of the Parameters and Guidelines and are subject to review and audit by the Controller.³⁴⁷

However, the Commission found the inspection requirements in Part D.3.a.(3).a. and b. are not a new program or higher level of service because inspections were required under the prior permit.³⁴⁸ The claimants' Proposed Parameters and Guidelines request reimbursement for personnel costs to inspect the conveyance system, but in rebuttal comments, acknowledge that inspections in Part D.3.a.3.a. of the test claim permit are not reimbursable.³⁴⁹ Thus, the Parameters and Guidelines clarify the activities that not eligible for reimbursement as follows:

The following conveyance system activities are *not* reimbursable:

1. Implementing a schedule of inspection activities (Part D.3.a.(3)(a));
2. Inspections of MS4 facilities (D.3.a.(3)(b)(i), D.3.a.(3)(b)(ii).);
3. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (Part D.3.a.(3)(b)(iv.));
4. Proper disposal of waste removed pursuant to applicable laws (Part D.3.a.(3)(b)(v));
5. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (Part D.3.a.(3)(b)(vi)).³⁵⁰

Moreover, there is no evidence in the record that the claimants' proposed activities are reasonably necessary to implement the mandate. These include developing programs

³⁴⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

³⁴⁷ Government Code section 17561.

³⁴⁸ Exhibit A, Amended Test Claim Decision on Remand, page 79.

³⁴⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 15.

³⁵⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 57-62.

and policies and procedures, employee and vendor training, and installing signs and enforcing parking prohibitions in areas where conveyance system cleaning is scheduled. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state mandate.³⁵¹ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.³⁵² Therefore, the claimants' proposed reasonably necessary activities are denied.

c. JURMP Educational Component (Section IV.B.1.c. of the Parameters and Guidelines)

The Commission partially approved the requirements imposed by Part D.5. addressing the test claim permit's educational component, recognizing that the prior permit also required education and training on many of the listed topics in the permit, including those for "municipal departments and personnel."³⁵³ Thus, the Commission found that the following new education-related activities are eligible for reimbursement:

- D.5.a.(1): Each copermittee shall educate each target community (municipal departments, construction site owners and developers, industrial owners and operators, commercial owners and operators, the residential community, the general public, and school children) on the following topics: erosion prevention, non-stormwater discharge prohibitions, and BMP types: facility or activity specific, LID, source control, and treatment control.
- D.5.a.(2): The educational programs shall emphasize underserved target audiences, high-risk behaviors, and "allowable" behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources.
- D.5.b.(1)(a): Implement an education program so that planning boards and elected officials, if applicable, have an understanding of: (i) Federal, state, and local water quality laws and regulations applicable to Development Projects;³⁵⁴

³⁵¹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

³⁵² California Code of Regulations, title 2, section 1187.5.

³⁵³ Exhibit A, Amended Test Claim Decision on Remand, page 79.

³⁵⁴ Development Projects are defined in Attachment C of the test claim permit as: "New development or redevelopment with land disturbing activities; structural development, including construction or installation of a building or structure, the creation of impervious surfaces, public agency projects, and land subdivision." Exhibit X (14), Test Claim, page 345 (Order No. R9-2007-0001, Attachment C).

and (ii) The connection between land use decisions and short and long-term water quality impacts (i.e., impacts from land developments and urbanization).

- D.5.b.(1)(a): Implement an education program so that planning and development review staffs as well as planning boards and elected officials have an understanding of: (iii) How to integrate LID BMP requirements into the local regulatory program(s) and requirements; (iv) Methods of minimizing impacts to receiving water quality resulting from development, including: [1] Storm water management plan development and review; [2] Methods to control downstream erosion impacts; [3] Identification of pollutants of concern; [4] LID BMP techniques; [5] Source control BMPs; and [6] Selection of the most effective treatment control BMPs for the pollutants of concern.”³⁵⁵
- D.5.b.(1)(b)(iii) - (vi): Implement an education program that includes annual training prior to the rainy season for its construction, building, code enforcement, and grading review staffs, inspectors, and other responsible construction staff have, at a minimum, an understanding of the topics in parts D.5.b.(1)(b)(iii), (iv), (v), and (vi) of the permit, as follows:
 - iii. Proper implementation of erosion and sediment control and other BMPs to minimize the impacts to receiving water quality resulting from construction activities.
 - iv. The Copermittee’s inspection, plan review, and enforcement policies and procedures to verify consistent application.
 - v. Current advancements in BMP technologies.
 - vi. SUSMP [Standard Urban Storm Water Mitigation Plan]³⁵⁶ requirements including treatment options, LID BMPs, source control, and applicable tracking mechanisms.
- D.5.(b)(1)(c): Each Copermittee shall train staff responsible for conducting storm water compliance inspections and enforcement of industrial and commercial facilities at least once a year. Training shall cover inspection and enforcement procedures, BMP implementation, and reviewing monitoring data.

³⁵⁵ The conclusion in the Amended Decision states that these educational topics in i.-iv. are reimbursable for “Planning Boards and Elected Officials.” Exhibit A, Amended Test Claim Decision on Remand, pages 141-142. The Commission found, however, that all the topics in (a) i.-iv. are new for planning boards and elected officials, and the topics in (a) iii.-iv. are also new for planning and development review staffs. Exhibit A, Amended Test Claim Decision on Remand, page 80.

³⁵⁶ SUSMP is defined in Attachment C of the test claim permit as: “A plan developed to mitigate the impacts of urban runoff from Priority Development Projects.” Exhibit X (14), Test Claim, page 351 (Order No. 2007-0001, Attachment C).

- D.5.(b)(1)(d): Municipal Other Activities – Each Copermitttee shall implement an education program so that municipal personnel and contractors performing activities which generate pollutants have an understanding of the activity specific BMPs for each activity to be performed.
- D.5.(b)(2): As early in the planning and development process as possible and all through the permitting and construction process, implement a program to educate project applicants, contractors, property owners, and community planning groups *who are not developers or construction site owners*. The education program shall provide an understanding of the topics listed in Sections D.5.b.(1)(a) [Municipal Development Planning] and D.5.b.(1)(b) [Municipal construction Activities] above, as appropriate for the audience being educated. The education program shall also educate these groups on the importance of educating all construction workers in the field about stormwater issues and BMPs through formal or informal training.
- D.5.(b)(3): Each Copermitttee shall collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities. The plan shall evaluate use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods.³⁵⁷

These new state-mandated activities are identified in Section IV.B.1.c. of the Parameters and Guidelines, with a clarification that the implementation of these activities was delayed until March 24, 2008, by the Regional Board’s Addendum, which states the following:

Jurisdictional Urban Runoff Management Program, Section D, . . . “Each Copermitttee shall implement all requirements of section D of this Order no later than ~~365~~ **425** days after adoption of the Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of the Order each Copermitttee shall at a minimum implement is Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.³⁵⁸

In addition, the collaboration required in Part D.5.b.3 (educating residential, the general public, and school children) is required by the first sentence in Part L.1. The Commission approved the requirements in Part L.1. for the copermitttees to collaborate with all other copermitttees to address *new* common issues, and to plan and coordinate the *newly* mandated activities.³⁵⁹ Part D.5.b.3. also requires the copermitttees to “collaboratively conduct or participate in development and implementation of a plan to

³⁵⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 74, 78-84, 141-143.

³⁵⁸ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³⁵⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

educate residential, general public and school children target communities.”³⁶⁰ Thus, this portion of the Parameters and Guidelines references both Part D.5.b.3. and the first sentence in Part L.1. Although there is overlap between Part D.5.b.3. and Part L.1., and Part L.1. was not delayed by the Regional Board’s Addendum, the Commission finds that the collaboration required here was delayed until no later than March 24, 2008, since all of the provisions of Part D were delayed.³⁶¹

The claimants also request reimbursement for the following costs and activities they allege are reasonably necessary to comply with the mandate:

- Program Development. Claimant’s costs, to develop an educational program for the target communities and the costs of preparation, collaboration, and development of the educational program, training, policy development, establishment of procedures, and updates to the same. While program development tasks are generally one-time costs, the permit requires measurable increases in knowledge and measurable changes in behavior, which necessitate annual reviews and periodic updates to the program; therefore these costs are also included.
- Reporting and Tracking Policies and Procedures: Claimant’s personnel costs to develop, update and implement reporting and tracking policies and procedures.
- Data Tracking and Analysis: Claimant’s costs to implement and update data tracking and analysis methods and procedures and personnel costs to develop and maintain data tracking methods or systems and performing data tracking and analysis for reports to the Regional Water Quality Control Board, as well as the costs of purchases of and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in of the reimbursable mandate in compliance with the Permit.
- Educational Materials. Claimant’s personnel and printing costs to develop, produce, and distribute educational materials and related reporting to document the efforts.
- Employee and Vendor Annual Training. Claimant’s costs to develop, update, and conduct training of staff responsible for providing education to target communities and the costs of training of all claimant

³⁶⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 82-83.

³⁶¹ Under the rules of statutory interpretation, when a conflict exists between general and specific provisions in the law, the specific provisions prevail over the general provisions relating to the same subject. Code of Civil Procedure section 1859; *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, 942-943.

and vendor employees who perform tasks necessary to implement educational functions during the life of the Permit.

- Education of Target Audiences. Claimant's personnel and printing costs to implement and conduct educational programs for the target communities.
- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).³⁶²

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.³⁶³ They also recommend that the claimants prorate personnel and other costs to ensure only the approved activities are reimbursed. And to the extent that Program Development incorporates a hydromodification management plan or low impact development, the copermittees must segregate those costs to avoid seeking improper reimbursement.³⁶⁴ As to data tracking and analysis, the Water Boards state that claimants have not identified the computer upgrades or why they are necessary to perform the reimbursable activities. The Water Boards also object to purchasing computer equipment and upgrades unless they are limited to what is necessary to comply with the permit and segregated for reimbursable activities. According to the Water Boards, the claimants should be required to transparently demonstrate what percentage of computer equipment is reimbursable beyond the prior permit.³⁶⁵

Regarding educational materials, the Water Boards again request specificity and proration of costs. And to the extent that the educational materials incorporate a hydromodification management plan or low impact development, the copermittees must segregate those costs to avoid seeking improper reimbursement.³⁶⁶ The Water Boards also disagree that vendor training should be reimbursable, and say that vendor costs

³⁶² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 44-45.

³⁶³ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 12.

³⁶⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 12-13.

³⁶⁵ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 12, 13.

³⁶⁶ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 13.

should be prorated to only the reimbursable activities in the permit.³⁶⁷ Regarding educating target audiences and report writing, the Water Boards again criticize a lack of specificity, and recommend that report writing be prorated to exclude activities that are not reimbursable.³⁶⁸

As to employee supervision and management and contracted services, the Water Boards again assert that the claimants should demonstrate how their supervising work is limited to the mandated provisions. And the Water Boards repeat their argument that service contract costs should only be allowed if the claimants can demonstrate, through a cost-benefit analysis, that they are the most cost effective and reasonable way to comply with the mandate.³⁶⁹

In response to the Water Boards, the claimants revised their proposed reimbursable activities to specify only those that are reasonably necessary, and agree that only prorated costs are appropriate. The claimants also explain that Educational Program Development activities that incorporate hydromodification management plan activities or low impact development activities are now explicitly prohibited in the claimant's revised proposed Parameters and Guidelines.³⁷⁰ In response to the Water Boards' comments on data tracking and analysis, the claimants state that computer and software upgrades are necessary to comply with the updated data tracking and analysis requirements in the test claim permit. Because computer systems vary among the claimants, the claimants propose that each jurisdiction claim upgrades that fit their system, which would be "disclosed and justified on reimbursement claim forms submitted to SCO in accordance with their Mandated Cost Manual. . . ." ³⁷¹ In response to the Water Boards' comments on educational materials, the claimants revised their proposed reimbursable activities to specify only the reimbursable activities that are reasonably necessary, and agree that only prorated costs are appropriate, and have inserted activities that are not reimbursable.³⁷² The claimants disagree with the Water Boards regarding vendor training, stating "[w]hile vendors' employees do not generally require additional training

³⁶⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 6, 13.

³⁶⁸ Exhibit D, Water Boards' Combined Comments on the Proposed Parameters and Guidelines, pages 6, 13.

³⁶⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 8-9, 12.

³⁷⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

³⁷¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 12, 13, 22-23.

³⁷² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 3-5, 23.

to meet the Claimants' needs, if this is not the case, Claimants may recover such additional training costs as may be necessary in utilizing new types of equipment and/or protocols."³⁷³ The claimants revised their proposed activities for educating target audiences and report writing to increase specificity and agree that proration is appropriate.³⁷⁴ As to employee supervision and management and contracted services, the claimants state that they will follow the Mandated Cost Manual in identifying supervisory costs and will not claim those costs as both direct and indirect. The claimants disagree with the Water Boards regarding performing a cost benefit analysis to determine whether contracting out is the most cost-effective method to comply with the mandate. Rather, the claimants rely on the Mandated Cost Manual, which they quote as saying that contracted services are allowable if "the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity."³⁷⁵

First, the Commission agrees with the claimants that *developing* and *implementing* the educational program for residential communities, the general public, and school children is expressly required by the plain language of Part D.5.b.3., which states: "Each Copermittee shall collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities."³⁷⁶

However, the introductory paragraph in Part D.5. and language in Part D.5.b.1.-2. mandate that each copermittee only *implement* an education program for the other target communities (municipal departments and personnel, new development and construction) and does not expressly require developing those programs.³⁷⁷ In construing regulations and statutes, it is a well-established rule that the use of different words indicates that different meanings are intended.³⁷⁸ So the requirement in D.5.b.3., for "development and implementation" of the residential, general public and school

³⁷³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 24.

³⁷⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 4-5, 24.

³⁷⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 13, 22.

³⁷⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 82-83.; see also Exhibit X (14), Test Claim, page 300 (Order No. R9-2007-0001).

³⁷⁷ Exhibit X (14), Test Claim, pages 297-300 (Order No. R9-2007-0001).

³⁷⁸ *Trancas Property Owners Assoc. v. City of Malibu* (1998) 61 Cal.App.4th 1058, 1061. The California Supreme Court said that using different words "is significant" to show a different intention existed. *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 507.

district programs indicates a different meaning than the requirement in Parts D.5., D.5.b.1., and D.5.b.2., for only implementation of the education programs for municipal staffs, elected officials, planning boards, project applicants, and community planning groups.

Nevertheless, the claimants argue that developing education programs should be reimbursable:

In order to implement a program it must be developed; one cannot simply implement a new program without developing it. As such, development of these education programs is a cost that is reasonably necessary to support required implementation.

Additionally, the Commission's reliance on rules relating to legislative interpretation is misplaced. The general rules of statutory construction and interpretation requires laws and rules to be read in a manner that is harmonious with *all* laws. [Citation omitted.] Here, interpreting the mandate as only including the implementation of the education system is improper because it explicitly conflicts with both Government Code section 17557 and California Code of Regulations, title 2, section 1183.7.

Reimbursement is proper for "activities that are reasonably necessary for the performance of the state mandated program." [Cite to Gov. Code, § 17557 & CCR, tit.2, § 1183.7.] As stated above, it is unreasonable to expect implementation of a program that is new or different without some type of development of this program. Interpreting the mandate as only including implementation improperly ignores Government Code section 17557 and California Code of Regulations, title 2, section 1183.7. Therefore, development costs should be reimbursed along with the implementation. As part of the claims process, the Municipal Claimants should be permitted to submit evidence of these reasonable and necessary costs.³⁷⁹

However, educational programs for municipal departments and personnel, as well as for developers and construction site owners *were also required under the prior permit*,³⁸⁰ and as stated above, the plain language of the test claim permit does not require developing the program. Moreover, there is no evidence in the record that developing a program for the other target communities is reasonably necessary to comply with the mandate.³⁸¹ Thus, the Commission finds only *implementing* the educational programs

³⁷⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 13.

³⁸⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 79-83.

³⁸¹ California Code of Regulations, title 2, section 1183.7(d).

for these target communities is eligible for reimbursement and the parameters and guidelines make it clear that reimbursement is *not* required to develop these programs.

In addition, the educational program required by Part D.5. is ongoing. The program is part of the Jurisdictional Urban Runoff Management Program (JURMP) and is, therefore, subject to the Program Effectiveness Assessment requirements of Part I.1. of the test claim permit, which requires that the program be annually assessed to identify modifications and improvements needed to maximize effectiveness.³⁸²

As to the claimants' proposed activities and costs, the pro rata direct costs of employee supervision and management, materials and supplies, fixed assets (including computer equipment), training, and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A. of the Parameters and Guidelines, and are subject to the Controller's audit.³⁸³

However, the Commission finds that the claimants' remaining proposed reasonably necessary activities are either overbroad or not supported by evidence in the record.

The claimants requested activities of "reporting" and "report writing," are required by Part J.a.3.i. of the test claim permit, but neither they nor Part J.a.3.i. were pled in this Test Claim. The Commission's regulations are clear that "[a]ctivities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible."³⁸⁴

Moreover, there is no evidence in the record that the claimants' remaining proposed activities (tracking policies and procedures, data tracking and analysis, and annual training for vendors) are reasonably necessary to perform the state-mandated education and training, so they are denied. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandate in accordance with the Government Code and Commission's

³⁸² Exhibit A, Amended Test Claim Decision on Remand, page 100. According to declarations in the Test Claim record, including this by Jon Van Rhyn of the County of San Diego: "Compliance with these mandated activities [in Section D.5.] requires the routine incorporation of testing and surveying methods into the program elements to ensure that implementation is resulting in the targeted outcomes. To comply with this mandate, the County expects to expend 288 hours of staff time in FY 2008-09, and each year thereafter, to develop, administer and analyze surveys and tests." Exhibit X (14), Test Claim, page 589, (Declaration of Jon Van Rhyn, Water Quality Manager, County of San Diego).

³⁸³ Government Code section 17561.

³⁸⁴ California Code of Regulations, title 2, section 1183.7(d).

regulations.³⁸⁵ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.³⁸⁶

Thus, Section IV.B.1.c. of the Parameters and Guidelines identify the reimbursable activities as follows:

- c. Educational Component (Parts 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), and the first sentence in Part L.1.) No later than March 24, 2008, the claimants shall comply with the following mandated activities:³⁸⁷
 - i. Each copermittee shall educate each target community (municipal departments, construction site owners and developers, industrial owners and operators, commercial owners and operators, the residential community, the general public, and school children) on the following topics: erosion prevention, non-stormwater discharge prohibitions, and BMP types: facility or activity specific, LID, source control, and treatment control. (D.5.a.(1).)

The educational programs shall emphasize underserved target audiences, high-risk behaviors, and "allowable" behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources. (D.5.a.(2).)
 - ii. Implement an education program so that planning boards and elected officials, if applicable, have an understanding of: (i) Federal, state, and local water quality laws and regulations applicable to Development Projects; and (ii) The connection between land use decisions and short and long-term water quality impacts (i.e., impacts from land developments and urbanization). (D.5.b.(1)(a).)
 - iii. Implement an education program so that planning and development review staffs as well as planning boards and elected officials have an understanding of: (iii) How to integrate LID BMP requirements into the local regulatory program(s) and requirements; (iv) Methods of minimizing impacts to receiving water quality resulting from development, including: [1] Storm water management plan development and review; [2] Methods to control downstream erosion impacts; [3] Identification of pollutants of concern; [4] LID BMP

³⁸⁵ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

³⁸⁶ California Code of Regulations, title 2, section 1187.5.

³⁸⁷ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

techniques; [5] Source control BMPs; and [6] Selection of the most effective treatment control BMPs for the pollutants of concern.”
(D.5.b.(1)(a).)

- iv. Implement an education program that includes annual training prior to the rainy season for its construction, building, code enforcement, and grading review staffs, inspectors, and other responsible construction staff have, at a minimum, an understanding of the topics in parts D.5.b.(1)(b)(iii), (iv), (v), and (vi) of the permit, as follows:
 - Proper implementation of erosion and sediment control and other BMPs to minimize the impacts to receiving water quality resulting from construction activities.
 - The Copermittee’s inspection, plan review, and enforcement policies and procedures to verify consistent application.
 - Current advancements in BMP technologies.
 - SUSMP [Standard Urban Storm Water Mitigation Plan] requirements including treatment options, LID BMPs, source control, and applicable tracking mechanisms. (D.5.b.(1)(b)(iii) - (vi).)
- v. Each Copermittee shall train staff responsible for conducting storm water compliance inspections and enforcement of industrial and commercial facilities at least once a year. Training shall cover inspection and enforcement procedures, BMP implementation, and reviewing monitoring data. (D.5.b.(1)(c).)
- vi. Municipal Other Activities – Each Copermittee shall implement an education program so that municipal personnel and contractors performing activities which generate pollutants have an understanding of the activity specific BMPs for each activity to be performed. (D.5.b.(1)(d).)
- vii. As early in the planning and development process as possible and all through the permitting and construction process, implement a program to educate project applicants, contractors, property owners, and community planning groups *who are not developers or construction site owners*. The education program shall provide an understanding of the topics listed in Sections D.5.b.(1)(a) [Municipal Development Planning] and D.5.b.(1)(b) [Municipal construction Activities] above, as appropriate for the audience being educated. The education program shall also educate these groups on the importance of educating all construction workers in the field about stormwater issues and BMPs through formal or informal training. (D.5.b.(2).)

*Reimbursement is **not** required to develop any of the educational programs described above in D.5.a., D.5.b.(1), or D.5.b.(2) of the permit.*

*Reimbursement is also **not** required to educate developers and construction site owners on the topics listed in D.5.b.(2).³⁸⁸*

viii. Each Copermittee shall collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities. The plan shall evaluate use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods. (D.5.b.(3) and the first sentence in Part L.1.)

3. Watershed Urban Runoff Management Program (Section IV.B.2. of the Parameters and Guidelines)

The Commission partially approved reimbursement for the following newly-mandated activities required by Parts E.2.f. and E.2.g. of the test claim permit, addressing the Watershed Urban Runoff Management Program (WURMP):³⁸⁹

Each Copermittee shall collaborate with other Copermittees within its WMA(s) [Watershed Management Area] identified in Table 4 [of the permit] to develop and implement an updated Watershed Urban Runoff Management Program for each watershed. Each updated Watershed Urban Runoff Management Program shall meet the requirements of section E of this Order, reduce the discharge of pollutants from the MS4 to the MEP [maximum extent practicable], and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of

³⁸⁸ Exhibit A, Amended Test Claim Decision on Remand, page 82.

³⁸⁹ Watershed is defined in Attachment C of the test claim permit as: “That geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).” Exhibit X (14), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

Watershed Urban Runoff Management Plan is defined in Attachment C of the test claim permit as: “A written description of the specific watershed urban runoff management measures and programs that each watershed group of Copermittees will implement to comply with this Order and ensure that pollutant discharges in urban runoff are reduced to the MEP and do not cause or contribute to a violation of water quality standards.” Exhibit X (14), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

The Watershed Management Areas (WMAs) identified in the test claim permit are: Santa Margarita River, San Luis Rey River, Carlsbad, San Dieguito River, Peñasquitos, Mission Bay, San Diego River, San Diego Bay, and Tijuana River. Exhibit X (14), Test Claim, pages 303-304 (Order No. R9-2007-0001, Table 4).

water quality standards. At a minimum, each Watershed Urban Runoff Management Program shall include the elements described below:

f. Watershed Activities

(1) The Watershed Copermittees shall identify and implement 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.

(a) Watershed Water Quality Activities are activities other than education that address the high priority water quality problems in the WMA. A Watershed Water Quality Activity implemented on a jurisdictional basis must be organized and implemented to target a watershed's high priority water quality problems or must exceed the baseline jurisdictional requirements of section D of this Order.

(b) Watershed Education Activities are outreach and training activities that address high priority water quality problems in the WMA.

(2) A Watershed Activities List shall be submitted with each updated Watershed Urban Runoff Management Plan (WURMP) and updated annually thereafter. The Watershed Activities List shall include both Watershed Water Quality Activities and Watershed Education Activities, along with a description of how each activity was selected, and how all of the activities on the list will collectively abate sources and reduce pollutant discharges causing the identified high priority water quality problems in the WMA.

(3) Each activity on the Watershed Activities List shall include the following information:

(a) A description of the activity;

(b) A time schedule for implementation of the activity, including key milestones;

(c) An identification of the specific responsibilities of Watershed Copermittees in completing the activity;

(d) A description of how the activity will address the identified high priority water quality problem(s) of the watershed;

(e) A description of how the activity is consistent with the collective watershed strategy;

(f) A description of the expected benefits of implementing the activity; and

(g) A description of how implementation effectiveness will be measured.

(4) 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. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences.

g. Watershed Copermittees shall collaborate to develop and implement the Watershed Urban Runoff Management Programs. Watershed Copermittee collaboration shall include frequent regularly scheduled meetings.³⁹⁰

In addition, the first sentence in Part L.1. of the test claim permit that the Commission found reimbursable requires copermittee collaboration "to address common issues, [and] promote consistency among Watershed Urban Runoff Management Programs" and, therefore, this section of the Parameters and Guidelines also references the first sentence in Part L.1.³⁹¹ As indicated above, reimbursement for collaboration is limited to activities approved by the Commission in the Test Claim Decision (to collaborate on an *updated* WURMP for each listed watershed). The prior permit also required a WURMP and required the copermittees to collaborate to address common issues to promote consistency among WURMPs, so collaboration is required only on the *updated* WURMP as described in the activities listed in the Parameters and Guidelines.³⁹²

Section E.1. of the test claim permit required each copermittee to implement the requirements of Section E no later than 365 days after the adoption of the test claim permit (or no later than January 24, 2008), and until then, the permittees were required

³⁹⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 72-77, emphasis added.

³⁹¹ Exhibit X (14), Test Claim, page 329 (Order No. R9-2007-0001).

³⁹² Exhibit A, Amended Test Claim Decision on Remand, pages 90, 111. According to the Decision: "Part L.1 of the 2007 permit, the first paragraph in L. requiring collaboration, is identical to part N. of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e., not in the 2001 permit) including the Regional Urban Runoff Management Program."

to implement the Watershed URMP document developed under the prior permit, Order No. 2001-01.³⁹³ Implementation of Section E was subsequently delayed by order of the Regional Board dated December 12, 2007, to March 24, 2008, as follows:

- c. Watershed Urban Runoff Management Program, Section E.1, . . . “Each Copermittee shall implement all requirements of section E of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** 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.”³⁹⁴

Although there is overlap between Parts E.2.f. and E.2.g. and Part L.1., and Part L.1. was not delayed by the Addendum of the Regional Board, the Commission finds that the collaboration required here was delayed until no later than March 24, 2008, since all of the provisions of Part E were delayed.³⁹⁵

Thus, the mandated activities are identified in Section IV.B.2. of the Parameters and Guidelines, with clarification that implementation began no later than March 24, 2008.

The claimants also request reimbursement for the following costs and activities they allege are reasonably necessary:

- Working Body Support and Representation: Claimant’s costs to organize and administer the Watershed Urban Runoff Management Program (“WURMP”) Working Bodies.³⁹⁶ And the costs incurred 1) to perform the responsibilities of

³⁹³ Exhibit X (14), Test Claim, page 300 (Order No. R9-2007-0001).

³⁹⁴ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

³⁹⁵ Under the rules of statutory interpretation, when a conflict exists between general and specific provisions in the law, the specific provisions prevail over the general provisions relating to the same subject. *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, 942-943.

³⁹⁶ Permit Part E.2.g. requires the collaborative development and implementation of a WURMP for each of the following WMAs: 1) Santa Margarita River; 2) San Luis Rey River; 3) San Dieguito River; 4) Peñasquitos; 5) Mission Bay; 6) San Diego River; 7) San Diego Bay; 8) Tijuana River. Exhibit X (14), Test Claim, pages 302-304 (Order No. R9-2007-0001, Table 4).

chairs,³⁹⁷ co-chairs, and secretaries,³⁹⁸ 2) attend and participate at meetings (including preparation and travel time), 3) other activities required for planning, discussion, and coordination such as telephone calls, emails, and video conferencing. Required tasks include 1) developing and distributing meeting agendas and notes, and 2) distributing, presenting, reviewing, and approving any of the Watershed Work Products described below.

- Collaborative Watershed Work Product Development. Claimant's Personnel costs to develop and update WURMP Work Products and the costs of such activities, including:
 - Watershed Urban Runoff Management Programs ("WURMPs"). A WURMP that includes all the elements described in Permit Part E.2.;
 - Watershed Activities Lists. Any Watershed Quality Activity³⁹⁹ or Watershed Education Activity⁴⁰⁰ necessary to meet the requirements of Permit Part E.2.f.(2), to include any or all of the minimum information identified in Permit Part E.2.f.(3);
 - Annual WURMP Work Plans and Budgets. Any Work Plan or Budget developed to support the implementation of a WURMP;

³⁹⁷ MOU Section I defines a Chair as follows: "Chair means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as the Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs." Exhibit X (14), Test Claim, page 497 (MOU).

³⁹⁸ MOU Section I defines a Secretary as follows: "Secretary means a person who takes responsibility for the records, correspondence, minutes, or notes of meetings, and related affairs of a working body. This includes: maintaining group contact lists; preparing and sending out meeting notifications and agendas; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; and, coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body." Exhibit X (14), Test Claim, page 497-499 (MOU).

³⁹⁹ Watershed quality activities are "activities other than education that address high priority water quality problems in the WMA." Exhibit X (14), Test Claim, page 302 (Order No. R9-2007-0001).

⁴⁰⁰ Watershed education activities are "Outreach and training activities that address high priority water quality problems in the WMA." Exhibit X (14), Test Claim, page 302 (Order No. R9-2007-0001).

- WURMP Annual Reports. Both the annual report content provided by individual Watershed Copermitees and the completion of the consolidated WURMP Annual Report;
- Watershed Specific Standards: 1) Watershed reporting, assessment, and program data and information management standards; and 2) standards and approaches for watershed-level management of specific source categories or types. It applies to work products developed by individual Copermitees, their consolidation into comprehensive, watersheds standards documents, and periodic updates as necessary for each;
- Working Body Status Reports: Watershed Working Body status reports developed for dissemination to Copermitees and interested parties. Status reports typically describe Watershed Working Body activities and accomplishments, success in completing scheduled tasks, and key issues, activities, and tasks to be addressed; and
- Other Watershed Work Products. Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2.
- Watershed Implementation of Programs and Activities. Claimant's costs for the ongoing implementation of programs and activities funded and/or conducted at the watershed level and Watershed programs and activities costs including:
 - Watershed Water Quality Activities
 - Watershed Education Activities
 - Other programs and activities required to implement the WURMP.

Implementation costs associated with these programs and activities including:

- Materials production and distribution, equipment, supplies, fees, media purchases, and other costs associated with program implementation.
- Equipment. The actual cost of purchasing, renting, leasing, or contracting for vehicles and equipment to perform watershed activities mandated by the Permit. This includes one-time costs for vehicle and equipment purchases and corresponding equipment depreciation costs.
- Vehicle and Equipment Maintenance. Annual vehicle and equipment maintenance costs, including parts, supplies (e.g., water), and Personnel Costs. This also includes the costs of operating, renting, leasing, or contracting for facilities to store and maintain the vehicles and/or equipment and supplies.
- Fuel. The actual cost of the fuel for the vehicles and equipment performing watershed activities mandated by the Permit.

- Reporting and Tracking Policies and Procedures. Claimant's personnel costs to develop, update, and implement each WMA activity and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs to develop, update, and implement data tracking and analysis methods and procedures for reports to the Regional Water Quality Control Board and costs of purchases and upgrades to equipment, hardware, software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.
- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.
- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for developing or conducting WMA activities and costs of training of all claimant and vendor employees who perform tasks necessary to implement these functions during the life of the Permit.
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with WURMP development and implementation and costs of documenting and monitoring expenditures incurred in developing and distributing budget balance and expenditure reports, and claim submittal forms and costs of individual Copermittee activities in developing and maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis and reporting.
- Coordination. Claimant's personnel costs, to coordinate WURMP Working Body content, issues, programs, and activities with organizations and parties outside the claimant's jurisdiction and the costs of coordination with Regional Board staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).⁴⁰¹

The Water Boards comment that the claimants use too many vague, non-specific phrases regarding the WURMP. They say that after nearly four years of

⁴⁰¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 49-52.

implementation, the claimants should be able to specifically describe the necessary tasks to perform the WURMP, as well as anticipated changes over the remainder of the permit term. The Water Boards also repeat their comments about vendor training and computer upgrades, and they question specific costs proposed for equipment and vehicle and equipment maintenance, as well as facilities to store and maintain vehicles and equipment. The Water Boards state that WURMP may require vehicles only to attend meetings, and it is unlikely that cars would be purchased exclusively for WURMP activities, so the claimants should be required to specify and prorate costs for only WURMP activities.⁴⁰²

The claimants respond that they have increased specificity and deleted catch-all phrases and categories in their proposed activities. The claimants disagree that vendor training is not recoverable, and agree that computer equipment must be prorated to apply only to the reimbursable activities. As to vehicles, the claimants agree that the WURMP activities do not generally require vehicles and equipment to implement, but because the claimants attend meetings, mileage for required travel should be reimbursable.⁴⁰³

First, as stated earlier, pro rata direct costs for employee supervision and management, materials and supplies, fixed assets (including computers and software), travel (including mileage), and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A.

However, the proposed “reporting” and “report writing activities” are too broadly stated and, as stated, may be required by Parts J.1.b. (submitting the WURMP to the Regional Board) and J.3.b. (submitting WURMP annual reports to the Regional Board) of the test claim permit, which were not pled in the Test Claim. The mandate here is limited to submitting the Watershed Activities List to the Regional Board, and not the plan or annual report itself. The Commission’s regulations are clear that “[a]ctivities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible.”⁴⁰⁴ Reporting and report writing do not define the state-mandated activities the Commission approved, so they are not eligible for reimbursement.

Moreover, there is no evidence in the record that any of the activities proposed by the claimants are reasonably necessary to comply with the mandate to update the WURMP as specified. Proposed reasonably necessary activities must be supported by

⁴⁰² Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 13-14.

⁴⁰³ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 24-26.

⁴⁰⁴ California Code of Regulations, title 2, section 1183.7(d).

substantial evidence in the record explaining why they are necessary to perform the state-mandated activity in accordance with the Government Code and Commission's regulations.⁴⁰⁵ The Commission's regulations also require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.⁴⁰⁶

In addition, the claimants' proposed reasonably necessary activities are overbroad. Reimbursement for the costs to "organize and administer the Watershed Urban Runoff Management Program ("WURMP") Working Bodies" is consistent with the copermittees' MOU, which establishes several working bodies the MOU defines as: "Committees, Subcommittees, Workgroups, Sub-workgroups, or any other group of Copermittees assembled to conduct work required by, for, or in furtherance of, compliance with the Permit"⁴⁰⁷ The MOU established a WURMP sub-workgroup to meet four times per year, unless otherwise approved by all the copermittees, to develop and implement the WURMP and the watershed activities required by the test claim permit.⁴⁰⁸ However, the prior permit also required a WURMP and required the copermittees to collaborate to address common issues and to promote consistency among the WURMPs, and required the MOU to provide a management structure that identified joint responsibilities and collaborative arrangements, so the working bodies were likely organized under the prior permit's MOU.⁴⁰⁹ The Test Claim Decision limited reimbursement for collaboration to the new activities in Part E.2.f., which the Commission found mandated a new program or higher level of service.⁴¹⁰ Thus, substantial evidence in the record is required to show that the costs incurred to "organize and administer the WURMP Working Bodies" are reasonably necessary to comply with the mandate to "develop and implement an **updated** Watershed Urban Runoff Management Program." In addition,

⁴⁰⁵ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

⁴⁰⁶ California Code of Regulations, title 2, section 1187.5.

⁴⁰⁷ Exhibit X (14), Test Claim, page 499 (MOU).

⁴⁰⁸ Exhibit X (14), Test Claim, page 527 (MOU).

⁴⁰⁹ Exhibit A, Amended Test Claim Decision on Remand, page 90; see also pages 111-112 for a discussion of the MOU under the prior permit.

⁴¹⁰ Exhibit A, Amended Test Claim Decision on Remand, page 90. The Decision states: "As to part E.2.g., although the 2001 (in parts J.1. & J.2.) and 2007 permits both require copermittee collaboration in developing and implementing the Watershed Urban Runoff Management Plan, copermittee collaboration is a new program or higher level of service because the WURMP is greatly expanded over the 2001 permit in part E.2.f as discussed above. This means that new collaboration is required to develop and implement the watershed activities in part E.2.f."

the claimant's reimbursement request for developing and updating WURMP work products "that includes all the elements described in Permit Part E.2." is overly broad, as the Commission only approved Parts E.2.f. (watershed activities, including watershed education activities) and E.2.g. (copermittee collaboration) for reimbursement.

Accordingly, Section IV.B.2. of the Parameters and Guidelines identifies the following reimbursable activities:

1. Watershed Urban Runoff Management Program (WURMP) (Parts E.2.f, E.2.g, and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following activities:⁴¹¹
 - a. Each Copermittee shall collaborate with other Copermittees within its Watershed Management Area identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below.
 - b. Update the WURMP to include and implement *only* the following elements:
 - i. 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. Watershed Water Quality Activities are activities other than education that address the high priority water quality problems in the WMA. A Watershed Water Quality Activity implemented on a jurisdictional basis must be organized and implemented to target a watershed's high priority water quality problems or must exceed the baseline jurisdictional requirements of section D of this Order. Watershed Education Activities are outreach and training activities that address high priority water quality problems in the WMA.⁴¹² These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.
 - ii. Submit a Watershed Activities List with each updated WURMP and updated annually thereafter. The Watershed Activities List shall include both Watershed Water Quality Activities and Watershed Education Activities, along with a description of how each activity was

⁴¹¹ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

⁴¹² Exhibit X (14), Test Claim, page 143 (Order No. R9-2007-0001, Part E.2.f.1.a. & b.).

selected, and how all of the activities on the list will collectively abate sources and reduce pollutant discharges causing the identified high priority water quality problems in the WMA.

- iii. Each activity on the Watershed Activities List shall include the following information:
 - A description of the activity;
 - A time schedule for implementation of the activity, including key milestones;
 - An identification of the specific responsibilities of Watershed Copermittees in completing the activity;
 - A description of how the activity will address the identified high priority water quality problem(s) of the watershed;
 - A description of how the activity is consistent with the collective watershed strategy;
 - A description of the expected benefits of implementing the activity; and
 - A description of how implementation effectiveness will be measured.
- c. 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. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences.

4. Regional Urban Runoff Management Program (Part IV.B.3. of the Parameters and Guidelines)

The Commission approved the following new state-mandated activities based on Parts F.1.-F.3. of the test claim permit relating to the Regional Urban Runoff Management Program (RURMP):⁴¹³

Each copermitttee shall collaborate with the other copermitttees to develop, implement, and update as necessary a RURMP that meets the requirements of section F of the permit, reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. The RURMP shall, at a minimum: [¶]...[¶]

1. Develop and implement a Regional Residential Education Program. The program shall include:
 - a. Pollutant specific education which focuses educational efforts on bacteria, nutrients, sediment, pesticides, and trash. If a different pollutant is determined to be more critical for the education program, the pollutant can be substituted for one of these pollutants.
 - b. Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a.
2. Develop the standardized fiscal analysis method required in section G of the permit,⁴¹⁴ and,

⁴¹³ RURMP is defined in Attachment C of the test claim permit as: “A written description of the specific regional urban runoff management measures and programs that the Copermitttees will collectively implement to comply with this Order and ensure that pollutant discharges in urban runoff are reduced to the MEP and do not cause or contribute to a violation of water quality standards.” Exhibit X (14), Test Claim, page 350 (Order No. R9-2007-0001, Attachment C).

⁴¹⁴ Section G.2. of the Test Claim Permit describes the standardized fiscal analysis method as follows: “As part of the Regional Urban Runoff Management Program, the Copermitttees shall collectively develop a standardized method and format for annually conducting and reporting fiscal analyses of their urban runoff management programs in their entirety (including jurisdictional, watershed, and regional activities). This standardized method shall:

- a. Identify the various categories of expenditures attributable to the urban runoff management programs, including a description of the specific items to be accounted for in each category of expenditures.

3. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs.⁴¹⁵

These activities are identified in the Parameters and Guidelines, with clarifying modifications as discussed below.

There is some overlap between Parts F.1.-F.3. and other parts of the permit the Commission found reimbursable. For example, collaboration is also required in Part L.1., and the Commission approved reimbursement for the requirement in Part L.1. for the copermitees to collaborate with each other to address common issues, and to plan and coordinate activities, which were found to mandate a new program or higher level of service.⁴¹⁶ Thus, the Parameters and Guidelines identify Part L.1. together with Parts F.1.-F.3.

However, the requirement in Part F.3., that the RURMP be developed and implemented to “facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs,” needs further interpretation. Part I also requires program effectiveness assessment. As described in the next section below, the Commission approved reimbursement to annually assess the jurisdictional and watershed programs, as required by Parts I.1. and I.2., and to conduct a long-term effectiveness assessment (a one-time activity) that addresses the jurisdictional, watershed, and regional programs “no later than 210 days in advance of the expiration of this [test claim permit],” as required by Part I.5. Conducting the assessments is provided for in Part I, so “*facilitate the assessment . . . of the jurisdictional, watershed, and regional programs*” does not mean to actually assess these programs. The general rule is that materially different language in a statute or regulation on the same or related subjects indicates a different meaning is intended.⁴¹⁷ In addition, it is noteworthy that the claimants did not plead Part I.3. of the test claim permit, which addresses annually assessing the effectiveness of the regional program, so this activity is not eligible for reimbursement.⁴¹⁸ Neither the

b. Identify expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program.

c. Identify a metric or metrics to be used to report program component and total program expenditures.”

Exhibit X (14), Test Claim, page 305 (Order No. R9-2007-0001, Part G.2.)

⁴¹⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 91-92, 96, 144-145.

⁴¹⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 109-112, 150.

⁴¹⁷ *Trancas Property Owners Assoc. v. City of Malibu* (1998) 61 Cal.App.4th 1058, 1061. The California Supreme Court said that using different words “is significant” to show a different intention existed. *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 507.

⁴¹⁸ Exhibit X (14), Test Claim, pages 201, 209-212 (Order No. R9-2007-0001).

test claim permit nor the Fact Sheet explains what “facilitate” the assessment of the effectiveness of the jurisdictional, watershed, and regional programs means. The best description of facilitating assessments is in the MOU, which lists the general responsibilities of regional workgroups and sub-workgroups (or working bodies), including their roles in facilitating consistency in the program and developing, annually reviewing, and updating as necessary subject-specific standards for assessments. It states in pertinent part:

The purpose of Regional Workgroups and Sub-workgroups is to provide regional coordination of urban runoff management activities within assigned subject areas, to develop and implement recommended Regional General Programs, and to provide coordination of activities with stakeholders and interested parties. Regional Workgroups are advisory to the Management Committee through the Planning Subcommittee. Regional Sub-workgroups are advisory to the Regional Workgroups to which they are subordinate.

[¶] . . . [¶]

At a minimum, each Regional Workgroup and Sub-workgroup shall have the following responsibilities within its assigned subject area:

[¶] . . . [¶]

Facilitate consistency in the development, implementation, review, and revision of General Programs, and the development of associated reports and work products;

Develop, annually review, and update as necessary subject-specific standards for reporting, *assessment*, and data and information management;⁴¹⁹

As the claimants stated in their proposed Parameters and Guidelines:

With limited exception, all Copermittee collaboration and coordination is carried out through these Working Bodies [pursuant to the MOU].⁴²⁰ Working Body meetings typically address regional, jurisdictional, and watershed issues or functions concurrently because a clear separation between them does not exist. The types of costs presented below

⁴¹⁹ Exhibit X (14), Test Claim, pages 513-514 (MOU). Emphasis added.

⁴²⁰ According to the MOU: “Working Body means Committees, Subcommittees, Workgroups, Sub-workgroups, or any other group of Copermittees assembled to conduct work required by, for, or in furtherance of, compliance with the Permit (Figure A identifies the Working Bodies established in this MOU).” Exhibit X (14), Test Claim, page 499 (MOU).

[proposed reasonably necessary activities] therefore apply to parts L, F, and I.5.⁴²¹

The MOU and the claimants' comment comport with the plain meaning of "facilitate." The courts look to dictionary definitions to determine the usual and ordinary meaning of a term in a statute or regulation.⁴²² The dictionary defines "facilitate" as "to make easier" or to "help bring out."⁴²³ The MOU's description of developing, annually reviewing, and updating as necessary subject-specific standards for assessments fall within that definition. Thus, the Parameters and Guidelines clarify that reimbursement for this activity includes "facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments."

In addition, Section F of the test claim permit states "The Copermittees shall implement all requirements of section F of this Order no later than 365 days after adoption of this Order," or by January 24, 2008.⁴²⁴ By an Addendum of the Regional Board dated December 12, 2007, that date was further delayed until March 24, 2008, as follows:

- c. Regional Urban Runoff Management Program, Section F, . . . "The Copermittees shall implement all requirements of section F of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order."⁴²⁵

This information is included in the Parameters and Guidelines.

The claimants also request reimbursement for the following costs and alleged "reasonably necessary" activities:

- Regional Coordination of Copermittees and Regional Working Bodies. Claimant's costs to develop, distribute, review, and present work products necessary for regional planning, coordination, and collaboration amongst Copermittees and Regional Working Bodies and the costs of written work products, presentations at meetings, and other means of coordination and review such as email.

⁴²¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 53.

⁴²² *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 567.

⁴²³ Exhibit X (6), Merriam-Webster Dictionary, facilitate, <https://www.merriam-webster.com/dictionary/facilitate#:~:text=transitive%20verb,make%20easier%20%3A%20help%20bring%20about> (accessed on June 9, 2023).

⁴²⁴ Exhibit X (14), Test Claim, page 304 (Order No. R9-2007-0001).

⁴²⁵ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- Working Body Support and Representation. [Fn. omitted.] Claimant's costs to organize and administer the Regional Working Bodies and the costs of activities: 1) to perform the responsibilities of chairs co-chairs, and secretaries, 2) attend and participate in meetings (including preparation and travel time), and 3) planning, discussion, and coordination telephone calls, emails, and video conferencing. Required tasks include: 1) developing and distributing meeting agendas and notes, and 2) distributing, presenting, reviewing, and approving any of the Regional Work Products described below.
- Regional Work Product Development. Claimant's personnel costs to develop and update any regional work product identified in an approved Regional Working Body Work Plan and Budget and the costs of such activities including:
 - Working Body Status Reports: Regional Working Body status reports developed for dissemination to Copermittees and interested parties. Status reports typically describe Regional Working Body activities and accomplishments, success in completing scheduled tasks, and key issues, activities, and tasks to be addressed;
 - Annual Work Plans and Budgets. Both individual Regional Working Body Work Plans and Budgets and the Copermittees' Annual Regional Work Plan and Regional Shared Costs Budget;
 - Regional URMP Annual Reports. Both the annual report content provided by individual Regional Working Bodies and the completion of the consolidated Regional URMP Annual Report;
 - Regional Standards. 1) Regional reporting, assessment, and program data and information management standards; and 2) regional standards and approaches for the management of specific source categories or types. It applies to work products developed by individual Regional Working Bodies, their consolidation into comprehensive, regional standards documents, and periodic updates as necessary for each; and
 - Other Regional Work Products. Any Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain Permit compliance. This includes, but is not limited to:
 - A formal agreement between the Copermittees that provides a management structure for meeting the requirements of the Permit. [Fn. omitted.]
 - By-laws for the conduct of Copermittee Working Bodies.

- A standardized method and format for annually conducting and reporting fiscal analyses of urban runoff management programs.⁴²⁶
- A Long Term Effectiveness Assessment ("LTEA") that addresses at least the following: review and assessment of jurisdictional, watershed, and regional program effectiveness (including analysis of outcome levels 1-6); assessment of the effectiveness of the Receiving Waters Monitoring Program in meeting its ability to answer the five core management questions, and; evaluation of the relationship of program implementation to changes in water quality. This may also include shared or individual Copermittee costs of collaboratively developing assessment methods and approaches, developing or maintaining data tracking methods or systems, and of performing data collection, tracking, management, analysis, and reporting (including staff training), as well as purchases and upgrades to equipment, hardware, and software necessary to support these data management functions.
- Regional Implementation of Programs and Activities. Claimant's personnel costs for the ongoing implementation of regionally-funded and/or conducted programs and costs of materials production and distribution, equipment, supplies, fees, and media. Regional programs and activities include:
 - Education of Residential Target Audiences
 - Annual Regional Effectiveness Assessments
 - Programs and Activities Included as Part of the Regional URMP
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with Regional Working Body Work Plans and Budgets and the Copermittees' Annual Regional Work Plan and Regional Shared Costs Budget and costs associated with documenting and monitoring expenditures (e.g., developing and distributing budget balance and expenditure reports, claim submittal forms) incurred pursuant to approved Regional Working Body Work Plans and Budgets. It also includes the individual Copermittee costs of developing or maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis, and reporting.

⁴²⁶ The standardized fiscal method must be submitted to the Regional Board by January 31, 2009. It is a one-time requirement.

- External Coordination. Claimant's personnel costs to coordinate Regional Working Body content, issues, programs, and activities with external organizations and parties and coordination with Regional Board staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies.
- Employee Supervision-and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).⁴²⁷

The Water Boards object to the proposed qualifying language such as “costs, including personnel costs” and “costs including, but not limited to” The Water Boards are also concerned about the lack of specificity in the claimant’s proposed language. Further, the Water Boards disagree that training vendors is reimbursable because vendors that bid on and carry out contracted activities should be well-versed or expert in the services they provide.⁴²⁸ The Water Boards also point to the claimants’ identification of costs to purchase upgrades to equipment, hardware and software to support data analysis, tracking and reporting, saying such costs should be limited to those incurred after January 24, 2007 and that claimants should be required to demonstrate that the purchases are necessary to comply with the test clam permit but not necessary to comply with the prior permit. According to the Water Boards, the claimants should be required to “demonstrate how they intend to exclude, in a transparent manner, the percentage of costs of equipment and upgrades used for unreimbursable purposes . . . in a verifiable manner.”⁴²⁹ Additionally, the Water Boards specifically object to the claimant’s proposed Report of Waste Discharge (ROWD) as a regional work product because a ROWD was not approved by the Commission and is required by federal law.⁴³⁰

In rebuttal comments, the claimants revised their proposed activities to reduce open ended and vague activities.⁴³¹ The claimants disagree that they have not adequately described the tasks necessary to perform the Regional Collaboration requirements, as

⁴²⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 53-56.

⁴²⁸ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 15.

⁴²⁹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 14-15.

⁴³⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 15.

⁴³¹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 5.

the tasks are described in the proposed activities listed above.⁴³² The claimants also disagree that vendor training should not be recoverable.⁴³³ The claimants acknowledge that costs for computer equipment should be prorated to cover only the reimbursable activities.⁴³⁴ The claimants also agree that the costs of preparing and submitting a ROWD should not be reimbursable, and deleted it from their proposed activities.⁴³⁵

First, the direct costs for personnel, materials and supplies, fixed assets, travel, and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A.

Second, the claimants' reimbursement request to organize and administer the Regional Working Bodies and to adopt a formal agreement between the copermitees that provides a management structure for meeting the requirements of the test claim permit are required by Part L.1.a.3.-6. of the test claim permit that governs all copermitee collaboration, and is accounted for as a one-time activity in Section IV.A.1. of the Parameters and Guidelines. Similarly, conducting the Long Term Effectiveness Assessment (LTEA) is required by Part I.5. of the Test Claim permit, and as described below, is identified as a one-time reimbursable activity in Section IV.A.2. of the Parameters and Guidelines.

In addition, the reimbursement request for regional implementation of programs and activities, including the "annual regional effectiveness assessments" is denied. As indicated above, the claimants did not plead Part I.3. of the test claim permit, which addresses the regional annual effectiveness assessment.

Moreover, much of the claimants' proposed language is overbroad and not narrowly tailored to the state-mandated activities approved by the Commission. These include, for example, "Claimant's personnel costs to develop and update *any regional work product* identified in an approved Regional Working Body Work Plan and Budget;" "Any Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain Permit compliance;" "Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with Regional Working Body Work Plans and Budgets;" and "Claimant's personnel costs to coordinate Regional Working Body content, issues, programs, and activities with external organizations and parties and coordination with Regional Board

⁴³² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 27.

⁴³³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 5-6, 27.

⁴³⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 27.

⁴³⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 28.

staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies." Reasonably necessary activities are limited to those activities necessary to comply with the statutes, regulations and other executive orders that the Commission found impose a state-mandated program.⁴³⁶

In addition, there is no evidence in the record that the activities identified by the claimants are reasonably necessary to comply with the mandated activities.

Thus, Section IV.B.3. of the Parameters and Guidelines states:

3. Regional Urban Runoff Management Program (Parts F.1.-F.3., and the first sentence of Part L.1.)

No later than March 24, 2008, each copermitttee shall collaborate with the other Copermitttees to develop, implement, and update as necessary a Regional Urban Runoff Management Program that reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.⁴³⁷ The Regional Urban Runoff Management Program shall include the following:

- a. Develop and implement a Regional Residential Education Program which shall include the following:
 - Pollutant specific education which focuses educational efforts on bacteria, nutrients, sediment, pesticides, and trash. If a different pollutant is determined to be more critical for the education program, the pollutant can be substituted for one of these pollutants.
 - Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a. (bacteria, nutrients, sediment, pesticides, and trash).
- b. Develop the standardized fiscal analysis method required in section G of the permit. The standardized fiscal analysis method shall:
 - Identify the various categories of expenditures attributable to the urban runoff management programs, including a description of the specific items to be accounted for in each category of expenditures.
 - Identify expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program.
- c. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs. This includes facilitating consistency in the assessment

⁴³⁶ California Code of Regulations, title 2, section 1183.7(d).

⁴³⁷ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments.

5. Program Effectiveness Assessments (Sections IV.A.2., IV.B.4. of the Parameters and Guidelines)

The Commission approved the following state-mandated activities from Parts I.1. (annual assessment of the JURMP), and I.2. (annual assessment of the WURMP) of the test claim permit:

1. Jurisdictional

a. As part of its Jurisdictional Urban Runoff Management Program, each Copermitttee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:

(a) Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;

(b) Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge Detection and Elimination, and Education); and

(c) Implementation of the Jurisdictional Urban Runoff Management Program as a whole.

(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.1.a.(1) above.

(3) Utilize outcome levels 1-6⁴³⁸ to assess the effectiveness of each of the items listed in section I.1.a.(1) above, where applicable and feasible.

⁴³⁸ Effectiveness assessment outcome levels are defined in Attachment C of the permit as follows: “Effectiveness assessment outcome level 1 – Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the implementation of specific activities prescribed by this Order or established pursuant to it. Effectiveness assessment outcome level 2 – Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, business, and municipal employees. Effectiveness assessment outcome level 3 – Behavioral Changes and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation. Effectiveness assessment outcome level 4 – Load Reductions – Level 4 outcomes measure load reductions which

- (4) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the items listed in section I.1.a.(1) above, where applicable and feasible.
 - (5) Utilize Implementation Assessment,⁴³⁹ Water Quality Assessment,⁴⁴⁰ and Integrated Assessment,⁴⁴¹ where applicable and feasible.
- b. Based on the results of the effectiveness assessment, each copermitttee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order.⁴⁴² The copermitttees shall develop and implement a plan and schedule to

quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed. Effectiveness assessment outcome level 5 – Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s. Effectiveness assessment outcome level 6 – Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity [i.e., ecosystem health], or beneficial use attainment.” Exhibit X (14), Test Claim, pages 345-346 (Order No. R9-2007-0001, Attachment C).

⁴³⁹ Implementation Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to determine the effectiveness of copermitttee programs and activities in achieving measurable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” Exhibit X (14), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).

⁴⁴⁰ Water Quality Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to evaluate the condition of non-storm water discharges, and the water bodies which receive these discharges.” Exhibit X (14), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

⁴⁴¹ Integrated Assessment is defined in Attachment C of the test claim permit as an “Assessment to be conducted to evaluate whether program implementation is properly targeted to and resulting in the protection and improvement of water quality.” Exhibit X (14), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).

⁴⁴² Section A of the permit governs discharge prohibitions and receiving water limitations. Exhibit X (14), Test Claim, pages 265-267 (Order R9-2007-0001.).

address the identified modifications and improvements. Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.

- c. As part of its Jurisdictional Urban Runoff Management Program Annual Reports, each Copermittee shall report on its Jurisdictional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.1.a and I.1.b above.

2. Watershed

- a. 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. At a minimum, the annual effectiveness assessment shall:
 - 1) Specifically assess the effectiveness of each of the following:
 - (a) Each Watershed Water Quality Activity implemented;
 - (b) Each Watershed Education Activity implemented; and
 - (c) Implementation of the Watershed Urban Runoff Management Program as a whole.
 - 2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.2.a.(1) above.
 - 3) Utilize outcome levels 1-6 to assess the effectiveness of each of the items listed in sections I.2.a.(1)(a) and I.2.a.(1)(b) above, where applicable and feasible.
 - 4) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
 - 5) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban Runoff Management

Program implementation on the high priority water quality problem(s) within the watershed.

6) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each [sic] of the items listed in section I.2.a.(1) above, where applicable and feasible.

7) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.

- b. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order.⁴⁴³ The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements. Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.
- c. As part of its Watershed Urban Runoff Management Program Annual Reports, each watershed group of Copermittees (as identified in Table 4) shall report on its Watershed Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of section I.2.a and I.2.b above.⁴⁴⁴

As indicated above, the effectiveness assessment of the JURMP is required to be included in the annual report, which as stated previously, is due September 30, 2008 and every September 30 thereafter for the previous fiscal year.⁴⁴⁵ In addition, the effectiveness assessment of each watershed group of permittees (as identified in Table

⁴⁴³ Section A of the permit governs prohibitions and receiving water limitations. Exhibit X (14), Test Claim, pages 265-267 (Order R9-2007-0001.)

⁴⁴⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 145-149.

⁴⁴⁵ Exhibit X (14), Test Claim, page 319 (Order R9-2007-0001.)

4 of the test claim permit) is required to be reported in the annual WURMP report, which is due by January 31, 2009 and every January 31 thereafter for the previous fiscal year.⁴⁴⁶ The Parameters and Guidelines identify these activities in section IV.B.4. and these reporting due dates are included in the Parameters and Guidelines.

The Commission also approved reimbursement to conduct a one-time, long term effectiveness assessment.

Long Term Effectiveness Assessment (Part I.5.):

- a. Collaborate with the other Copermittees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' 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.
- b. The LTEA shall be designed to address each of the objectives listed in section I.3.a.(6)⁴⁴⁷ of this Order, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle.
- c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).
- d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis

⁴⁴⁶ Exhibit X (14), Test Claim, page 327 (Order R9-2007-0001.)

⁴⁴⁷ Part I.3.a.(6) of the permit states: "At a minimum, the annual effectiveness assessment shall: (6) Include evaluation of whether the Copermittees' jurisdictional, watershed, and regional effectiveness assessments are meeting the following objectives: (a) Assessment of watershed health and identification of water quality issues and concerns. (b) Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns. (c) Evaluation of the need to address additional pollutant sources not already included in Copermittee programs. (d) Assessment of progress in implementing Copermittee programs and activities. (e) Assessment of the effectiveness of Copermittee activities in addressing priority constituents and sources. (f) Assessment of changes in discharge and receiving water quality. (g) Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality. (h) Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies." Exhibit X (14), Test Claim, page 309 (Order No. R9-2007-0001).

shall identify the frequency and intensity of sampling needed to identify a 10% reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80% confidence.

- e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.
 1. Collaborate with all other Copermittees regulated under the permit 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.⁴⁴⁸

There is some overlap between Part I.5. (LTEA) and the first sentence of Part L.1. The Commission approved the requirement in Part L.1. for collaboration among all copermittees to address common issues, and to plan and coordinate the required new mandated activities.⁴⁴⁹ Thus, the Parameters and Guidelines combine Part L.1. with the requirement in Part I.5. to collaborate.

In addition, collaborating on and submitting the long term effectiveness assessment to the Regional Board is not an annual requirement. Rather, it is submitted once, “no later than 210 days in advance of the expiration of the [test claim permit].”⁴⁵⁰ Therefore, this is listed as a one-time activity in section IV.A.2. of the Parameters and Guidelines.

The claimants also request reimbursement for the following alleged reasonably necessary activities:

- Program Development. Claimant’s costs to develop and annually update JURMP and WURMP effectiveness assessment methods, approaches, and documentation (e.g., policies, procedures, manuals and forms), as well as data management systems and tools necessary to support the implementation of effectiveness assessments.
- Program Implementation. Claimant’s personnel costs to conduct the annual JURMP and WURMP effectiveness assessments in accordance with the Copermittee’s effectiveness assessment program and the requirements of Parts I.1 and I.2 of the Permit and the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting.
- Employee and Vendor Annual Training. Claimant’s costs to develop, update, and conduct training of staff responsible for developing or

⁴⁴⁸ Exhibit A, Amended Test Claim Decision on Remand, pages 149-150.

⁴⁴⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

⁴⁵⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 105, 107, 149.

conducting effectiveness assessments and the costs of training claimant and vendor employees who perform tasks necessary to implement assessment functions during the life of the Permit.

- JURMP and WURMP Modifications. Claimant's personnel costs to modify the JURMP and WURMP based upon the results of effectiveness assessments in accordance with the requirements of Parts I.1.b and I.2.b of the Permit and the costs of the development and implementation of plans and schedules to address the identified modifications and improvements.
- Report Writing. Claimant's personnel costs to develop and write reports required by Parts I.1.c and I.2.c of the Permit.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).⁴⁵¹

First, the direct costs for personnel, materials and supplies, fixed assets, and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A.

In addition, the claimants' request for reimbursement "to develop and write reports" required as part of the annual assessments of the JURMP and WURMP is already identified in the mandated activities. As indicated above, the Commission approved the following activities required by Part I.1.c. and I.2.c. as reimbursable state-mandated activities:

- As part of its Jurisdictional Urban Runoff Management Program Annual Reports, each Copermittee *shall report* on its Jurisdictional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.1.a and I.1.b above.⁴⁵²
- As part of its Watershed Urban Runoff Management Program Annual Reports, each watershed group of Copermittees (as identified in Table 4) *shall report* on its Watershed Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of section I.2.a and I.2.b above.⁴⁵³

The annual reports for the JURMP and WURMP are governed by Part J.3. of the test claim permit, which generally requires the copermittees to submit detailed annual reports comprehensively describing all their efforts to meet the JURMP and WURMP requirements, including reporting the assessment of the effectiveness of these

⁴⁵¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 61.

⁴⁵² Exhibit A, Amended Test Claim Decision on Remand, pages 101, 147.

⁴⁵³ Exhibit A, Amended Test Claim Decision on Remand, pages 103, 149.

programs.⁴⁵⁴ The claimants only claimed Part J. of the test claim permit for street sweeping (J.3.a.(3)(c)(x.-xv.) and conveyance system cleaning (J.3.a.(3)(c)(iv.-viii.), which are discussed above. However, based on the Commission's approval of Parts I.1.c. and I.2.c. of the test claim permit, it is reimbursable to *include* in the annual reports the program effectiveness assessments for the JURMP and the WURMP.

There is no evidence in the record supporting any of the claimants' proposed reasonably necessary activities to comply with the mandate in Part I, so these requested activities and costs are denied. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandated activity in accordance with the Government Code and Commission's regulations.⁴⁵⁵ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation and if written must be signed under penalty of perjury by persons who are authorized and competent to do so.⁴⁵⁶

Accordingly, Section IV.A.2. of the Parameters and Guidelines authorizes one-time reimbursement to develop the Long Term Effectiveness Assessment as follows:

2. Long Term Effectiveness Assessment (Parts I.5 and the first sentence in Part L.1.):
 - a. Collaborate with the other Copermitees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermitees' 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 the test claim permit.
 - b. The LTEA shall be designed to address each of the objectives listed below, and to serve as a basis for the Copermitees' Report of Waste Discharge (ROWD) for the next permit cycle:
 - Assessment of watershed health and identification of water quality issues and concerns.
 - Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns.

⁴⁵⁴ Exhibit X (14), Test Claim, pages 324, 327 (Order No. R9-2007-0001, Part J.3.a.3.i., JURMP and J.3.b.2.m., WURMP).

⁴⁵⁵ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

⁴⁵⁶ California Code of Regulations, title 2, section 1187.5.

- Evaluation of the need to address additional pollutant sources not already included in Copermittee programs.
 - Assessment of progress in implementing Copermittee programs and activities.
 - Assessment of the effectiveness of Copermittee activities in addressing priority constituents and sources.
 - Assessment of changes in discharge and receiving water quality.
 - Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality.
 - Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies.
- c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).
- d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10 percent reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80 percent confidence.
- e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.

Section IV.B.4. of the Parameters and Guidelines identifies the annual program effectiveness assessments of the JURMP and WURMP as follows:

4. Program Effectiveness Assessments (Parts I.1., I.2.)
- a. Annual Effectiveness Assessment of Jurisdictional Urban Runoff Management Program (Part I.1.)
1. Each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
- (i) Specifically assess the effectiveness of each of the following:

- Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;
 - .Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge Detection and Elimination, and Education); and
 - Implementation of the Jurisdictional Urban Runoff Management Program as a whole.
- (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items listed above.
- (iii) Utilize outcome levels 1-6, as defined in Attachment C to Order No. R9-2007-0001, to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.
- (iv) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.
- (v) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, as defined in Attachment C of Order No. R9-2007-0001, where applicable and feasible.
2. Based on the results of the effectiveness assessment, each Copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The Copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each copermittee shall *include* in the Jurisdictional Urban Runoff Management Program Annual Report due September 30, 2008,

and every September 30 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

- b. Annual Effectiveness Assessment of the Watershed Urban Runoff Management Program Watershed (Part I.2.)
 1. Each watershed group of Copermitttees identified in Table 4 of the test claim permit shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
 - (i) Specifically assess the effectiveness of each of the following:
 - Each Watershed Water Quality Activity implemented;
 - Each Watershed Education Activity implemented; and
 - Implementation of the Watershed Urban Runoff Management Program as a whole.
 - (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items that are part of the WURMP listed above.
 - (iii) Utilize outcome levels 1-6 to assess the effectiveness of each Watershed Water Quality Activity implemented and each Watershed Education Activity implemented, where applicable and feasible.
 - (iv) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
 - (v) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban Runoff Management Program implementation on the high priority water quality problem(s) within the watershed.
 - (vi) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items that are part of the WURMP listed above, where applicable and feasible.
 - (vii) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.

2. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each watershed group of Copermittees shall *include* in the Watershed Urban Runoff Management Program Annual Report January 31, 2009 and every January 31 thereafter, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

Reimbursement is not required to conduct the annual effectiveness assessment of the Regional Urban Runoff Management Program.

6. The Commission Has No Authority to Approve Reimbursement for Interest and Legal and Expert Costs in These Parameters and Guidelines as Requested by the Claimants.

The claimants request reimbursement for any owed interest from the reimbursements, as well as recoverable legal and expert costs to process the Test Claim.⁴⁵⁷ This request is denied.

⁴⁵⁷ Exhibit H, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 11; Exhibit M, Claimants' Rebuttal Comments, pages 15, 20.

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or Constitution.⁴⁵⁸

While article XIII B, section 6 and Government Code section 17514 require reimbursement for all costs mandated by the state to comply with the state-mandated program, the Commission has no authority to approve reimbursement for interest. Government Code 17561.5 only authorizes reimbursement for interest if the Controller's payment of the claim is made more than 365 days after adoption of the statewide cost estimate:

The payment of an initial reimbursement claim by the Controller shall include accrued interest at the Pooled Money Investment Account rate, if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim. Interest shall begin to accrue as of the 366th day after adoption of the statewide cost estimate for the initial claim. Payment of a subsequent claim that was reported to the Legislature pursuant to paragraph (2) of subdivision (b) of Section 17562 shall include accrued interest at the Pooled Money Investment Account rate for any unpaid amount remaining on August 15 following the filing deadline. Interest shall begin to accrue on August 16 following the filing deadline.

In addition, the Commission previously approved the *Mandate Reimbursement Process I and II* programs authorizing reimbursement for "[a]ll costs incurred by local agencies and school districts in preparing and presenting successful test claims . . . [including] the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs."⁴⁵⁹ However, the Legislature has suspended that program for many years pursuant to Government Code section 17581, assigning a zero dollar appropriation for the program and making it voluntary during the suspended budget years.⁴⁶⁰ Thus, there are no costs mandated by the state for expert or legal costs to file a successful test claim during the years the program is suspended.

⁴⁵⁸ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

⁴⁵⁹ Exhibit X (2), Commission on State Mandates, Parameters and Guidelines Amendment, *Mandate Reimbursement Process I and II* (CSM 4204, 4485, 05-TC-05, 12-PGA-03), adopted May 24, 2013, <https://www.csm.ca.gov/decisions/052813a.pdf>.

⁴⁶⁰ Statutes 2007, chapter 171 (SB 77), line item 8885-295-0001, schedule 3 (y), suspending the program for fiscal year 2007-2008, when the Test Claim was filed. The suspension continues today; see, Statutes 2024, chapter 22 (AB 107), line item 8885-295-0001, schedule 5 (aa), (bb). The suspension process in Government Code section 17581 has been upheld by the courts and determined constitutional. *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287.

Accordingly, the Commission has no authority to approve reimbursement for interest and legal and expert costs in these Parameters and Guidelines as requested by the claimants.

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

1. Training

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement. Training costs are included in Section V.6. because, as indicated above, the state-mandated activities include training. Accordingly, Section V.6. on Training provides:

Report the cost of training an employee as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

2. Travel

In addition, Part E.2 (Watershed Urban Runoff Management Program) also mandates that the collaboration with other copermittees within its Watershed Management Area, “with frequent regularly scheduled meetings.”⁴⁶¹ And other parts require copermittee collaboration. Thus, Section V.4. identifies the direct costs for travel as follows:

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

All other direct costs identified in the boilerplate language of Section V. of the Parameters and Guidelines are reimbursable as specified.

⁴⁶¹ Exhibit X (14), Test Claim, page 146, (Order No. R9-2007-0001, Part E.2.g.).

E. The Claimants' Reasonable Reimbursement Methodologies (RRMs) Proposed in Lieu of Supporting Their Claims with Documentation of Actual Costs Are Not Supported by Substantial Evidence or Evidence that the Proposals Reasonably Represent Only the Costs Mandated by the State for All Eligible Claimants to Comply with the Higher Levels of Service Approved by the Commission.

Government Code section 17561 provides that the state shall reimburse each local agency for all costs mandated by the state and that payment of the claim is subject to the Controller's audit of the records of any local agency "to verify the actual amount of the mandated costs."⁴⁶² The Controller may reduce any claim the Controller determines is excessive or unreasonable.⁴⁶³

Government Code section 17557(b) provides that "[i]n adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology," or RRM. An RRM, as defined in Government Code section 17518.5, is generally a formula or unit cost adopted by the Commission for the reimbursement of an approved activity, so that the claimants do not need to provide detailed documentation of the actual costs to the State Controller's Office for its review and audit of the claimants' reimbursement claims. Rather, the Controller simply reviews the claimant's application of the RRM to the costs claimed.⁴⁶⁴ Government Code section 17518.5 states the following:

- (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.
- (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.
- (d) Whenever 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. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may

⁴⁶² Government Code section 17561(d)(1)(C).

⁴⁶³ Government Code section 17561(d)(1)(C).

⁴⁶⁴ Government Code section 17561(d)(2).

consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(e) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.

(f) This section shall become operative on July 1, 2019.

The Commission has approved RRM's in the past under earlier versions of the Government Code and Commission regulations for ongoing reimbursable costs. For example, in 2011, the Commission approved a unit cost and formula RRM in *Municipal Storm Water and Urban Runoff Discharges* (03-TC-04, 03-TC-20, 03-TC-21) to reimburse eligible claimants for the ongoing activity to maintain trash receptacles at \$6.74 for each trash collection or pickup, multiplied by the annual number of trash collections, subject to the limitation of no more than three pickups per week. This RRM was based on declarations filed by the claimants, sworn testimony, and other supporting information including contracts and surveys.⁴⁶⁵

In 2015, the Commission approved a unit cost RRM in an amendment to the Parameters and Guidelines for the *Immunization Records – Pertussis* program (14-PGA-01 (11-TC-02)). That program reimburses school districts to verify whether pupils entering the 7th through 12th grades are fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. The unit cost RRM of \$9.17 per eligible pupil was adopted for claims going forward, based on the weighted average of costs clearly identified and already claimed in initial reimbursement claims filed with the State Controller's Office and signed under penalty of perjury, less any outliers that were identified, and the costs were supported by a declaration from the Controller's Office and CDE enrollment data.⁴⁶⁶

The Commission has also denied proposed unit cost RRM's when the proposal was based solely on survey or time study responses, which are considered hearsay. For

⁴⁶⁵ Exhibit X (3), Commission on State Mandates, Parameters and Guidelines, *Municipal Storm Water and Urban Runoff Discharges* (03-TC-04, 03-TC-20, 03-TC-21), adopted March 24, 2011, <https://www.csm.ca.gov/decisions/033011c.pdf>.

⁴⁶⁶ Exhibit X (1), Commission on State Mandates, Parameters and Guidelines Amendment, *Immunization Records – Pertussis* (14-PGA-01 (11-TC-02)), adopted September 25, 2015, <https://www.csm.ca.gov/decisions/doc25.pdf>.

example, in 2012, the Commission considered a proposed unit cost RRM in *Voter Identification Procedures* (03-TC-23).⁴⁶⁷ The test claim statute requires the elections official to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration and if the signatures do not compare, to reject the provisional ballot. The test claimant proposed a unit cost RRM of 1.88 minutes per provisional ballot, determined from "various survey data and time study data" from counties, multiplied by average salaries of employees, and then adjusted each year by the Implicit Price Deflator. The Commission did not adopt the RRM because the county responses identified in the spreadsheets of survey responses were out-of-court hearsay statements that were *not* provided under oath or affirmation from the responder. Under the Commission's regulations, hearsay evidence is not sufficient itself to support a finding unless the evidence is admissible under a hearsay exception, but may only be used to supplement or explain other evidence.⁴⁶⁸ Also, it was also not clear from the record and there was no direct evidence explaining if the reported times in the spreadsheet to comply with the mandate were estimated by counties or were recorded as the actual time to check a signature on a provisional ballot during an election. If the times were estimated, there was no indication how time was estimated or who performed the estimate. Thus, the adopted Parameters and Guidelines required the claimants to submit reimbursement claims with the State Controller's Office based on a showing of actual costs incurred.⁴⁶⁹

In this case, the claimants seek RRMs in the form of several formulas and unit costs for the ongoing activities, which if adopted, would provide reimbursement estimated at over \$252 million, as alleged by the claimants. The proposal does *not* take into account offsetting revenues, so to the extent the claimants used funds that are *not* their proceeds of taxes on the reimbursable activities (i.e., revenue from fees or assessments, grant funding), those revenues would have to be deducted from the costs claimed under any approved RRM and the Controller could audit the reimbursement claims for this purpose.

The claimants developed the proposals by hiring John Quenzer, a principal scientist at D-Max Engineering, Inc. to evaluate the following data relating to the test claim permit: 2011 county surveys, declarations from copermitees, JURMP annual reports, WQIP annual reports, WURMP annual reports, county fiscal analysis documents, MOUs, county watershed workgroup expenditure records, regional cost sharing documentation,

⁴⁶⁷ Exhibit X (4), Commission on State Mandates, Adopted Final Staff Analysis, Proposed Parameters and Guidelines, *Voter Identification Procedures* (03-TC-23); Minutes of the March 23, 2012 Commission hearing.

⁴⁶⁸ California Code of Regulations, title 2, section 1187.5.

⁴⁶⁹ Exhibit X (4), Commission on State Mandates, Adopted Final Staff Analysis, Proposed Parameters and Guidelines, *Voter Identification Procedures* (03-TC-23); Minutes of the March 23, 2012 Commission hearing.

and “D-Max proposal records relating to JRMP annual reporting services (‘D-Max Files’).”⁴⁷⁰ Mr. Quenzer is a certified professional in stormwater quality and stormwater pollution prevention planning, has focused on stormwater management for municipal agencies within San Diego County, and has worked to implement the test claim permit.⁴⁷¹ The claimants provide Mr. Quenzer’s declarations,⁴⁷² and those of County employee Lara Barrett,⁴⁷³ along with 14 volumes of documentation to support the proposed RRM.⁴⁷⁴

Both the State Water Boards and the Department of Finance oppose the RRM proposals.⁴⁷⁵

As explained below, the Commission finds that the proposed RRMs are not supported by substantial evidence or evidence that the proposals reasonably represent the costs mandated by the state for all eligible claimants to comply only with the higher levels of service. Section IV. of the Parameters and Guidelines therefore includes the following boilerplate language:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in

⁴⁷⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 4, 32.

⁴⁷¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 32.

⁴⁷² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 32-49 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 52-102 (Quenzer Declaration).

⁴⁷³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 27-31 (Barrett Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 21-22 (Barrett Declaration).

⁴⁷⁴ Exhibit M, Claimants’ Rebuttal Comments, pages 52-102 (Quenzer Declaration). Exhibit I (1-14), Claimants’ Supporting Documentation for Proposed RRMs.

⁴⁷⁵ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs. Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs.

question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

And Section VI. of the Parameters and Guidelines, Record Retention, requires the claimants to retain their documentation of actual costs incurred during the period subject to the Controller's review and audit.

1. The Legal Requirements for an RRM.

- a. The RRM shall consider the variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse eligible claimants for the actual costs mandated by the state.

Article XIII B, section 6 provides: "[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...." This reimbursement obligation was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."⁴⁷⁶ Government Code section 17561(a) states: "[t]he state *shall* reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514."⁴⁷⁷ The courts have interpreted the Constitutional and statutory scheme as requiring "full" payment of the actual costs incurred by a local entity once a reimbursable state mandate is determined by the Commission.⁴⁷⁸

⁴⁷⁶ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, footnote 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

⁴⁷⁷ Emphasis added.

⁴⁷⁸ *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the

The statute providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6, and thus any RRM approved by the Commission must reasonably represent the actual costs mandated by the state for all eligible claimants to comply with the new programs or higher levels of service approved by the Commission.⁴⁷⁹

In a 2007 report, the Legislative Analyst's Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the Controller's audit reductions. The report identifies, under the heading "Concerns With the Mandate Process," the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or "parameters and guidelines") typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller's Office.⁴⁸⁰

The LAO's recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute.⁴⁸¹

goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in "increased actual expenditures." The court further noted the statutory mandates process that refers to the reimbursement of "actual costs incurred."

See also, Government Code sections 17522 defining "annual reimbursement claim" to mean a claim for "actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller's audit to verify the "actual amount of the mandated costs."

⁴⁷⁹ Government Code sections 17500, et seq.

⁴⁸⁰ Exhibit X (9), Office of the Legislative Analyst, "State-Local Working Group Proposal to Improve the Mandate Process," June 21, 2007, pages 2-3.

⁴⁸¹ Exhibit X (9), Office of the Legislative Analyst, "State-Local Working Group Proposal to Improve the Mandate Process," June 21, 2007, page 3.

Thus, Government Code section 17518.5 was enacted to provide a flexible definition of an RRM 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.”⁴⁸²

As noted above, an RRM “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 other local costs.”⁴⁸³ The statute does not provide for a minimum number of claimants to constitute a representative sample. However, the regulations provide that a “representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”⁴⁸⁴

In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.⁴⁸⁵ “Costs to implement the mandate in a cost-efficient manner” is defined in the Commission’s regulations to “include 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 1183.7(d) of these regulations.”⁴⁸⁶

In this case, there is no evidence supporting the proposed reasonably necessary activities. Thus, any RRM approved must be limited to the activities mandated by the test claim permit and approved by the Commission as stated in the sections above.

Government Code section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity.*”

By determining a unit cost RRM based on approximations or averages of local costs pursuant to section 17518.5, some local entities may receive more than their actual costs incurred to comply with a state-mandated program and some may receive less. Therefore, for any given program with a unit cost, there may be some entities that are not reimbursed the full costs actually incurred, as the courts have determined is required by article XIII B, section 6. Nevertheless, the Legislature has the power to enact statutes, such as Government Code section 17518.5, that provide “reasonable”

⁴⁸² Government Code section 17518.5(d).

⁴⁸³ Government Code section 17518.5(b).

⁴⁸⁴ California Code of Regulations, title 2, section 1183.10(b)(2).

⁴⁸⁵ Government Code section 17518.5(c).

⁴⁸⁶ California Code of Regulations, title 2, section 1183.10(b)(1).

regulation and control of the rights granted under the Constitution.⁴⁸⁷ The Commission must presume that Government Code section 17518.5 is constitutionally valid.⁴⁸⁸ Additionally, the Commission has the duty to apply Government Code section 17518.5 in a constitutional manner. If the Commission approves a unit cost that does not comply with the requirements of section 17518.5 and does not represent a reasonable approximation of the actual costs mandated by the state, then the Commission's decision could be determined unconstitutional and invalid by the courts.

Accordingly, the substantive requirements to adopt an RRM are to consider the variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants the costs mandated by the state to comply with the higher levels of service approved by the Commission.

b. The RRM must be based on substantial evidence in the record.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, "to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence."⁴⁸⁹ Section 1094.5 states that "abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record." And the Commission's regulations require: "If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations."⁴⁹⁰

The evidence required to adopt an RRM is necessarily more relaxed than an actual cost reimbursement methodology.⁴⁹¹ However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission's findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.⁴⁹² Thus, the plain language of the statutory mandates scheme requires substantial evidence in the record to adopt an RRM.

⁴⁸⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 493.

⁴⁸⁸ California Constitution, article III, section 3.5.

⁴⁸⁹ Government Code section 17559(b) (Stats. 1999, ch. 643).

⁴⁹⁰ California Code of Regulations, title 2, section 1183.12.

⁴⁹¹ See Government Code section 17518.5 that employs, for example, the terms "projections" and "approximations."

⁴⁹² *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

The Commission is not required to observe strict evidentiary rules, but its decisions cannot be based on hearsay evidence alone. The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.⁴⁹³

The Commission's regulations provide that when exercising its quasi-judicial functions, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."⁴⁹⁴ This regulation is borrowed from the Administrative Procedures Act (APA), which contains substantially the same language.⁴⁹⁵ The Commission's regulation also require oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury

⁴⁹³ *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. The board based its denial of land use permit for a race track on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to "reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." *Id.* page 456.

⁴⁹⁴ California Code of Regulations, title 2, section 1187.5(a).

⁴⁹⁵ Government Code section 11513.

by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.⁴⁹⁶

Both the Commission's regulations and the APA provisions in the Government Code provide that hearsay evidence is admissible if it is inherently reliable, but *will not be sufficient in itself* to support a finding unless the evidence would be admissible over objection in a civil case with a hearsay exception.⁴⁹⁷ Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence.⁴⁹⁸

Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated.⁴⁹⁹ Under the evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination.⁵⁰⁰ However, under the relaxed rules of evidence in the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁵⁰¹

Out-of-court statements that are *not* made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence alone cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁵⁰² There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁵⁰³

⁴⁹⁶ California Code of Regulations, title 2, section 1187.5(c).

⁴⁹⁷ California Code of Regulations, title 2, section 1187.5; Government Code section 11513.

⁴⁹⁸ California Code of Regulations, title 2, section 1187.5.

⁴⁹⁹ Evidence Code section 1200(a). "Statement" is defined in Evidence Code section 225(a) as "oral or written verbal expression."

⁵⁰⁰ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁵⁰¹ California Code of Regulations, title 2, section 1187.5.

⁵⁰² *People v. Cudjo* (1993) 6 Cal.4th 585; *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁵⁰³ See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

In addition, the Commission may take official notice of any facts which may be judicially noticed by the courts.⁵⁰⁴ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.

The Commission's regulations further provide that each party has the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing witnesses, and "[i]f declarations are to be used in lieu of testimony, the party proposing to use the declarations shall comply with Government Code section 11514."⁵⁰⁵ Government Code section 11514, in turn, provides:

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, *shall be given the same effect as if the affiant had testified orally*. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.⁵⁰⁶

Note that the Commission's regulations use the word "declaration," and the Government Code refers to an "affidavit." An affidavit, by definition, if it is to be used before a court, must "be taken before any officer authorized to administer oaths," usually a judge.⁵⁰⁷ But under the Code of Civil Procedure, section 2015.5, a declaration made *under penalty of perjury* is given the same force and effect as an affidavit sworn before an authorized officer. Such declaration must be in writing, must be "subscribed by him or her," and must name the date and place of execution.⁵⁰⁸

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge:

⁵⁰⁴ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

⁵⁰⁵ California Code of Regulations, title 2, section 1187.5.

⁵⁰⁶ Government Code section 11514(a), emphasis added.

⁵⁰⁷ Code of Civil Procedure section 2012.

⁵⁰⁸ Code of Civil Procedure section 2015.5.

- Commission decisions must be supported by “substantial evidence” under Government Code section 17559.
- Any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely. Oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant’s personal knowledge, information, or belief.⁵⁰⁹
- Hearsay evidence may be used to supplement or explain, although it shall not be sufficient alone to support a finding unless admissible over objection in civil actions.⁵¹⁰
- Under Government Code section 11514, as referenced in the Commission’s regulations, an affidavit or declaration may be “given the same effect as if the affiant had testified orally,” if properly noticed and an opportunity to cross-examine the affiant is given.⁵¹¹
- The Commission may take official notice of any facts which may be judicially noticed by the courts, including official acts of any legislative, executive, or judicial body and records of the court.⁵¹²
- Furthermore, surveys and other cost analyses of eligible claimants as a method of gathering cost data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission’s regulations and the evidence rules, as discussed above.⁵¹³

⁵⁰⁹ California Code of Regulations, title 2, section 1187.5.

⁵¹⁰ California Code of Regulations, title 2, section 1187.5.

⁵¹¹ California Code of Regulations, title 2, section 1187.5.

⁵¹² California Code of Regulations, title 2, section 1187.5; Government Code section 11515.

⁵¹³ Government Code section 17518.5; California Code of Regulations, title 2, sections 1183.10(b), 1187.5.

2. The Proposed RRMs Are Not Supported by Substantial Evidence Showing they Reasonably Represent the Costs Mandated by the State to with the Higher Levels of Service.

- a. The proposed unit cost RRMs for annual reporting on street sweeping and conveyance system inspections and cleaning is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher level of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for annual reporting on street sweeping and conveyance system inspection and cleaning. This involves reporting certain information in the JURMP Annual Reports regarding each jurisdiction's sweeping (including miles swept and tons of trash collected), cleaning activities (including miles cleaned and tons of trash collected), and inspection activities (including the number of catch basins and inlets inspected, the distance of the MS4 inspected, and identification of any MS4 facility found to require inspection less than annually following two years of inspection) as required by Permit Parts J.3.a.(3)(c)(x.-xv) and J.3.a(3)(c)(iv.-viii.). The first report was due September 30, 2008, covering the information reported from July 1, 2007 to June 30, 2008, and every September 30 thereafter for the prior fiscal year.⁵¹⁴ As indicated above, the first report due September 30, 2008, may only cover a three and a half month time period from March 2008 through June 30, 2008, for the information reported about street sweeping and conveyance system cleaning since implementing those new activities was delayed until no later than March 24, 2008. However, the information required to be reported on conveyance system *inspections* would address the entire 2007-2008 fiscal year, since the inspections were not new.

The claimants propose an RRM where each Municipal Claimant would be entitled to claim \$5,784.85 adjusted annually by the Consumer Price Index (CPI) "for each of the six-and-a-half-years Conveyance Reporting Cost was required" and \$6,143.67 adjusted annually for CPI for "each of the six and- a-half-years for Sweeping Reporting Cost was required."⁵¹⁵ This totals \$87,247.59 per claimant, or an estimated \$1,657,704.21 for all eligible claimants to comply with the requirement to report on street sweeping and conveyance system cleaning from "FY 2006/2007 through FY2012/2013."⁵¹⁶ In

⁵¹⁴ Exhibit X (14), Test Claim, page 319 (Order No. R9-2007-0001, Parts J.3.a., J.3.a.2.).

⁵¹⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 36 (Quenzer Declaration). Exhibit M, Claimants' Rebuttal Comments, pages 58-59 (Quenzer Declaration).

⁵¹⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 35 (Quenzer Declaration).

response to comments from the state agencies, the claimants revised their time period to fiscal year 2007-2008 through fiscal year 2012-2013.⁵¹⁷

The claimants state the “Conveyance Reporting Cost standard unit cost represents the median of the permittee’s average annual conveyance system cleaning reported costs between FY 2007/2008 to FY 2009/2010 as reported by the Co-Permittees in submitted 2011 Co-Permittee Surveys focused on conveyance system cleaning located in Vol. 1, pp. 22-239 and the County 2011 County Survey 2 attached and authenticated in the Barrett Declaration” and was “selected as a representative value for a standard unit cost for this unfunded mandate as it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittees.”⁵¹⁸

Similarly, the claimants state the following:

The standard unit cost for Sweeping Reporting Cost represents the median of the permittee’s average annual reporting costs to cover street sweeping reporting between FY 2007/2008 to FY 2009/2010 as reported by the subset of Co-Permittees that prepared and submitted 2011 Co-Permittee Surveys focused on street sweeping located in Vol. 1, pp. 240-376. [Fn. omitted.] The median was selected as a representative value for a standard unit cost for this unfunded mandate as it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittee.⁵¹⁹

The declaration of Mr. Quenzer filed by the claimants also states that the proposal is consistent with an “NPDES Stormwater Cost Survey Final Report from January 2005” as follows:

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”).⁵²⁰

The Water Boards contend that the 2011 survey does not support an accurate or verifiable approximation of local costs since 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

⁵¹⁷ Exhibit M, Claimants’ Rebuttal Comments, pages 6-7, 59 (Quenzer Declaration).

⁵¹⁸ Exhibit M, Claimants’ Rebuttal Comments, page 7, 21-22 (Barrett Declaration), 58 (Quenzer Declaration).

⁵¹⁹ Exhibit M, Claimants’ Rebuttal Comments, page 7.

⁵²⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 35 (Quenzer declaration).

that can be relied upon as accurate and verifiable.⁵²¹ The Water Boards also argue that the proposed RRM is overbroad since the first annual JURMP report was not due until the 2008-2009 fiscal year.⁵²² In addition, the Water Boards assert that the claimants were not required to start implementing the 2007 Order required activities until near the end of the second half of fiscal year 2007/2008 or nine months from the start of fiscal year 2007/2008, and that the claimants did not begin fully implementing the 2007 Order activities until fiscal year 2008-2009 or July 1, 2008, through June 30, 2009.⁵²³ The Water Boards further object to the use of the 2005 State Cost Survey, since that survey is not representative of local costs and does not represent local agency stormwater budgets as follows:

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. [Fn. omitted.] 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: [Fn. omitted.]

"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:

⁵²¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 9.

⁵²² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 36, 42.

⁵²³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 38, 42-43.

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.⁵²⁴

The Commission finds that the claimants' proposed RRM is overbroad and not limited to the mandated activities, and there is no evidence that the proposed unit costs are limited to the activities the Commission approved for reimbursement or those reasonably necessary to comply with the mandate, as required.⁵²⁵

As indicated above, the proposed unit cost RRM of \$5,784.85 each year per eligible claimant to comply with the conveyance system reporting requirements is based on "the median of the permittee's average annual conveyance system cleaning reported costs between FY 2007/2008 to FY 2009/2010 as reported by the Co-Permittees in submitted 2011 Co-Permittee Surveys."⁵²⁶ There are several legal issues with the survey and the survey responses. First, the proposal includes costs that are *not* eligible for reimbursement. The mandate to report first started in fiscal year 2008-2009, with the first JURMP annual report due September 30, 2008; yet the survey and survey responses include reporting costs for fiscal year 2007-2008. Including fiscal year 2007-2008 reporting costs in the calculation of the proposed unit cost is incorrect as a matter of law and would include costs to comply with the prior 2001 permit, which are not reimbursable.

The survey instructions and responses also appear to include costs for proposed reasonably necessary activities that have not been supported by substantial evidence explaining why the activities and costs are necessary to comply with the mandated higher level of service and have been denied as explained in the sections above. These include developing policies and procedures, or developing, updating and implementing data tracking and analysis methods and procedures for reports to the Regional Board.⁵²⁷ The 2011 permittee surveys collected cost information on these activities, as noted in the following survey instruction on reporting:

⁵²⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 85.

⁵²⁵ California Code of Regulations, title 2, section 1183.10(b).

⁵²⁶ Exhibit M, Claimants' Rebuttal Comments, pages 7 and 21-22 (Barrett Declaration).

⁵²⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 36, 37, 40-41.

Note 8 (reporting). Generally includes (1) Reporting and tracking policies and procedures, (2) data tracking and analysis, (3) report writing, and (4) associated supervision and management.⁵²⁸

The survey instructions and responses also include costs for training,⁵²⁹ which was not approved as a reimbursable state mandated activity, and for conducting conveyance system inspections as follows:

Note 1 (Conveyance System Inspection and Related Costs). Please report only the portion of costs allocated to conveyance system inspection or related functions. If these costs are intermingled with cleaning-related costs, please estimate the proportion allocated to inspection functions, and describe the assumptions used to derive this estimate under "Source of Information" (see Note 6)⁵³⁰

Conducting conveyance system inspections were expressly denied in the Test Claim Decision; the mandate is limited to *reporting* the information from those inspections.⁵³¹ It is not clear from the record if the non-reimbursable costs were included in the calculation of the proposed unit cost for reporting.

Moreover, the survey instructions also state: "**Note 6 (Source of Information)**. Please indicate the documents and assumptions used for reported costs. Also document any assumptions used to derive the reported values."⁵³² Yet, in some responses, the source of information in Note 6 of the survey form was left blank.⁵³³ In others, the response is not clear. For example, in one response, the source of information for reporting, which was reported as costing \$30,294 and does not include supervision and management, was described based on an estimate of time spent on maintenance of data management and reporting as follows:

One Public Works Specialist dedicated to storm drain inspection and maintenance data management and reporting. Estimated 20% time for inspections, 80% for maintenance. Based on 1,800 working hours per

⁵²⁸ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 24.

⁵²⁹ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 41.

⁵³⁰ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 24; see also, for example, pages 26, 54.

⁵³¹ Exhibit A, Amended Test Claim Decision on Remand, pages 70-72.

⁵³² Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 25.

⁵³³ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 31, 126.

year. Rates from Fully Allocated Hourly Rates minus Maintenance and Operation.⁵³⁴

It is not clear from this response if the permittee was claiming all of maintenance data management and reporting costs (representing 80 percent of that person's time), or only the pro rata share representing the mandated higher level of service here, which is limited to reporting specified information about conveyance system cleaning and inspections. Other responses to that question indicated "Approximately 8 hours per year in a year composed of approximately 1,992 hours" spent on reporting and another estimated 16 hours.⁵³⁵ Similarly, other responses include "Supervisor used work order assignments from past years to calculate along with Best Professional Judgement [sic] for information not recorded or easily available."⁵³⁶ Thus, there's no indication in these responses that only the pro rata portion of the reporting information approved as a reimbursable is captured in the survey data, or that the median cost reasonably represents the actual costs mandated by the state. The RRM is required to consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.⁵³⁷ "Costs to implement the mandate in a cost-efficient manner" is defined in the Commission's regulations to "include 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 1183.7(d) of these regulations."⁵³⁸

Similar problems occur with street sweeping reporting. The claimants allege "[t]he standard unit cost for Sweeping Reporting Cost represents the median of the permittee's average annual reporting costs to cover street sweeping reporting between FY 2007/2008 to FY 2009/2010 as reported by the subset of Co-Permittees that prepared and submitted 2011 Co-Permittee Surveys focused on street sweeping located in Vol. 1, pp. 240-376. [Fn. omitted.]"⁵³⁹ The mandate to report first started in fiscal year 2008-2009, with the first JURMP annual report due September 30, 2008; yet the survey and survey responses include reporting costs for fiscal year 2007-2008, which are not reimbursable. The instructions for the 2011 permittee surveys also

⁵³⁴ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 41.

⁵³⁵ See for example, Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 59, 149.

⁵³⁶ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 110.

⁵³⁷ Government Code section 17518.5(c).

⁵³⁸ California Code of Regulations, title 2, section 1183.10(b)(1).

⁵³⁹ Exhibit M, Claimants' Rebuttal Comments, page 7.

collected cost information on tracking policies and procedures,⁵⁴⁰ which is not reimbursable. In addition, the surveys collected cost information for implementing the street sweeping requirements, which is not reimbursable, and it is not clear from the record if the street sweeping costs were included in the calculation of the proposed unit cost for reporting.⁵⁴¹ Finally, the range of reporting costs identified in the survey responses varies widely, from a low of \$0 (with a note that the costs were included in supervision/management),⁵⁴² to \$138,⁵⁴³ to \$67,937.⁵⁴⁴ There is no indication that outlier reports of costs were eliminated from the calculation of unit costs, or whether the median amount proposed by the claimants reasonably represents the actual costs mandated by the state for all eligible claimants.

Moreover, as filed, the survey data identified by the claimant to develop the proposed unit cost cannot be considered evidence of either actual or estimated costs incurred by the eligible claimants to perform the mandated activity because the survey responses are hearsay. The responses are out-of-court statements that are *not* provided under oath or affirmation. The claimant is using the out-of-court responses to prove the truth of the matters asserted; i.e. that the surveys focused on conveyance system cleaning and street sweeping and “was selected as a representative value for a standard unit cost for this unfunded mandate.”⁵⁴⁵ For these reasons, the courts have held that survey data is hearsay and cannot be considered evidence unless a hearsay exception applies.⁵⁴⁶ But the surveys do not fall under the hearsay exception for records prepared in the normal course of business or official public records.⁵⁴⁷ The surveys, entitled

⁵⁴⁰ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 1 (2011 Permittee Survey), page 242.

⁵⁴¹ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 1 (2011 Permittee Survey), pages 241-242.

⁵⁴² Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 1 (2011 Permittee Survey), page 358.

⁵⁴³ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 1 (2011 Permittee Survey), page 312.

⁵⁴⁴ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 1 (2011 Permittee Survey), page 324.

⁵⁴⁵ Exhibit M, Claimants’ Rebuttal Comments, pages 7 and 21-22 (Barrett Declaration).

⁵⁴⁶ *People v. R.J. Reynolds Tobacco Co.* (2004) 116 Cal.App.4th 1253, 1269.

⁵⁴⁷ Evidence Code sections 1271, 1280.

“Reasonable Reimbursement Methodology Unit Cost Survey,” were prepared for the sole purpose of obtaining mandate reimbursement.⁵⁴⁸

Finally, the claimants opine that the total cost spent on reporting for each copermittée is comparable to the amounts reported in the NPDES Stormwater Cost Survey Final Report from January 2005 (“2005 State Survey”).⁵⁴⁹ However, the 2005 State Survey only surveyed six municipalities, one of which is an eligible claimant (Encinitas), and represents about five percent of all the eligible claimants here.⁵⁵⁰ The purpose of that survey was to determine total stormwater costs per household.⁵⁵¹ The report considered reporting as part of the overall stormwater management program, but there is no information in that survey about reporting the information required for street sweeping and conveyance system inspection and cleaning that represent the mandated higher level of service in this case. Moreover, Encinitas reported costs based on the prior 2001 San Diego County permit and not the 2007 test claim permit.⁵⁵² Thus, the 2005 survey is not relevant to the issues here.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM or that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants. With this record, the Commission cannot determine the reliability of the claimants’ numbers; including whether the costs used to calculate the proposed unit cost were incurred only for the reporting activity determined to be reimbursable by the Commission, or whether the proposed unit cost reasonably

⁵⁴⁸ Exhibit M, Claimants’ Rebuttal Comments, pages 7 and 21-22 (Barrett Declaration). Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), pages 23, 241.

⁵⁴⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 35 (Quenzer declaration).

⁵⁵⁰ Exhibit X (8), NPDES Stormwater Cost Survey, January 2005, pages 5-6. The surveyed local governments were Encinitas, Fremont, Santa Clarita, Corona, Sacramento, and the Fresno-Clovis metropolitan area.
https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

⁵⁵¹ Exhibit X (8), NPDES Stormwater Cost Survey, January 2005, pages 5-6. The surveyed local governments were Encinitas, Fremont, Santa Clarita, Corona, Sacramento, and the Fresno-Clovis metropolitan area.
https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

⁵⁵² Exhibit X (8), NPDES Stormwater Cost Survey, January 2005, page 33.
https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

represents the costs incurred by the claimants to comply with the mandate during the period of reimbursement. Thus, the Commission denies this proposal.

- b. The proposed unit cost RRMs for conveyance system cleaning is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for the following conveyance system cleaning activities:

Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:⁵⁵³

- i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc).
- ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which 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.
 - Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

The proposed RRM consists of unit costs (based on “reasonable values in 2007”) to clean one inlet or storm basin (\$150.66), one linear foot of pipe (\$6.77/ft.), and one linear foot of the channel (\$8.52/ft.); times the total number of inlets and storm basins, feet of channel cleaned, and feet of pipe cleaned; adjusted annually by the Consumer Price Index, for fiscal years 2007-2008 through 2014-2015.⁵⁵⁴ The claimants state that the following feet of structures and channels have been cleaned:

Fiscal Year	# MS4 Structures Cleaned (#S)	Linear ft of MS4 Pipe Cleaned (P)	Linear ft of MS4 Open Channel Cleaned (C)
FY 2006/2007	12092	131439.75	1553201.076
FY 2007/2008	41847	140301.15	485964.3222

⁵⁵³ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

⁵⁵⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 6-7; Exhibit M, Claimants’ Rebuttal Comments, pages 8, 61-62.

Fiscal Year	# MS4 Structures Cleaned (#S)	Linear ft of MS4 Pipe Cleaned (P)	Linear ft of MS4 Open Channel Cleaned (C)
FY 2008/2009	37227	106249.1	2016202.269
FY 2009/2010	34392	182277.3	1981611.457
FY 2010/2011	35260	142610.9	1955701.586
FY 2011/2012	54261	128042.25	1609647.248
FY 2012/2013	29820	142091.1	1620035.61
FY 2013/2014	38952	142091.1	1620035.61
FY 2014/2015	38952	142091.1	1620035.61 ⁵⁵⁵

The estimated total for conveyance system cleaning is over \$192.43 million,⁵⁵⁶ which is 76 percent of the total \$252 million estimated in the RRM proposal for the approved activities.

The claimants state that the unit costs are based on Mr. Quenzer's review of the County 2011 Co-Permittee Surveys and JRMP Annual Reports⁵⁵⁷ and the costs align with 2005 State Survey responses from the Cities of Santa Clarita and Corona:

The *Unit Costs* align with those found in the 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. 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 a weighted average of the 2007 (*Unit Cost*)P and 2007 (*Unit Cost*)C. Therefore, the 2005 State Survey supports that the Unit Costs are reasonable to apply to all Co-Permittees.⁵⁵⁸

The claimants further state that the reported costs are in the 2011 Co-Permittee Surveys, located in Vol. 1, pp. 22-239, 2010 Co-Permittee Declarations located in Vol. 1, pp. 377-743, data included JRMP Annual Reports located in Vols. 2-11, and the County 2011 County Survey 2 attached and authenticated in the Barrett Declaration. "Each Unit Cost is the median cost to clean during FY 2007/2008. The median was selected as a representative value for a standard unit cost for this unfunded mandate as

⁵⁵⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 38.

⁵⁵⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 37, emphasis added.

⁵⁵⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 36 (Quenzer Declaration).

⁵⁵⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 37.

it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittees.”⁵⁵⁹

The Water Boards oppose the RRM on the following grounds:

- The permit did not require claimants to fully implement conveyance system cleaning until March 24, 2008. Thus, for the majority of fiscal year 2007-2008 (75 percent), the claimants implemented the 2001 permit, and did not implement the test claim permit.⁵⁶⁰
- The Quenzer declaration includes a table of the storm drain inlets cleaned, which increased by 20,000 from 2010-2011 to 2011-2012, when the number of inlets would decrease based on the 2007 test claim permit’s reduction in cleaning. The Water Boards argue that claimants do not indicate whether their formula accounts for the permit’s debris volume or facility design criteria regarding which conveyances actually need to be cleaned.⁵⁶¹
- The information the claimants provided does not reflect an accurate or representative number of the total number of facilities cleaned. The claimants do not identify a process that affirms or demonstrates that they actually cleaned a facility as required by the test claim permit. Without indication that the facilities that were cleaned were *required* to be cleaned, the proposed RRM would overstate reimbursement amounts and potentially reimburse for cleaning that the test claim permit did not actually require due to the timing or debris criteria.⁵⁶²

The Commission finds that the proposed unit cost RRMs are not supported by substantial evidence in the record, and there is no evidence that the proposed unit costs reasonably represent the costs mandated by the state for all eligible claimants.

The claimants do not clearly indicate what costs are included in their three “unit costs” (i.e., cost to clean: (1) one inlet or storm basin, and (2) one linear foot of pipe, and (3) one linear foot of channel). However, if the proposal includes those costs alleged as reasonably necessary to comply with the mandate, which as stated in the sections above, included developing programs and policies and procedures, employee and vendor training, and installing signs and enforcing parking prohibitions in areas where conveyance system cleaning is scheduled, the proposal is overbroad and not limited to

⁵⁵⁹ Exhibit M, Claimants’ Rebuttal Comments, page 8.

⁵⁶⁰ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 44 (Technical Analysis).

⁵⁶¹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 46 (Technical Analysis).

⁵⁶² Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 48 (Technical Analysis).

the mandated costs.⁵⁶³ As discussed under Section IV. (reimbursable activities), reimbursement for these activities is denied since there is no evidence in the record that the claimants' proposed activities are reasonably necessary to implement the mandate. The 2011 survey instructions (upon which the claimants rely in part),⁵⁶⁴ tells the survey takers to exclude or not report on the following costs because they "will be claimed as actual costs:"

Costs Not Included. This RRM survey does not include the following costs: (1) reimbursable costs for parking signage and enforcement, which will be claimed as actual costs, (2) vehicle and equipment costs, which will be claimed as actual costs,⁵⁶⁵

This instruction, however, conflicts with the claimants' comments that parking signage and enforcement, vehicles and equipment, and vehicles and equipment maintenance are reasonably necessary activities that the proposed RRMs are presumably intended to reimburse.⁵⁶⁶

Similarly, the claimants were told in the survey instructions not to include open channels in their survey answers because they would also be claimed based on actual costs.⁵⁶⁷ Yet the claimants' proposed RRM includes a formula for cleaning open channels.⁵⁶⁸

And although the Commission denied reimbursement for annual inspections,⁵⁶⁹ and the claimants acknowledge that inspections are not reimbursable,⁵⁷⁰ the 2011 permittee survey on conveyance system cleaning asks the copermitees to include some inspection costs (for employee and vendor training, contract management and fuel) and

⁵⁶³ Exhibit B, Claimants' Proposed Parameters and Guidelines, pages 17-18.

⁵⁶⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 37 (Quenzer Declaration).

⁵⁶⁵ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), page 23.

⁵⁶⁶ Exhibit B, Claimants' Proposed Parameters and Guidelines, pages 19-20.

⁵⁶⁷ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), page 23.

⁵⁶⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 37 (Quenzer declaration).

⁵⁶⁹ Exhibit A, Amended Test Claim Decision on Remand, page 79.

⁵⁷⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 15.

cleaning costs in their survey responses, although inspections are tallied in a separate column from cleaning.⁵⁷¹

Thus, the 2011 copermitttee surveys do not support the claimants' proposed RRM, nor do they isolate only the pro rata higher levels of service.

The claimants also rely on declarations prepared in 2010, which identify costs associated with increased staffing and contract costs for conveyance system cleaning. For example, the first four declarations state:

- Section D.3.a.(3) of the 2007 Permit requires all municipal separate stormwater system ("MS4") facilities to be inspected annually, with high priority facilities being inspected between May and September. Because all inspected facilities must be cleaned in accordance with specific Permit requirements, the County has increased staffing of its MS4 operations and maintenance program for FY 2007-2008 by 2.64 staff years. The County's cost in FY 2007-2008 for an Equipment Operator is \$51 per hour. The increase in the County's staffing cost to comply with this mandated activity in FY 2007-2008 is \$237,592 and is expected to increase 4% in FY 2008-09 and each year thereafter.⁵⁷²
- Because all inspected facilities must be cleaned in accordance with specific Permit requirements, the City of Carlsbad has encumbered \$53,000 to pay for a contractor to provide these services for FY 2007-08. An additional \$3,000 is allocated for staff time to oversee these activities. These costs are expected to increase 4% in FY 2008-09 and each year thereafter.⁵⁷³
- Because all inspected facilities must be cleaned in accordance with specific Permit requirements, the City of Chula Vista has increased staffing of its MS4 operations and maintenance program for FY 2007-08 by 1.25 staff years and will need to increase staffing by another 8.75 staff years in 2008-09. The City of Chula Vista has procured two additional vacuum trucks and plans to purchase various other equipment necessary to meet the 2007 Permit conveyance system cleaning requirements in FY 2008-09. City of Chula Vista's additional conveyance system cleaning system inspection and cleaning costs in FY 2007-08 for staff and equipment is \$824,296.⁵⁷⁴
- Because all inspected facilities must be cleaned in accordance with specific Permit requirements, the increase in the City of Coronado's staffing costs to

⁵⁷¹ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 24.

⁵⁷² Exhibit X (14), Test Claim, pages 385-386 (Van Rhyn Declaration for San Diego County).

⁵⁷³ Exhibit X (14), Test Claim, page 404 (Pruim Declaration for Carlsbad).

⁵⁷⁴ Exhibit X (14), Test Claim, page 423 (Huth Declaration for Coronado).

comply with the mandated activity in FY 2007-08 is \$12,000, and is expected to increase 4% in FY 2008-09 and each year thereafter. Additionally, the City of Coronado will be contracting out a portion of its line cleaning beginning FY 2008-09; that contact cleaning cost is \$30,000 per year with an anticipated 4% increase each subsequent year.⁵⁷⁵

The remaining declarations state substantially the same thing, but with different costs.⁵⁷⁶ The declarations are signed under penalty of perjury, but they simply identify increased staffing costs for conveyance system cleaning as a whole. As indicated above, the test claim permit mandated a higher level of service to clean catch basins and storm drain inlets only when accumulated trash and debris is greater than 33 percent of design capacity; to clean any MS4 facilities designed to be self-cleaning immediately of any accumulated trash and debris; and to clean observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning. The information in the declarations is not limited to the scope of the mandated higher level of service.

The claimants also state they relied on data in the JRMP or JURMP Annual Reports (claimants use both acronyms), which they filed in nine volumes of documents (Vols. 2-11), amounting to 61,936 pages. The number of feet cleaned identified in the chart above may be in these annual reports, but that is not clear from the narrative. The claimants do not identify the pages or the data referred to in the annual reports for the calculation of the proposed unit cost RRM or feet cleaned, but are requesting reimbursement estimated at \$192 million for conveyance system cleaning. As the courts have held, "A party is required to support its argument with appropriate and page-specific references to the record; failure to do so effectively waives the argument."⁵⁷⁷ Thus, without specific references to the record, the Commission will not consider the JRMP annual reports for the conveyance system cleaning higher level of service activities. In any event, the claimants have pointed to no evidence to show that the feet cleaned in the chart above is limited to the mandated higher levels of service.

⁵⁷⁵ Exhibit X (14), Test Claim, page 441 (Huth Declaration for Coronado).

⁵⁷⁶ Exhibit X (14), Test Claim, pages 444-467 (DeStefano Declaration for Del Mar), 469-482 (Turner Declaration for El Cajon), 484-502 (Steenblock Declaration for Encinitas), 504-519 (Filar Declaration for Escondido) 521-534 (Keir Declaration for Imperial Beach), 536-552 (Tamimi Declaration for La Mesa), 554-572 (Long Declaration for Lemon Grove), 574-587 (Tipton Declaration for National City), 589-606 (Lashaie Declaration for Oceanside), 608-621 (Heinrichs Declaration for San Diego), 623-637 (St. Clair Declaration for San Marcos), 639-649 (Halbert Declaration for Santee), 651-668 (Coleman Declaration for Solana Beach), 670-684 (Bechter Declaration for Poway), 686-702 (Pierce Declaration for Vista).

⁵⁷⁷ *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.

Finally, the claimants' reliance on the 2005 State Survey is not relevant. That survey reflects only six municipalities surveyed, only one of which is an eligible claimant (Encinitas, representing about five percent of all the eligible claimants here), and that city was surveyed on a prior years' permit and not the permit containing the reimbursable higher levels of service at issue here.⁵⁷⁸

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM for the conveyance system cleaning activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit cost were incurred only for the higher levels of service here; or whether the proposed unit cost reasonably represents the costs incurred by the claimants to comply with the mandate during the period of reimbursement. Thus, the Commission denies this proposal.

- c. The proposed unit cost RRM for the JURMP educational component is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for the jurisdictional educational activities in the JURMP (including a residential educational program in Part D.5.b.3. at the jurisdictional level for educating residential, the general public, and school children). In addition, the collaboration required in Part D.5.b.3 (educating residential, the general public, and school children) is required by the first sentence in Part L.1. The Commission approved the requirements in Part L.1. for the copermittees to collaborate with all other copermittees to address *new* common issues, and to plan and coordinate the *newly* mandated activities.⁵⁷⁹ Part D.5.b.3. also requires the copermittees to “collaboratively conduct or participate in development and implementation of a plan to educate residential, general public and school children target communities.”⁵⁸⁰ Thus, the reimbursable activities in section IV. of the Parameters and Guidelines references both Part D.5.b.3. and the first sentence in Part L.1. As indicated above, implementation of the Education Component requirements of the JRUMP was delayed to no later than March 24, 2008.⁵⁸¹

The claimants propose two RRM formulae; one for the jurisdictional education program and one for the residential education program.

⁵⁷⁸ Exhibit X (8), NPDES Stormwater Cost Survey, January 2005, page 33. https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on Jan. 3, 2025).

⁵⁷⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

⁵⁸⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 82-83.

⁵⁸¹ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

The proposed RRM for the *jurisdictional education program* is calculated using the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015, which is 2.16 percent, times the Municipal Claimant's total stormwater budget each fiscal year, resulting in an estimated reimbursement of \$16,336,242.47.⁵⁸²

The claimants state:

The value of Education Costs was determined by compiling a dataset of the total stormwater expenditures as reported by a subset of Co-Permittees as education costs. The expenditures listed in the JRMP annual reports located in Vols. 2-11, the jurisdictional education program expenditures as reported in JRMP annual reports located in Vols. 2-11, WURMP Annual Reports located in Vol. 13 pp. 1-10,756, and D-Max Proposal Documents located in Vol. 14, pp. 8-189 were used to calculate the percentage of each years reported total stormwater expenditures each Co-Permittee spent on jurisdictional educational costs."⁵⁸³ The Quenzer declaration states "[t]he formula and components of the formula [for the jurisdictional education programs] were determined by reviewing the JRMP Annual Reports, WQIP Annual Reports, D-Max Files, and County Fiscal Analysis Documents."⁵⁸⁴

The Quenzer declaration further states the average percentage spent on education of 2.16 percent is reasonable based on: "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."⁵⁸⁵

For the *residential education program*, the proposal multiplies the actual annual shared costs for developing and implementing the program (called "County Education Costs"), times the claimant's proportional share of cost based on applicable MOUs.⁵⁸⁶ The

⁵⁸² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 39-40; Exhibit M, Claimants' Rebuttal Comments, page 66.

⁵⁸³ Exhibit M, Claimants' Rebuttal Comments, pages 9-10.

⁵⁸⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 38.

⁵⁸⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 40.

⁵⁸⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 39; see also, Exhibit M, Claimants' Rebuttal Comments, page 9, which states: "The yearly County Education Costs were reported in the Co-Permittee Declarations for FY 2007/2008 to FY 2011/2012 located in Vol. 1, pp.

claimants state the yearly program development and implementation costs are estimated as follows:

Fiscal Year	County Costs for Regional Residential Education Program Development and Implementation
FY 2007/2008	\$219,226.90
FY 2008/2009	\$438,452.75
FY 2009/2010	\$876,907.50
FY 2010/2011	\$920,752.90
FY 2011/2012	\$966,791.36
FY 2012/2013	\$138,040.00 ⁵⁸⁷

This brings the total estimated costs for developing and implementing the Residential Education Program to \$3,560,171.41. The formula and components of the formula were determined by reviewing the JRMP Annual Reports,⁵⁸⁸ WQIP Annual Reports,⁵⁸⁹ D-Max Files,⁵⁹⁰ and county fiscal analysis documents.”⁵⁹¹

377-743. [Fn. omitted.] For FY 2012/2013, the County Education Costs were determined by reviewing Regional Cost Sharing Documentation located in Vol. 13, pp. 10,917- 13,074. [Fn. omitted.] The data from both sources were summarized by year to calculate total annual regional education program development and implementation cost incurred by the Co-Permittees.”

⁵⁸⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 39; Exhibit M, Claimants’ Rebuttal Comments, pages 64-65.

⁵⁸⁸ Exhibit I (2-11), Claimants’ Supporting Documentation for Proposed RRM’s, Volumes 2-11.

⁵⁸⁹ Exhibit I (12), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 12 (Water Quality Improvement Project Reports).

⁵⁹⁰ Exhibit I (14), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 14 (Quenzer Resume, DMAX Files).

⁵⁹¹ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 13 (WURMP reports, County Records, MOUs), pages 10757-10784.

Based on these proposals, the claimants' total estimate for the educational program reimbursement is \$23.68 million.⁵⁹² In rebuttal comments, the claimants reduce a percentage of these costs based on when implementation was required to begin.⁵⁹³

The Water Boards oppose the RRM's on the following grounds:

- The claimants were not required to implement the educational component until March 24, 2008, before which they implemented the prior (2001) permit during all of 2006-2007 and 75 percent of 2007-2008.⁵⁹⁴ This also applies to the Regional Education Program in part F of the permit.⁵⁹⁵ The claimants' summary table does not prorate 25 percent of costs for 2007-2008.⁵⁹⁶
- Using each claimants' "total stormwater budget" contains costs that are not for mandated reimbursable activities, and costs already proposed for reimbursement for other mandated activities outside of the education component, so the RRM equation reflects reimbursing the same mandated activity, fully or partially, more than once.⁵⁹⁷
- Stormwater budgets vary broadly among claimants as to what is included. Annual reports under the test claim permit indicate stormwater budgets were inconsistently reported based on each claimant's interpretation of what to include in the fiscal analysis. This inconsistency among stormwater budgets has been an ongoing and long-standing concern for assessing MS4 permit annual reports statewide since 2005.⁵⁹⁸

⁵⁹² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, pages 7, 38 (Quenzer declaration).

⁵⁹³ Exhibit M, Claimants' Rebuttal Comments, page 65 (Quenzer Declaration).

⁵⁹⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 35, 51 (Technical Analysis).

⁵⁹⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 51 (Technical Analysis).

⁵⁹⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 35, 51 (Technical Analysis).

⁵⁹⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 49 (Technical Analysis).

⁵⁹⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 50 (Technical Analysis).

- The proposed RRM's do not subtract developing educational programs or calculate a pro rata adjustment for just the increased level of service.⁵⁹⁹
- The claimants do not address local variation in costs from one claimant to another. For example, a large jurisdiction may have a significant stormwater budget and a small jurisdiction may have a much smaller stormwater budget that will increase the total percent of a budget component across the board for all claimants and is not representative or reasonable.⁶⁰⁰
- The claimants request reimbursement for developing an educational program, but in the Draft Proposed Decision, staff found that (except in part D.5.(b)(3) for educating residential, general public, and school children target communities) only implementing but not developing education program was reimbursable and that costs for developing regional and jurisdictional programs were to be prorated for the higher level of service in the test claim permit. The claimants do not prorate these costs.⁶⁰¹
- The claimants do not indicate if the MOU cost share is implementing section F requirements (residential education program) which are not part of the reimbursable section D requirements.⁶⁰² The claimants do not differentiate between jurisdictional development and implementation costs from regional development and implementation costs. Regional educational programs were not a requirement of the reimbursable activities in Section D. of the test claim permit.⁶⁰³

The Commission finds that the proposed RRM's are not supported by substantial evidence in the record, nor is there evidence that the proposals reasonably reimburse all eligible claimants for the costs mandated by the state.

First, the claimants' proposal is not clear and appears to request reimbursement twice for the residential education program and collaboration component of the jurisdictional program to develop and implement a plan to educate residential, general public, and

⁵⁹⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 49-50 (Technical Analysis).

⁶⁰⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 50 (Technical Analysis).

⁶⁰¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 52-53 (Technical Analysis).

⁶⁰² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed Reasonable Reimbursement Methodology, page 53 (Technical Analysis).

⁶⁰³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 53 (Technical Analysis).

school children target communities. Those costs appear to be included in this proposal and also in separate RRM proposals for the residential education program in the RURMP and in Part L.1. for collaboration.

In addition, the residential education program is calculated based on “county education costs” (i.e., the table titled “County Costs for Regional Residential Education Program Development and Implementation”). There is no indication or evidence to show that those county costs are limited to the reimbursable state-mandated activities. Many activities addressing the jurisdictional residential education program were required by the prior permit.⁶⁰⁴

Moreover, the proposal for the jurisdictional education program, which uses the average percentage of the stormwater budget spent on yearly education costs, is too broad and would provide reimbursement beyond the scope of the higher level of service mandated here. “Yearly education costs” implies the claimants are using the entire yearly education budget in the calculation. However, as indicated in the Test Claim Decision, education programs for municipal departments and personnel, as well as for developers and construction site owners were also required under the prior permit and are not reimbursable.⁶⁰⁵ Only the pro rata direct costs of employees, materials and supplies, fixed assets (including computer equipment), training, and contracted services that relate directly to the state-mandated activities may be claimed. It is unknown what costs are included in “yearly education costs.” In addition, the Commission denied reimbursement for proposed reasonably necessary activities (including report writing, tracking policies and procedures, data tracking and analysis, and annual training for vendors) because the report writing activities are required by other portions of the permit and were not pled in the test claim, and there is no evidence in the record showing why the remaining activities are reasonably necessary to comply with the mandated higher level of service.

In addition, the claimants state “The value of Education Costs was determined by compiling a dataset of the total stormwater expenditures as reported by a subset of Co-Permittees as education costs.”⁶⁰⁶ However, the claimants do not identify which permittees make up the subset, so there is no way to check the costs included in their proposal.

The claimants state they relied on the following:

[T]he JRMP annual reports located in Vols. 2-11, the jurisdictional education program expenditures as reported in JRMP annual reports located in Vols. 2-11, WURMP Annual Reports located in Vol. 13 pp. 1-10,756, and D-Max Proposal Documents located in Vol. 14, pp. 8-189 . . .

⁶⁰⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 83.

⁶⁰⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 79-83.

⁶⁰⁶ Exhibit M, Claimants’ Rebuttal Comments, pages 9-10.

to calculate the percentage of each years reported total stormwater expenditures each Co-Permittee spent on jurisdictional educational costs.⁶⁰⁷

The 2007-2008 Annual JURMP Report for the City of Carlsbad includes *developing* materials for a city waste reduction program as part of its educational program to educate city staff.⁶⁰⁸ But as discussed above, only implementation and not development of the educational program (except the residential education program) is reimbursable.⁶⁰⁹ Thus, it does not appear that the annual JURMP Reports isolate the mandated higher levels of service approved by the Commission. There are 61,936 pages in all of these documents, yet the claimants do not identify which reports or page numbers they relied on in these documents or explain the relevance of the Watershed Urban Runoff Program (WURMP) and the D-Max Proposal Documents to this JURMP issue. As the courts have held, “A party is required to support its argument with appropriate and page-specific references to the record; failure to do so effectively waives the argument.”⁶¹⁰ Thus, without specific references to the record, the Commission will not consider the remaining documents for the higher level of service activities mandated in the jurisdictional education program.

Additionally, the claimants’ reliance on the 2005 State Survey is not relevant. That survey reflects only six municipalities surveyed, only one of which is an eligible claimant (Encinitas), representing about five percent of all the eligible claimants here, and that city was surveyed on a prior years’ permit and not the reimbursable higher levels of service at issue here.⁶¹¹

Finally, there is no evidence in the record the claimants’ proposed formulae are either limited to activities the Commission approved for reimbursement, or do not include activities (such as tracking policies and procedures, data tracking and analysis, and annual training for vendors) the Commission did not approve, including those the claimants propose for which there is no substantial evidence in the record showing they are necessary to perform the state-mandated higher levels of service. Lacking evidence that what is included in the formula components of the proposed RRM is

⁶⁰⁷ Exhibit M, Claimants’ Rebuttal Comments, pages 9-10.

⁶⁰⁸ Exhibit I (2), Claimants’ Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), page 970.

⁶⁰⁹ Exhibit X (14), Test Claim, pages 297-300 (Order No. R9-2007-0001).

⁶¹⁰ *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.

⁶¹¹ Exhibit X (8), NPDES Stormwater Cost Survey, January 2005, page 33, https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

based only on the approved activities or those shown to be reasonably necessary,⁶¹² the proposal does not comply with statute.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM for the educational activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit costs were incurred only for the higher levels of service; or whether the proposed unit costs reasonably represent the costs incurred by the claimants to comply with the state-mandated higher level of service. Thus, the Commission denies this proposal.

- d. The proposed RRM for the watershed activities and collaboration in the updated WURMP is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for the following new state-mandated activities required for the Watershed Urban Runoff Management Program (WURMP), including the first sentence in Part L.1. requiring collaboration on the *updated* WURMP, no later than March 24, 2008:

- Each Copermittee shall collaborate with other Copermittees within its Watershed Management Area identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below.
- Update the WURMP to include and implement *only* the following elements:
 - Watershed water quality activities (activities other than education) and education activities (outreach and training) that address high priority water quality problems in the watershed management area. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.
 - Submit a Watershed Activities List with each updated WURMP and updated annually thereafter. The Watershed Activities List shall include the following information: a description of the activity; a time schedule for implementation of the activity, including key milestones; an identification of the specific responsibilities of Watershed Copermittees in completing the activity; a description of how the activity will address the identified high

⁶¹² Government Code section 17518.5(c); California Code of Regulations, title 2, section 1183.10(b)(1).

priority water quality problem(s) of the watershed; a description of how the activity is consistent with the collective watershed strategy; a description of the expected benefits of implementing the activity; and a description of how implementation effectiveness will be measured.

- 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 (i.e., the activity shows significant pollutant load reductions or other quantifiable benefits, and the education activities show changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences).

The claimants propose four RRM formulae in this section: watershed workgroup cost share contributions; jurisdictional watershed activities; regional watershed activities; and watershed workgroup meetings. “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.”⁶¹³ In rebuttal comments, the claimants say the time frames for the watershed workgroup cost share contributions occurred from fiscal years 2006-2007 to 2012-2013 and the other formulas are for fiscal years 2007-2008 to 2012-2013.⁶¹⁴

For the watershed workgroup cost share contributions, the RRM proposal uses each Municipal Claimant’s proportional share of cost based on the applicable MOUs of the total yearly “watershed lead costs.” The “watershed lead costs” are defined by the claimants as follows: “The yearly Watershed Lead Costs that [sic] for the Watershed Workgroup lead Co-Permittee were determined by reviewing the County of San Diego costs included in the County Watershed Workgroup Expenditure Records located in Vol. 13, p. 10908 and dividing the reported County costs by the percent of watershed costs that the County was responsible for in a given year”⁶¹⁵ When costs are added across fiscal years, the total reimbursement is estimated at \$616,316.21.⁶¹⁶

The proposed RRM for performing the watershed activities on a jurisdictional basis multiplies the average cost in fiscal year 2007-2008 to perform one jurisdictional activity

⁶¹³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 8, 40 (Quenzer declaration).

⁶¹⁴ Exhibit M, Claimants’ Rebuttal Comments, page 11.

⁶¹⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 40; see also Exhibit M, Claimants’ Rebuttal Comments, pages 10-11.

⁶¹⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer declaration).

per copermitttee (a unit cost of \$2,500), adjusted annually for the CPI, by the number of activities required each year (with the assumption that each jurisdiction completed the minimum four watershed activities). The proposed unit cost of \$2,500 is based on the median cost to perform one jurisdictional activity in fiscal year 2007-2008 as reported in “Co-Permitttee Declarations located in Vol. 1, pp. 377-743.”⁶¹⁷ The total watershed activity cost is then divided by the number of watersheds in which the copermitttee is located to account for the copermitttees being in multiple watersheds that implemented different or duplicative activities in different watersheds.⁶¹⁸ This proposal is also based on the County Watershed Activities Database.⁶¹⁹ Mr. Quenzer’s declaration states that “[u]sing this formula, each Copermitttee would receive . . . \$221,461.50”; and when “added across the time the mandate applied and all the Municipal Claimants, the total is: Reimbursement = \$4,207,768.50.”⁶²⁰

The proposed RRM for performing the watershed activities on a regional basis is each claimant’s proportional share of costs based on applicable MOUs times the “WURMP costs.” “WURMP costs” are the actual annual costs for the Regional Watershed Urban Runoff Management Plan Working Group’s costs (“WURMP costs”) to develop and maintain the Regional Watershed Activities Database.⁶²¹ Mr. Quenzer’s declaration states that, based on the County Watershed Workgroup Expenditure Records, the average amount spent on the Regional Watershed Urban Runoff Management Plan Working Group’s costs totals \$2,737.91 in fiscal year 2008-2009, and \$3,287.23 in fiscal year 2009-2010,⁶²² and “[w]hen the WURMP Costs are added across the time the mandate applied and all the Municipal Claimants, the total” estimated reimbursement is \$6,025.14.⁶²³

⁶¹⁷ Exhibit M, Claimants’ Rebuttal Comments, page 71 (Quenzer declaration).

⁶¹⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 11, 71.

⁶¹⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer Declaration).

⁶²⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 41-42 (Quenzer Declaration).

⁶²¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, pages 11, 72.

⁶²² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, page 72.

⁶²³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42 (Quenzer Declaration).

And, finally, the proposed RRM for the Watershed Workgroup Meetings is calculated by multiplying the average cost of an employee to attend a meeting by the number of attendees the claimant had attend the meeting, by the number of meetings per year.⁶²⁴ Based on Co-Permittees' Declarations, County 2011 Co-Permittee Surveys, and WURMP Annual Reports, the average cost to attend a meeting in fiscal year 2007-2008 was \$262.88.⁶²⁵ The number of meetings each year are as follows:

FY 2007/2008	369
FY 2008-2009	312
FY 2009-2010	334
FY 2010-2011	338
FY 2011-2012	355
FY 2012-2013	320 ⁶²⁶

Assuming one attendee per meeting, total costs for all Municipal Claimants are estimated at \$560,630.93.⁶²⁷

The claimants estimate the total for these WURMP activities at \$5.39 million.⁶²⁸

The Water Boards oppose the RRM proposals on the following grounds:

- The Section E requirements under the 2007 permit were not required to be implemented until March 24, 2008, or the last 90 days of 2007-2008. Claimants should not be reimbursed for "watershed lead costs" for fiscal year 2006-2007

⁶²⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 42 (Quenzer declaration); Exhibit M, Claimants' Rebuttal Comments, page 74.

⁶²⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 42-43 (Quenzer declaration); Exhibit M, Claimants' Rebuttal Comments, page 74.

⁶²⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43 (Quenzer declaration).

⁶²⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43 (Quenzer declaration).

⁶²⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 8, 40 (Quenzer declaration).

and 75 percent of fiscal year 2007-2008 because they implemented the 2001 permit before that time.⁶²⁹

- The claimants propose the annual proportionate share of costs implementing the “applicable” MOUs for fiscal years 2006-2007 through 2012-2013 as the basis for the RRM equation for these mandated activities, but no description of the MOU or activities are referenced. Costs for developing an MOU or developing programs are not reimbursable and claimants do not differentiate between development and implementation of reimbursement costs specific to the mandated watershed activities for 2007.⁶³⁰ Also, the claimants do not provide a methodology to prorate the cost differential required to implement the 2007 permit requirements above and beyond the 2001 permit program implementation.⁶³¹
- A minimum of four activities required to be implemented per watershed per claimant in the proposed RRM appears reasonable, but the claimants are unclear how the average cost was calculated for a jurisdictional activity in FY 2007-2008, since they were implementing activities required under the 2001 permit and not the 2007 permit until March 24, 2008. And it is also unclear whether the costs were only for the mandated activities.⁶³²
- Under table 4 of the test claim permit, the number of annual activities in each watershed can range from four to 40. The claimants do not identify the methodology in their proposed RRM formula to calculate the number of jurisdictional activities they implemented annually in the nine watersheds to arrive at the total cost.⁶³³
- The claimants do not explain their RRM equation for Permit Part E.2.f. that states the activities “may be implemented individually or collectively, and may be

⁶²⁹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 54-55, 56-57, 57-58 (Technical Analysis).

⁶³⁰ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 55-56 (Technical Analysis).

⁶³¹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 56 (Technical Analysis).

⁶³² Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 57 (Technical Analysis).

⁶³³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 57 (Technical Analysis).

implemented at the regional, watershed, or jurisdictional level.”⁶³⁴ Nor do claimants explain their methodology to calculate the average proportional share of costs based on the “applicable MOUs,” nor are the proportional shares adjusted to include only the costs to implement the section E.2.f. activities.⁶³⁵ The claimants also do not provide a methodology to adjust the total number of meetings each fiscal year to account for those focused on 1) the 2001 Permit requirements; 2) development of watershed programs; 3) development and management of MOUs and 4) claimant meetings focused on implementing the mandated activity required by the 2007 permit.

- The claimants are unclear if the 2012-2013 activities during these meetings were development of the MOU or discussions regarding the 2013 Permit.⁶³⁶
- The claimants do not include supporting documentation or a methodology for the total number of meetings in the summary table held for each fiscal year, and do not include the basis of the assumption that every claimant had an attendee at every single watershed group meeting for fiscal years 2007-2008 through 2012-2013, although the 2007 MOU only identified some claimants to attend and others with voting rights.⁶³⁷
- For regional workgroup meetings, the claimants provide no supporting methodology for calculating the average rate of meeting attendance (\$262.88). The 2011 copermittee survey instructions asked the claimants to use a rate equivalent to the annual salary of the consultant when a consultant attended the meetings. The claimants do not identify if contractor rates are included in the average from the 2011 survey. The Water Boards point to the Draft Proposed Decision that says the claimants cannot be reimbursed for contractor or consultant costs beyond that charged to the claimants.⁶³⁸

The Commission finds that the proposed RRM s are not supported by substantial evidence in the record, nor is there evidence that the proposals reasonably reimburse all eligible claimants for the costs mandated by the state.

⁶³⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM s, page 58 (Technical Analysis).

⁶³⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM s, page 58 (Technical Analysis).

⁶³⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines Opposition to Proposed RRM s, page 59 (Technical Analysis).

⁶³⁷ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM s, page 60 (Technical Analysis).

⁶³⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM s, page 60 (Technical Analysis).

First, as indicated above, the claimants' proposal appears to request reimbursement twice for the collaboration component of updated WURMP activities for workgroup costs. Those costs appear to be included in this proposal and also in the separate RRM proposals for Part L.1. for collaboration.

In addition, the proposal for the watershed workgroup cost share contributions is too broad and includes costs beyond the scope of the mandate since it is calculated based on *all* yearly "Watershed Lead Costs" for the Watershed Workgroup lead copermitee. This is evidenced by the "County Watershed Workgroup Expenditure Records located in Vol. 13, p. 10908" which identifies the County's watershed costs by fiscal year.⁶³⁹ The prior permit, however, also required a WURMP and required the copermitees to collaborate to address common watershed issues and to promote consistency among the WURMPs, and also required the MOU to provide a management structure that identified joint responsibilities and collaborative arrangements.⁶⁴⁰ So all yearly costs are too broad. The Test Claim Decision *limited* reimbursement to develop and implement an *updated* WURMP based on the new requirements mandated by the state.⁶⁴¹ There is no indication that yearly "watershed lead costs" are limited to the higher level of service mandated here.

Similarly, for the fourth proposal, there is no evidence in the record that the number of Watershed Workgroup Meetings relate only to the reimbursable activities and, as asserted by the Water Boards, there is no evidence that each claimant sent an attendee to each meeting.

In addition, there is no evidence that the proposed RRM for performing the watershed activities on a *jurisdictional* basis is reliable and reasonably represents the actual costs mandated by the state for all eligible claimants. The claimants indicate that the proposed unit cost of \$2500 per activity is based on the median cost to perform one jurisdictional activity in fiscal year 2007-2008 as indicated in "Co-Permittee Declarations located in Vol. 1, pp. 377-743."⁶⁴² These declarations show *budgeted* costs for the

⁶³⁹ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), page 10908.

⁶⁴⁰ Exhibit A, Amended Test Claim Decision on Remand, page 90. See also pages 111-112 for a discussion of the MOU under the prior permit.

⁶⁴¹ Exhibit A, Amended Test Claim Decision on Remand, page 90. The Decision states: "As to part E.2.g., although the 2001 (in parts J.1. & J.2.) and 2007 permits both require copermitee collaboration in developing and implementing the Watershed Urban Runoff Management Plan, copermitee collaboration is a new program or higher level of service because the WURMP is greatly expanded over the 2001 permit in part E.2.f as discussed above. This means that new collaboration is required to develop and implement the watershed activities in part E.2.f.."

⁶⁴² Exhibit M, Claimants' Rebuttal Comments, page 71.

watershed activities, but do not identify the activities performed. For example, the declaration from the County of San Diego, identifies budgeted costs of \$40,000 to implement the watershed activities and also acknowledges “a wide range of potential costs.”⁶⁴³ Similarly, the declaration from City of Carlsbad indicates that the City *budgeted* \$10,000 to implement the watershed activities, and also notes “a wide range of potential costs” for this activity.⁶⁴⁴ The declaration from the City of Vista is identical to the declaration of City of Carlsbad and also budgeted \$10,000 for this activity.⁶⁴⁵ In addition, although the cover sheet for the volumes of documents filed by the claimants states the declarations were prepared in 2010, none of the declarations identify the year they were signed.⁶⁴⁶ A written declaration must name the date of execution for them to be reliable.⁶⁴⁷ Moreover, if these declarations were signed in 2010, it is not clear why they would contain only the fiscal year 2007-2008 budgeted costs for the watershed activities, rather than the actual costs incurred to comply with the mandate. The WURMPs filed by the claimants are in Volume 13 of their documents and identify the watershed activities. For example, the Carlsbad Watershed Urban Runoff Management Program, dated March 2008, identifies the following water quality activities selected for first-year implementation:

Watershed Water Quality Activities: Residential Irrigation Runoff
Reduction, Loma Alta Creek Ultraviolet Radiation Storm Water Treatment

⁶⁴³ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 389, 395.

⁶⁴⁴ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 407.

⁶⁴⁵ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 736, 741.

⁶⁴⁶ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 390, 408, 737

⁶⁴⁷ Code of Civil Procedure section 2015.5 (“Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, *states the date* and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California.”). Emphasis added.

Facility, Eternal Hills Cemetery BMPs, Myers Property Restoration Assessment, Septic Tank Source Identification, Escondido Creek Restoration, Stormwater Quality Master Plans for Special Drainage Fee Areas, Nitrate Source Identification and Abatement: Buena Creek, Focused Inspections along San Marcos Creek, and Pet Waste Bag Dispenser Program in County Parks.

Watershed Education Activities: LID and Watershed Planning for Community Planning/Sponsor Groups, Residential Irrigation Runoff Reduction, Pilot Restaurant Binder/CD Distribution, Water Quality Runoff Management and Agricultural Waiver Workshop for Nurseries and Agricultural Businesses, and LID Features in San Elijo Nature Center.⁶⁴⁸

However, the WURMP does not identify the actual or estimated costs to perform these activities.

The claimants also state their proposal is based on the County Watershed Activities Database.⁶⁴⁹ Page 10910 of Volume 13 of the documents filed by the claimants is titled “County Only Activities taken from the WURMP Activities Database” and lists “County only activities,” such as pet waste dispenser program, water quality monitoring, water quality treatment facility at McClellan- Palomar Airport, and residential rain barrel subsidies and distribution.⁶⁵⁰ However, not all activities identify a cost, and it is not clear how this information was used in the claimants’ calculation of the proposed unit cost RRM. In addition, subsequent pages identify invoiced amounts for “Laboratory Analysis to support the Poway Compost BMP Study”⁶⁵¹ and a “Snapshot of SMR WURMP activities from WURMP Annual Reports that take credit for permit required water quality and educational activities,” which lists activities but no costs.⁶⁵² These pages are spreadsheets, and are considered out-of-court hearsay documents, which are unreliable because there is no information about who prepared the documents, from what records, or the dates the spreadsheets were prepared.

Finally, the claimants proposed reasonably necessary activities (e.g., for mileage, reporting and tracking policies and procedures, data tracking and analysis, employee

⁶⁴⁸ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), pages 53, 69-104.

⁶⁴⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41.

⁶⁵⁰ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), page 10910.

⁶⁵¹ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), page 10912.

⁶⁵² Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), pages 10913, 10915-10916.

and vendor annual training, cost accounting and documentation, and coordination) without evidence in the record that they are reasonably necessary to comply with the mandate to update the WURMP as specified. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandated activity in accordance with the Government Code and Commission's regulations.⁶⁵³ Lacking evidence that what is included in the proposed RRM is based only on the approved activities or those shown to be reasonably necessary,⁶⁵⁴ the proposal does not meet the statutory requirements.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRMs for the watershed activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit costs were incurred only for the higher levels of service; or whether the proposed unit costs reasonably represent the costs incurred by the claimants to comply with the state-mandated higher level of service. Thus, the Commission denies this proposal.

- e. The proposed RRM for the Regional Urban Runoff Management Program and Collaboration in the updated RURMP is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for the copermitees to collaborate to develop, implement, and update as necessary a RURMP that meets the requirements of section F, reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. As part of the updated plan, the copermitees are required to develop and implement a Regional Residential Education Program with specified content, develop the standardized fiscal analysis method required in section G of the permit,⁶⁵⁵ and facilitate assessing the effectiveness of jurisdictional, watershed,

⁶⁵³ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

⁶⁵⁴ Government Code section 17518.5(c), California Code of Regulations, title 2, section 1183.10(b)(1).

⁶⁵⁵ Section G.2. of the Test Claim Permit describes the standardized fiscal analysis method as follows: "As part of the Regional Urban Runoff Management Program, the Copermitees shall collectively develop a standardized method and format for annually conducting and reporting fiscal analyses of their urban runoff management programs in their entirety (including jurisdictional, watershed, and regional activities). This standardized method shall:

and regional programs (which includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments, but does not include actually assessing these programs).⁶⁵⁶

The proposed RRM for the Regional Urban Runoff Management Plan is a claimant's proportional share of costs based on the applicable MOUs for fiscal year 2006-2007 through fiscal year 2012-2013, multiplied by the actual annual costs invoiced by the County.⁶⁵⁷ Based on the County Watershed Workgroup Expenditure Records, the annual costs are estimated at:

FY 2008/2009 \$2,928.91

FY 2009/2010 \$5,230.98

FY 2010/2011 \$1,926.50⁶⁵⁸

The claimants explain the following:

RURMP costs are Regional Workgroup Expenditures specifically designated as allocated for RURMP annual reporting as reported by the following workgroups: Fiscal, Reporting, and Assessment (FRA); Industrial and Commercial Sources (ICS), Monitoring (MON), Municipal (MUNI), WURMP, Education and Regional Sources (ERS), and Land Development (LD). [Fn. omitted.] The RURMP expenditures reported by these workgroups were removed from the workgroup expenditures presented for some of these workgroups in other categories (e.g., FRA expenses in item 17.b [Regional Fiscal, Reporting, and Assessment ("FRA") Workgroup Expenditures, discussed in the next section below]) to avoid double

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- a. Identify the various categories of expenditures attributable to the urban runoff management programs, including a description of the specific items to be accounted for in each category of expenditures.
 - b. Identify expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program.
 - c. Identify a metric or metrics to be used to report program component and total program expenditures."

Exhibit X (14), Test Claim, page 305 (Order No. R9-2007-0001, Part G.2.)

⁶⁵⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 91-92, 96, 144-145.

⁶⁵⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

⁶⁵⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43; Exhibit M, Claimants' Rebuttal Comments, page 75.

counting. [Fn. omitted.] Expenditures data can be found in the County Watershed Workgroup Expenditure Records located in Vol. 13, pp. 10,908-10,916 and the Regional Cost Sharing documentation located in Vol. 13, pp. 19,017-13,074.⁶⁵⁹

The proposed RRM estimates total reimbursement at \$10,086.39.⁶⁶⁰

The Water Boards object to the proposed RRM on the following grounds:

- Section F of the permit was not effective until March 24, 2008 due to the 365-day implementation delay in the permit and the Addendum that added 60 days due to a wildfire emergency in San Diego County. But the claimants proposed RRM period is from July 1, 2006, to June 30, 2013.⁶⁶¹
- Regarding the MOU basis for the cost share, the claimants do not state which MOUs were relied on, and the claimants' summary table gives a proportion to each claimant without explanation. Claimants are "unclear if the MOU costs were for implementing the mandated activities, or for managing, facilitating and developing MOUs or activities."⁶⁶²

The Commission finds that the proposed RRM is not supported by substantial evidence in the record, nor is there evidence that the proposals reasonably reimburse all eligible claimants for the costs mandated by the state.

First, it appears that the claimants' proposal is overbroad and goes beyond the scope of the mandated higher level of service since it is based on the actual annual costs invoiced by the County and Regional Workgroup Expenditures. The Regional Workgroup Expenditures appear in Volume 13, pages 10917-13,074, but are not limited to the mandated higher level of service activities here; including coordinating to develop and implement a Regional Residential Education Program with specified content, to develop the standardized fiscal analysis method required in section G of the permit, and to facilitate the assessment of the effectiveness of jurisdictional, watershed, and

⁶⁵⁹ Exhibit M, Claimants' Rebuttal Comments, page 12. The reference to pages "19,017-13,074" appears to be a mistake, and should be "10,917-13,074" as stated in the Table of Contents to Exhibit I (1).

⁶⁶⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44.

⁶⁶¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 61 (Technical Analysis). The claimants revised these dates in their rebuttal to January 24, 2007 to June 26, 2013. Exhibit M, Claimants' Rebuttal Comments, page 74 (Quenzer Declaration).

⁶⁶² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 61-62 (Technical Analysis).

regional programs (which includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments, but does not include actually assessing these programs). For example, these pages show costs for the “Industrial and Commercial Sources Workgroup,” a “Regional Monitoring Workgroup,” a “Land Development Workgroup,” a “Municipal Sources Workgroup,” and “Other Expenditures” which is not defined.⁶⁶³ Other parts of the test claim permit also address these topics, including regional monitoring and development planning, which were not pled in this Test Claim.⁶⁶⁴ In addition, these expenditures may also include the proposed reasonably necessary costs requested by the claimants, which were denied above for lack of evidence explaining why they are necessary.

Second, the Watershed Workgroup Expenditure Records located in Vol. 13, pp. 10,908-10,916, were also cited as supporting documentation for the Watershed Activities in the section above and may be relevant to those activities, but do not appear to be relevant to the mandated activities here: coordinating to develop and implement a Regional Residential Education Program with specified content, to develop the standardized fiscal analysis method required in section G of the permit, and to facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs (which includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments, but does not include actually assessing these programs).

In addition, and as indicated above, it is not clear if the proposed RRM, which includes all annual costs invoiced by the County, overlaps with other proposed RRMs for the costs to develop and implement the Regional Residential Education Program and for coordination on the regional program.

Finally, the claimants proposed a number of reasonably necessary activities (such as regional coordination of copermittee and regional working bodies, working body support and representation, regional work product development, regional implementation of programs and activities)⁶⁶⁵ for which there is no evidence in the record that they are reasonably necessary to comply with the mandated activities. In the absence of evidence that the claimants’ formula components are limited to the approved activities

⁶⁶³ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), pages 10918-11025.

⁶⁶⁴ Exhibit X (14), Test Claim, pages 270 (Order No. R9-2007-0001, Part D.1., Development Planning), 368 (Order No. R9-2007-0001, Attachment II.C., Regional Monitoring Program).

⁶⁶⁵ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 53-56.

or those reasonably necessary to comply with the mandate,⁶⁶⁶ the proposed RRM does not comply with the statute.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM for the RURMP activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit costs were incurred only for the higher levels of service here; or whether the proposed unit costs reasonably represent the costs incurred by the claimants to comply with the state-mandated higher level of service. Thus, the Commission denies this proposal.

- f. The proposed RRM for the Program Effectiveness Assessment is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for conducting an annual assessment of the JURMP for permit Part I.1. and of the WURMP for Permit Part I.2. based on assessment outcome levels,⁶⁶⁷ annually review those programs following the

⁶⁶⁶ Government Code section 17518.5(c); California Code of Regulations, title 2, section 1183.10(b)(1).

⁶⁶⁷ Effectiveness assessment outcome levels are defined in Attachment C of the permit as follows: “Effectiveness assessment outcome level 1 – Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the implementation of specific activities prescribed by this Order or established pursuant to it. Effectiveness assessment outcome level 2 – Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, business, and municipal employees. Effectiveness assessment outcome level 3 – Behavioral Changes and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation. Effectiveness assessment outcome level 4 – Load Reductions – Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed. Effectiveness assessment outcome level 5 – Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s. Effectiveness assessment outcome level 6 – Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity [i.e., ecosystem health], or beneficial use

assessments to determine if they comply with receiving water limitations and discharge prohibitions, and report to the Regional Board on the effectiveness assessment as implemented under each of the requirements.

The proposed RRM for the Jurisdictional Program Effectiveness Assessment is based on the percentage of the total stormwater budget all copermittees spent assessing the effectiveness of the jurisdiction program (which is 3.72 percent, based on JRMP annual reports in Volumes 2-11 and D-Max Proposals in Volume 14, pages 8-189) to the Municipal Claimant's total stormwater budget, from fiscal year 2007-2008 through fiscal year 2012-2013.⁶⁶⁸ Mr. Quenzer states that total reimbursement would be \$26,804,749.26, but in that statement, he refers to the "Residential Education Program."⁶⁶⁹

The proposed RRM for the "Regional Fiscal, Reporting, and Assessment Workgroup is the proportional share of costs based on MOUs to the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup, from fiscal year 2006-2007 through 2012-2013.⁶⁷⁰ Based on a review of the County Watershed Workgroup Expenditure Records, Mr. Quenzer declares that the actual shared costs for developing and implementing the program was as follows for the following three fiscal years:

FY 2008/2009	\$24,466.92
FY 2009/2010	\$32,423.11
FY 2010-2011	\$72,983.57 ⁶⁷¹

attainment." Exhibit X (14), Test Claim, pages 345-346 (Order No. R9-2007-0001, Attachment C).

⁶⁶⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44; Exhibit M, Claimants' Rebuttal Comments, page 77.

⁶⁶⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44 (Quenzer Declaration).

⁶⁷⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45 (Quenzer Declaration); Exhibit M, Claimants' Rebuttal Comments, page 78 (Quenzer Declaration).

⁶⁷¹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 44-45 (Quenzer Declaration); Exhibit M, Claimants' Rebuttal Comments, page 79 (Quenzer Declaration).

The declaration states that “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: *Reimbursement* = \$129,873.60.”⁶⁷²

The Water Boards oppose the proposed RRM on the following grounds:

- The claimants were not required to implement the JURMP or WURMP mandated activities until March 24, 2008, or near the end of fiscal year 2007-2008. Until this date, claimants were required to implement the 2001 Permit requirements.⁶⁷³
In addition, the test claim permit did not require submitting annual reports for the JURMP and WURMP until September 30, 2008, or fiscal year 2008-2009. Claimants were required to implement annual effectiveness assessments under the 2001 permit for the JURMP and WURMP until March 28, 2008 and would not have been fully implementing the test claim permit until 2009-2010.⁶⁷⁴
- For the Jurisdictional Program Effectiveness Assessment, the claimants do not provide any summary or supporting documentation explaining the methodology or basis for calculating the percentage of 3.72 percent or how the total of the claimant’s total stormwater budget was calculated to identify a \$26.8 million reimbursement.⁶⁷⁵
- Section 15.b. of the claimants’ declaration does not contain the total annual stormwater budgets, as the claimant indicated, but contains the “Claimant Jurisdictional Activities basis for reimbursement costs.” It is unclear what “total annual stormwater budget” for reimbursement costs the claimants refer to in section 15.b when they state the basis of their costs.⁶⁷⁶
- The claimants do not provide a description or specific data or records for the Regional Fiscal, Reporting and Assessment (FRA) Workgroup expenditure formula the claimants say were determined by reviewing the County Watershed

⁶⁷² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 45 (Quenzer Declaration), emphasis added.

⁶⁷³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 62 (Technical Analysis).

⁶⁷⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 62-63, 64-65 (Technical Analysis).

⁶⁷⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 63 (Technical Analysis).

⁶⁷⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 63-64 (Technical Analysis).

Workgroup Expenditure Records.⁶⁷⁷ Nor do the claimants describe the methodology or data used to calculate the proportional share of MOU costs for the workgroups or for the summary table for each fiscal year of reimbursement.⁶⁷⁸ And the claimants do not identify if the MOU costs were adjusted or prorated to remove non-mandated activities such as developing and managing the MOUs for each fiscal year. The effectiveness assessment was a requirement of the 2001 permit that continued into the 2007 test claim permit with some minor modifications.⁶⁷⁹

- The RRM includes costs of the Regional FRA Workgroup that are not required in Sections I.1. and I.2. of the test claim permit, which only address 1) implementing and annual reporting of each claimant's jurisdictional effectiveness assessment and 2) implementing each Claimant's WURMP effectiveness assessment. Regional Effectiveness Assessment and Reporting is included in Section I.3 under the RURMP.⁶⁸⁰
- The claimants do not identify if the MOU cost shares were actual spent costs or proposed budgets. Claimants refer to the Residential Education costs which is under a different proposed RRM methodology.⁶⁸¹

The Commission finds that the proposed RRMs are not supported by substantial evidence in the record, nor is there evidence that the proposals reasonably reimburse all eligible claimants for the costs mandated by the state.

First, the claimants refer to the "Residential Education Program,"⁶⁸² which is not part of the effectiveness assessment activities, so the proposals are not clear in that respect.

It is also unclear what the formula components (total stormwater budget for the jurisdictional effectiveness assessment program and shared costs for developing and implementing the Regional FRA Workgroup Expenditure) include, and whether they are limited to the reimbursable activities discussed above. To the extent the claimants rely

⁶⁷⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 64 (Technical Analysis).

⁶⁷⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 65 (Technical Analysis).

⁶⁷⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 65 (Technical Analysis).

⁶⁸⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 65-66 (Technical Analysis).

⁶⁸¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 66 (Technical Analysis).

⁶⁸² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 45 (Quenzer Declaration).

on the stormwater budgets, it is unclear whether they are from all or a “representative sample” of claimants, and whether the budgets include line-item expenditures that are consistent among the sample and consistent with the state-mandated activities.

Moreover, reliance on the budget for the jurisdictional effectiveness assessment and total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup is overbroad, since the prior 2001 permit also required an assessment of the JURMP and WURMP.⁶⁸³ In addition, the Commission denied the claimants’ request for reimbursement of their proposed reasonably necessary activities (“program development,” program implementation,” employee and vendor annual training,” “Jurisdictional Urban Runoff Management Program (JURMP) and Watershed Urban Runoff Management Program (WURMP) modifications,” and “report writing”).⁶⁸⁴ Thus, there is no evidence that the budgets are limited to assessing the programs using the six specific effectiveness assessment outcome levels which the Commission determined imposes a mandated higher level of service, or whether the Regional Fiscal, Report, and Assessment Workgroup addressed only the higher level of service. In the absence of evidence, the claimants’ formula components reflect the “costs to implement the mandate in a cost-efficient manner,”⁶⁸⁵ meaning they are limited to the activities the Commission determined are reimbursable and those proven to be reasonably necessary to comply with the mandate,⁶⁸⁶ the proposed RRM does not comply with the statute.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRMs for the effectiveness assessment activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant, or whether the costs used to calculate the proposed unit costs were incurred only for the higher levels of service, or whether the proposed unit costs reasonably represent the costs incurred by the claimants to comply with the state-mandated higher level of service. Thus, the Commission denies this proposal.

- g. The proposed RRM for the one-time long term effectiveness assessment is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants.

The Parameters and Guidelines authorize reimbursement to comply with the new requirements in Part I.5, to collaborate with the other copermittees to develop a Long

⁶⁸³ Exhibit A, Amended Test Claim Decision on Remand, pages 103-105.

⁶⁸⁴ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 27-28; Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 61.

⁶⁸⁵ Government Code section 17518.5(c).

⁶⁸⁶ California Code of Regulations, title 2, section 1183.10(b).

Term Effectiveness Assessment (LTEA), which shall build on the results of an August 2005 Baseline LTEA conducted by the copermitees. The LTEA is required to be designed to address the effectiveness outcome levels 1-6; assess the effectiveness of the Receiving Waters Monitoring Program; and address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment. The LTEA is required to be submitted no later than 210 days before the end of the permit term and serves as the basis for the permittees' ROWD for the next permit cycle. As explained above, this assessment is a one-time requirement.

The claimants' proposed RRM formula for reimbursement for the LTEA is the proportional share of costs based on applicable MOUs times the "actual annual costs of the contractors needed to assess the long term effectiveness of the projects reported by [the] County" (which totals \$344,539.21 annually, according to the Regional Workgroup Expenditure Records) from fiscal year 2007-2008 through fiscal year 2012-2013.⁶⁸⁷ "The Regional Cost Sharing Documentation located in Vol. 13, pp. 10,917-13,074 was used to determine the *Contractor Costs*."⁶⁸⁸

The Water Boards oppose the proposed RRM on the following grounds:

- Section I.5 of the 2007 permit was not implemented until 210 days before the permit expired. So, the claimant's statement that reimbursement is "*halfway through FY 2006/2007 through FY 2012/2013*" is incorrect.⁶⁸⁹ The claimants do not explain the costs incurred three years prior to the required mandated activity date.⁶⁹⁰
- The claimants do not provide supporting documentation to explain their "yearly contractor costs for Long-term Effectiveness Assessment" of \$344,539.⁶⁹¹
- The claimants do not explain their methodology to determine reimbursement for the Regional Work Group MOUs for the claimants and the contractors, and do

⁶⁸⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 10, 45-46 (Quenzer Declaration); Exhibit M, Claimants' Rebuttal Comments, pages 14, 80 (Quenzer Declaration).

⁶⁸⁸ Exhibit M, Claimants' Rebuttal Comments, page 14.

⁶⁸⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 67 (Technical Analysis).

⁶⁹⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 68 (Technical Analysis).

⁶⁹¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 67-68 (Technical Analysis).

not prorate reimbursement to include only the increased higher level of service compared to costs implementing the 2001 permit.⁶⁹²

The Commission finds that the proposed RRM is not supported by substantial evidence in the record, nor is there evidence that the proposal reasonably reimburses all eligible claimants for the costs mandated by the state.

First, as indicated above, there is overlap in the collaboration required by Part I.5. and Part L.1., and the claimants have a separate proposal for collaboration. Thus, it is not clear if the claimants' proposals provide reimbursement for collaboration twice.

Second, the claimants propose the following reasonably necessary activities, as discussed above: "program development, employee and vendor annual training, and JURMP and WURMP modifications,"⁶⁹³ But the Commission finds no evidence in the record to support these activities as reasonably necessary to comply with the mandate. To the extent the RRM includes these activities, it does not comply with the definition of "costs to implement the mandate in a cost-effective manner,"⁶⁹⁴ defined in the Commission's regulations as "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."⁶⁹⁵

Third, there is no evidence in the record supporting the proposal that it took from fiscal years 2007-2008 through 2012-2013 to comply with the requirements. Although the report is due 210 days before the end of the permit term, they do have to develop the assessment, as specified, and assess the Receiving Waters Monitoring Program and address the jurisdictional, watershed, and regional program with an emphasis on watershed assessment, so that the information is included in the report. The County of San Diego Report of Waste Discharge for the next term permit states that the LTEA for the receiving waters monitoring program was conducted in 2010 as follows:

The LTEA analysis was conducted in 2010 and evaluated data from the MS4, receiving water (RW), wet, and ambient separately. In addition, inclusion of a constituent on the §303(d) list did not result in that constituent categorized as high priority. Constituent groups are used for the comparison of the BLTEA [Baseline Long Term Effectiveness Assessment] and the receiving waters LTEA. Priorities within watersheds were also evaluated. The purpose of this evaluation was to determine if the answer to management question #1 (conditions in receiving waters

⁶⁹² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 68 (Technical Analysis).

⁶⁹³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 61.

⁶⁹⁴ Government Code section 17518.5(c).

⁶⁹⁵ California Code of Regulations, title 2, section 1183.10(b).

protective of beneficial uses) is the same in 2010 (LTEA) as the 2005 (BLTEA).⁶⁹⁶

But the claimants have not pointed to any other documents to show when the remaining LTEA costs were incurred.

In addition, it is not clear how the claimants calculated yearly contractor costs of \$344,549. They assert they relied on the Regional Cost Sharing Documentation located in Volume 13, at pages 10,917-13,074, which is the same documentation the claimants relied on for the proposed RRM for the new RURMP activities. As explained above, those pages address costs for the “Industrial and Commercial Sources Workgroup,” a “Regional Monitoring Workgroup,” a “Land Development Workgroup,” a “Municipal Sources Workgroup,” and “Other Expenditures” which is not defined, and do not appear to address the LTEA.⁶⁹⁷ The claimants do not identify the pages they relied on to calculate the contractor costs of \$344,549. As the courts have held, “A party is required to support its argument with appropriate and page-specific references to the record; failure to do so effectively waives the argument.”⁶⁹⁸

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM for the long-term effectiveness assessment activities (LTEA). With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit cost was incurred only for the higher levels of service here; or whether the proposed unit cost reasonably represents the costs incurred by the claimants to comply with the state-mandated higher level of service. Thus, the Commission denies this proposal.

- h. The proposed RRMs for all copermitttee collaboration is not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represent the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission.

The Parameters and Guidelines authorize reimbursement for the following one-time activity:

Jointly execute and submit to the Regional Board no later than 180 days after adoption of the permit, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement that (Part L.1.a.3.-6) that:

⁶⁹⁶ Exhibit X (5), County of San Diego, Report of Waste Discharge, June 24, 2011, page 72.

⁶⁹⁷ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP reports, County Records, MOUs), pages 10918-11025.

⁶⁹⁸ *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.

- Establishes a management structure to promote consistency and develop and implement regional activities;
- Establishes standards for conducting meetings, decisions-making, and cost-sharing.
- Provides guidelines for committee and workgroup structure and responsibilities;
- Lays out a process for addressing Copermitttee non-compliance with the formal agreement.

*Reimbursement is limited to the pro rata costs to execute and submit an MOU or formal agreement on only the four topics identified above. Executing and submitting a full MOU, JPA, or other formal agreement is not reimbursable.*⁶⁹⁹

The Parameters and Guidelines also authorize reimbursement for the collaboration required by the first sentence in Part L.1. as an ongoing reimbursable activity, which is identified in the Parameters and Guidelines for other approved sections of the test claim permit where collaboration is expressly required (i.e., the Educational Component of the Jurisdictional Urban Runoff Management Program, the requirement to update the Watershed Urban Runoff Management Program, the Regional Urban Runoff Management Program, and the Long Term Effectiveness Assessment). Reimbursement for collaboration is limited to what the Commission approved in its Decision. Reimbursement is not required for activities or requirements not pled in the Test Claim, imposed by the prior (2001) permit, or expressly denied by the Commission (e.g., collaboration with the other copermitttees to develop and implement a Hydromodification Management Plan or developing urban runoff activities related to municipal activities, like low impact development (LID) BMPs (Best Management Practices) and plans).⁷⁰⁰ The Commission also found the prior permit required the parties to enter into a Memorandum of Understanding (MOU) and expressly limited reimbursement for collaboration to the new activities found to mandate a new program or higher level of service.⁷⁰¹ Thus, only the pro-rata costs collaborate on the activities and costs approved by the Commission is eligible for reimbursement.

⁶⁹⁹ Exhibit A, Amended Test Claim Decision on Remand, page 111.

⁷⁰⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112, 118-126.

⁷⁰¹ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112. The Decision states: “Part L.1. of the 2007 permit, the first paragraph in L requiring collaboration, is identical to part N of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e, not in the 2001 permit) including the Regional Urban Runoff Management Program.”

Based on information in the record, the copermittees entered into a new MOU dated November 16, 2007.⁷⁰² The MOU establishes a regional management committee, a regional planning subcommittee and nine regional workgroups or sub-workgroups to support the regional coordination of programs.⁷⁰³

The claimants' proposed RRM contains three formulas to reimburse eligible claimants for "support of regional workgroup meeting"; regional workgroup meetings; and workgroup expenditures, for a total of \$2,315,471.69 from fiscal year 2006-2007 through fiscal year 2012-2013.⁷⁰⁴ Thus, the proposals appear to address only the ongoing collaboration activities, and not the one-time activity to execute and submit to the Regional Board the MOU.

The proposed RRM for "Support for Regional Workgroup Meeting" is the proportional share of costs based on applicable MOUs to the actual costs spent to support the various all copermittee meetings (County Costs). Based on a review of the "Regional Cost Sharing Documentation," the yearly county costs are as follows:

FY 2008/2009	\$57,285.40
FY 2009/2010	\$69,576.92
FY 2010/2011	\$44,665.30
FY 2011/2012	\$56,311.45 ⁷⁰⁵

"When the costs for preparing the plan is added across the time the mandate applied, the total is: *Reimbursement* = \$277,839.07."⁷⁰⁶ The claimants explain:

The *County Costs* in this formula are Regional Workgroup Expenditures specifically designated as meeting support; these expenses do not overlap

⁷⁰² Exhibit X (14), Test Claim, pages 495 -579 (MOU).

⁷⁰³ Exhibit X (14), Test Claim, pages 517-525, 535. The MOU's nine regional workgroups or sub-workgroups include: fiscal, reporting, and assessment workgroup; education and residential sources workgroup; regional monitoring workgroup and two sub-workgroups for dry weather and coastal monitoring; regional watershed URMP workgroup; land development workgroup; municipal activities workgroup; and industrial and commercial sources workgroup.

⁷⁰⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46 (Quenzer declaration); Exhibit M, Claimants' Rebuttal Comments, pages 14-15.

⁷⁰⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 46; Exhibit M, Claimants' Rebuttal Comments, page 81.

⁷⁰⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 46.

and are not included in other reimbursement formulae (e.g., FRA Workgroup expenses in Section 17.b). These expenditures were reported by the following workgroups: ERS, FRA, ICS, LD, MON, MUNI, PPS, WURMP. Expenditures data can be found in the County Watershed Workgroup Expenditure Records (Vol. 13, pp. 10908-10916) and the Regional Cost Sharing Documentation (Vol. 13, pp. 19017-13074).⁷⁰⁷

The proposed RRM for “Regional Workgroup Meetings” is based on a review of the Co-Permittees Declarations and County Fiscal Analysis Documents and equals the number of employees from a Municipal Claimant that attended a regional workgroup meeting, times the average costs to attend one meeting in fiscal year 2007-2008 of \$262.88, times the number of meetings attended.⁷⁰⁸ The number of meetings each year are as follows:

FY 2007/2008	1179
FY 2008/2009	1386
FY 2009/2010	1238
FY 2010/2011	1263
FY 2011/2012	1260
FY 2012/2013	1218 ⁷⁰⁹

“When the meeting costs are added across the time the mandate applied for all Municipal Claimants, the total is: *Reimbursement* = \$2,087,214.52.”⁷¹⁰ The claimants explain the following:

The period of summation for regional workgroup meetings is from January 24, 2007, or the effective date of the 2007 Permit, to June 26, 2013, which is the day before the effective date of the 2013 Permit. These meetings included program planning and development in response to 2007 Permit requirements that began after the 2007 Permit was adopted. The regional workgroup continued to support Co-Permittees throughout the duration of the 2007 Permit. After the 2013 Permit went into effect, regional workgroup meetings were no longer required in the

⁷⁰⁷ Exhibit M, Claimants’ Rebuttal Comments, page 81.

⁷⁰⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47; Exhibit M, Claimants’ Rebuttal Comments, page 82.

⁷⁰⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 47.

⁷¹⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 47.

same way as they had been under the 2007 Permit, so regional workgroup costs are not claimed after that date.⁷¹¹

The claimants further state that the same unit cost is proposed here as was proposed for the Watershed Workgroup Meetings, because “in my experience the group of Co-Permittee staff that attended regional meetings was comparable to the group of Co-Permittee staff that attended watershed meetings.”⁷¹²

The proposed RRM for the “Workgroup Expenditures” is the proportional share of costs based on applicable MOUs to the actual costs of activities performed by the workgroup in fiscal years 2006-2007 through 2012-2013.⁷¹³ Based on a review of the Regional Cost Sharing Documentation (Volume 13, pages 10917-13074), the actual costs in fiscal years 2008-2009 and 2009-2010 for these activities is \$418.10.⁷¹⁴

The Water Boards oppose the proposed RRMs on the following grounds:

- The proposed RRMs include reimbursement for costs that are already included in other proposed RRM equations. The claimants cannot be reimbursed twice for activities.⁷¹⁵ As they state:

[Claimants] 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. [Citation omitted.] 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. [Citation omitted.]”⁷¹⁶

⁷¹¹ Exhibit M, Claimants’ Rebuttal Comments, page 81.

⁷¹² Exhibit M, Claimants’ Rebuttal Comments, page 82.

⁷¹³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47.

⁷¹⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 48; Exhibit M, Claimants’ Rebuttal Comments, page 83.

⁷¹⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 68-71 (Technical Analysis).

⁷¹⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 71 (Technical Analysis).

- Permit sections D, E, F, I, and L references or cross reference effectiveness assessments and evaluations of effectiveness assessments for JURMP, WURMP, and RURMP activities, and the permit and fact sheet made clear that these were distinct requirements. Claimants are not entitled to the same reimbursement already calculated for the mandated activity in other areas. “For example, attendance at the same regional work group meetings by Claimants cannot be proposed for reimbursement twice.”⁷¹⁷
- The claimants provide no documentation for the RRM equation to justify whether the proposed reimbursement for LTEA activities after November 16, 2007 falls under the one-time activity criteria, nor do the claimants provide a methodology that supports reimbursable annual costs. Nor is any methodology provided on the calculation of the totals in the summary table for each fiscal year’s share for copermittee workgroup meeting support. For example, each claimant’s MOU cost share is not provided, nor is a methodology for how the MOU costs were adjusted to only include those for the mandated activity and not those identified as not reimbursable in the Draft Proposed Decision.⁷¹⁸
- Regarding regional workgroup meetings, the claimants provide no explanation on how the average rate of attendance or total number of meetings or number of claimants was calculated, nor the data sources used to calculate them.
- The claimants are not entitled to reimbursement for ongoing watershed activities and collaboration in WURMP meetings under the mandated activity identified for section L because claimants already proposed an RRM equation for reimbursements for the mandated WURMP activity for sections E.2.f. and E.2.g.
- The proposed RRM for collaboration on workgroup expenditures is not clear because the claimants do not identify which regional or other workgroup they are referring to.
- The claimants do not provide a 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, nor is each claimant’s MOU cost share provided, nor is there an explanation of how the MOU costs were adjusted to only include reimbursable costs for the mandated activity and to not include those the Commission staff identified as not reimbursable.⁷¹⁹

⁷¹⁷ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 72-73 (Technical Analysis).

⁷¹⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 74-75 (Technical Analysis).

⁷¹⁹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 78-80 (Technical Analysis).

The Commission finds that the proposed RRM's are not supported by substantial evidence in the record, nor is there evidence that the proposals reasonably reimburse all eligible claimants for the costs mandated by the state.

First, collaboration is addressed in other sections of these Parameters and Guidelines and it is not clear from the record if the claimants' proposals provide reimbursement for the collaboration twice.

In addition, although reimbursement for collaboration is limited to the higher levels of service the Commission approved in its Decision, there is no indication in the record that the claimants' proposals only provide reimbursement for the pro-rata costs mandated by the state. As indicated above, reimbursement is not required for activities or requirements not pled in the Test Claim, imposed by the prior (2001) permit, or expressly denied by the Commission (e.g., collaboration with the other copermitees to develop and implement a Hydromodification Management Plan or developing urban runoff activities related to municipal activities, like low impact development (LID) BMPs (Best Management Practices) and plans).⁷²⁰ Yet, the claimants' proposal for workgroup expenditures "were reported by the following workgroups: ERS, FRA, ICS, LD, MON, MUNI, PPS, WURMP."⁷²¹ A review of Volume 13, page 10918, shows that those acronyms stand for the following workgroups: Education and Residential Resources Workgroup; Fiscal, Reporting, and Assessment Workgroup; Industrial and Commercial Sources Workgroup; Land Development Workgroup; Monitoring Workgroup; Municipal Sources Workgroup; Program Planning Subcommittee; and the Regional WURMP Workgroup.⁷²² There have been no activities approved for industrial and commercial regulation, land development, or for municipal requirements. Thus, the proposal is overbroad and not limited to the costs mandated by the state.

Furthermore, there is no evidence in the record that the number of Regional Workgroup Meetings relate only to the reimbursable activities or evidence that each claimant sent an attendee to each meeting.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM's for the ongoing collaboration activities. With this record, the Commission cannot determine the reliability of the numbers used by the claimant; whether the costs used to calculate the proposed unit cost were incurred only for the higher levels of service the Commission approved for reimbursement; or whether the proposed unit cost reasonably represents the costs mandated by the state to comply with the higher levels of service. Thus, the Commission denies this proposal.

⁷²⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112, 118-126.

⁷²¹ Exhibit M, Claimants' Rebuttal Comments, page 81.

⁷²² Exhibit I (13), Claimants' Supporting Documentation for Proposed RRM's, Volume 13 (WURMP reports, County Records, MOUs), page 10918.

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

In the Test Claim Decision, the Commission identified the following potential offsetting revenues:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning;
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.⁷²³

Accordingly, Section VII. of the Parameters and Guidelines states:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes, shall be identified and deducted from any claim submitted for reimbursement. Such offsetting revenues include the following:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning.
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.

⁷²³ Exhibit A, Amended Test Claim Decision on Remand, pages 139, 151.

V. Staff Recommendation

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

PARAMETERS AND GUIDELINES⁷²⁴

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), L.1.a.(3)-(6)

07-TC-09-R

Period of reimbursement is January 24, 2007 through December 31, 2017.

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address activities related to reducing stormwater pollution in compliance with NPDES Permit (CAS0108758, Order No. R9-2007-0001) issued by the San Diego Regional Water Quality Control Board (Regional Board), a state agency.

On May 26, 2023, the Commission adopted the Amended Test Claim Decision on Remand.⁷²⁵ The Commission partially approved the Test Claim, finding that the test claim permit imposes a reimbursable state-mandated program on local agency copermitees within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities only:

- Reporting on street sweeping and conveyance system cleaning (Part J.3.a.(3)(c)(iv)-(viii), (x)-(xv));
- Conveyance system cleaning (Part D.3.a.(3)(b)(iii));
- Educational component (Parts 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));
- Watershed activities and collaboration in the Watershed Urban Runoff Management Program (Part E.2.f & E.2.g);
- Regional Urban Runoff Management Program (Parts F.1., F.2. & F.3);
- Program effectiveness assessment (Parts I.1 & I.2);
- Long-term effectiveness assessment (Part I.5) and

⁷²⁴ Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

⁷²⁵ Exhibit A, Amended Test Claim Decision on Remand.

- All permittee collaboration (Part L.1.a.(3)-(6)).⁷²⁶

Further, the Commission found that the following would be identified as offsetting revenue in the Parameters and Guidelines:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning; and
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.

II. ELIGIBLE CLAIMANTS

The following city and county copermittees are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

The County of San Diego and the Cities 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.

The San Diego Unified Port District and San Diego County Regional Airport Authority are *not* eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 20, 2008, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, costs incurred would be reimbursable on or after July 1, 2006; but because the permit did not become effective until January 24, 2007, costs are reimbursable beginning January 24, 2007.

Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these

⁷²⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 5-6.

activities pursuant to Government Code section 17556(d).⁷²⁷ Therefore, costs incurred are reimbursable from January 24, 2007, through December 31, 2017.

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

⁷²⁷ Government Code sections 57350 and 57351 (SB 231, Stats. 2017, ch. 536).

otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

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

A. One-Time Activities

1. Jointly execute and submit to the Regional Board no later than 180 days after adoption of the permit, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement (Part L.1.a.(3)-(6)) that:
 - a. Establishes a management structure to promote consistency and develop and implement regional activities;
 - b. Establishes standards for conducting meetings, decisions-making, and cost-sharing.
 - c. Provides guidelines for committee and workgroup structure and responsibilities;
 - d. Lays out a process for addressing Copermittee non-compliance with the formal agreement.

*Reimbursement is limited to the pro rata costs to execute and submit an MOU or formal agreement on only the four topics identified above. Executing and submitting a full MOU, JPA, or other formal agreement is **not** reimbursable.⁷²⁸*

2. Long Term Effectiveness Assessment (Part I.5 and the first sentence in Part L.1.):
 - a. Collaborate with the other Copermittees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' 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 the test claim permit.
 - b. The LTEA shall be designed to address each of the objectives listed below, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle:
 - Assessment of watershed health and identification of water quality issues and concerns.

⁷²⁸ Exhibit A, Amended Test Claim Decision on Remand, page 111.

- Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns.
 - Evaluation of the need to address additional pollutant sources not already included in Copermittee programs.
 - Assessment of progress in implementing Copermittee programs and activities.
 - Assessment of the effectiveness of Copermittee activities in addressing priority constituents and sources.
 - Assessment of changes in discharge and receiving water quality.
 - Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality.
 - Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies.
- c. The LTEA shall address outcome levels 1-6,⁷²⁹ and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).

⁷²⁹ Effectiveness assessment outcome levels are defined in Attachment C of the permit as follows: “Effectiveness assessment outcome level 1 – Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the implementation of specific activities prescribed by this Order or established pursuant to it. Effectiveness assessment outcome level 2 – Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, business, and municipal employees. Effectiveness assessment outcome level 3 – Behavioral Changes and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation. Effectiveness assessment outcome level 4 – Load Reductions – Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed. Effectiveness assessment outcome level 5 – Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s. Effectiveness assessment outcome level 6 – Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory

- d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10 percent reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80 percent confidence.
- e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.

B. Ongoing Activities

1. Jurisdictional Urban Runoff Management Program

- a. By September 30, 2008, and each September 30th thereafter, include in the JURMP Annual Report the following information for the prior fiscal year:
 - i. Street Sweeping Information (Part J.3.a.(3)(c)(x-xv))
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating the highest volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating moderate volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating low volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.
 - Identification of the total distance of curb-miles swept.

benchmarks, protection of biological integrity [i.e., ecosystem health], or beneficial use attainment.” Exhibit X (14), Test Claim, pages 188-189 (Order No. R9-2007-0001, Attachment C).

- Identification of the number of municipal parking lots, the number of municipal parking lots swept, and the frequency of sweeping.
 - Amount of material (tons) collected from street and parking lot sweeping.⁷³⁰
- ii. Conveyance System Cleaning Information (Part J.3.a.(3)(c)(iv)-(viii))
- Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.
 - Identification of the total distance (miles) of the MS4, the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.
 - Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open channels found with anthropogenic litter, and the distance of open channels cleaned.
 - Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.
 - Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.⁷³¹
- b. Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:⁷³²
- i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc.).

⁷³⁰ The requirements for street sweeping were delayed until no later than March 24, 2008. (Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.)

⁷³¹ The requirements for conveyance system cleaning were delayed until no later than March 24, 2008. (Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.)

⁷³² Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which 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.
 - Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

The following conveyance system activities are not reimbursable:

- Implementing a schedule of inspection activities (Part D.3.a.(3)(a));
 - Inspections of MS4 facilities (Part D.3.a.(3)(b)(i), D.3.a.(3)(b)(ii));
 - Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (Part D.3.a.(3)(b)(iv));
 - Proper disposal of waste removed pursuant to applicable laws (Part D.3.a.(3)(b)(v));
 - Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (Part D.3.a.(3)(b)(vi)).⁷³³
- c. Educational Component (Parts 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), and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following mandated activities:⁷³⁴
- i. Each copermittee shall educate each target community (municipal departments, construction site owners and developers, industrial owners and operators, commercial owners and operators, the residential community, the general public, and school children) on the following topics: erosion prevention, non-stormwater discharge prohibitions, and BMP types: facility or activity specific, LID, source control, and treatment control. (Part D.5.a.(1).)

⁷³³ Exhibit A, Amended Test Claim Decision on Remand, pages 57-62.

⁷³⁴ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

The educational programs shall emphasize underserved target audiences, high-risk behaviors, and “allowable” behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources. (Part D.5.a.(2).)

- ii. Implement an education program so that planning boards and elected officials, if applicable, have an understanding of: (i) Federal, state, and local water quality laws and regulations applicable to Development Projects; and (ii) The connection between land use decisions and short and long-term water quality impacts (i.e., impacts from land developments and urbanization). (Part D.5.b.(1)(a).)
- iii. Implement an education program so that planning and development review staffs as well as planning boards and elected officials have an understanding of: (iii) How to integrate LID BMP requirements into the local regulatory program(s) and requirements; (iv) Methods of minimizing impacts to receiving water quality resulting from development, including: [1] Storm water management plan development and review; [2] Methods to control downstream erosion impacts; [3] Identification of pollutants of concern; [4] LID BMP techniques; [5] Source control BMPs; and [6] Selection of the most effective treatment control BMPs for the pollutants of concern.” (Part D.5.b.(1)(a).)
- iv. Implement an education program that includes annual training prior to the rainy season for its construction, building, code enforcement, and grading review staffs, inspectors, and other responsible construction staff have, at a minimum, an understanding of the topics in parts D.5.b.(1)(b)(iii), (iv), (v), and (vi) of the permit, as follows:
 - Proper implementation of erosion and sediment control and other BMPs to minimize the impacts to receiving water quality resulting from construction activities.
 - The Copermittee’s inspection, plan review, and enforcement policies and procedures to verify consistent application.
 - Current advancements in BMP technologies.
 - SUSMP [Standard Urban Storm Water Mitigation Plan] requirements including treatment options, LID BMPs, source control, and applicable tracking mechanisms. (Part D.5.b.(1)(b)(iii) - (vi).)
- v. Each Copermittee shall train staff responsible for conducting storm water compliance inspections and enforcement of industrial and commercial facilities at least once a year. Training shall cover

inspection and enforcement procedures, BMP implementation, and reviewing monitoring data. (Part D.5.b.(1)(c).)

- vi. Municipal Other Activities – Each Copermitttee shall implement an education program so that municipal personnel and contractors performing activities which generate pollutants have an understanding of the activity-specific BMPs for each activity to be performed. (Part D.5.b.(1)(d).)
- vii. As early in the planning and development process as possible and all through the permitting and construction process, implement a program to educate project applicants, contractors, property owners, and community planning groups who are not developers or construction site owners. The education program shall provide an understanding of the topics listed in Sections D.5.b.(1)(a) [Municipal Development Planning] and D.5.b.(1)(b) [Municipal construction Activities] above, as appropriate for the audience being educated. The education program shall also educate these groups on the importance of educating all construction workers in the field about stormwater issues and BMPs through formal or informal training. (Part D.5.b.(2).)

*Reimbursement is **not** required to develop any of the educational programs described above in Parts D.5.a., D.5.b.(1), or D.5.b.(2).*

*Reimbursement is also **not** required to educate developers and construction site owners on the topics listed in Part D.5.b.(2).⁷³⁵*

- viii. Each Copermitttee shall collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities. The plan shall evaluate use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods. (Part D.5.b.(3) and the first sentence in Part L.1.)

2. Watershed Urban Runoff Management Program (WURMP, Parts E.2.f, E.2.g, and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following activities:⁷³⁶
 - a. Each Copermitttee shall collaborate with other Copermitttees within its Watershed Management Area (WMA) identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent

⁷³⁵ Exhibit A, Amended Test Claim Decision on Remand, page 82.

⁷³⁶ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below. (Part E.2.g. and the first sentence in Part L.1.)

- b. Update the WURMP to include and implement *only* the following elements:
 - i. 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. Watershed Water Quality Activities are activities other than education that address the high priority water quality problems in the WMA. A Watershed Water Quality Activity implemented on a jurisdictional basis must be organized and implemented to target a watershed's high priority water quality problems or must exceed the baseline jurisdictional requirements of section D of this Order. Watershed Education Activities are outreach and training activities that address high priority water quality problems in the WMA. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.
 - ii. Submit a Watershed Activities List with each updated WURMP and updated annually thereafter. The Watershed Activities List shall include both Watershed Water Quality Activities and Watershed Education Activities, along with a description of how each activity was selected, and how all of the activities on the list will collectively abate sources and reduce pollutant discharges causing the identified high priority water quality problems in the WMA.
 - iii. Each activity on the Watershed Activities List shall include the following information:
 - A description of the activity;
 - A time schedule for implementation of the activity, including key milestones;
 - An identification of the specific responsibilities of Watershed Copermittees in completing the activity;
 - A description of how the activity will address the identified high priority water quality problem(s) of the watershed;
 - A description of how the activity is consistent with the collective watershed strategy;
 - A description of the expected benefits of implementing the activity; and

- A description of how implementation effectiveness will be measured.
- c. 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. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences. (Part E.2.f.)
3. Regional Urban Runoff Management Program (Parts F.1-F.3, and the first sentence in Part L.1.)

No later than March 24, 2008,⁷³⁷ each copermittee shall collaborate with the other copermittees to develop, implement, and update as necessary a Regional Urban Runoff Management Program that reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. The Regional Urban Runoff Management Program shall include the following:

- a. Develop and implement a Regional Residential Education Program which shall include the following:
- Pollutant specific education which focuses educational efforts on bacteria, nutrients, sediment, pesticides, and trash. If a different pollutant is determined to be more critical for the education program, the pollutant can be substituted for one of these pollutants.
 - Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a. (bacteria, nutrients, sediment, pesticides, and trash). (Part F.1.)
- b. Develop the standardized fiscal analysis method required in section G of the permit. The standardized fiscal analysis method shall:

⁷³⁷ Exhibit X (11), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- Identify the various categories of expenditures attributable to the urban runoff management programs, including a description of the specific items to be accounted for in each category of expenditures.
 - Identify expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program. (Part F.2.)
- c. *Facilitate* the assessment of the effectiveness of jurisdictional, watershed, and regional programs. This includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments. (Part F.3.)
4. Program Effectiveness Assessments (Parts I.1, I.2., I.5.)
- a. Annual Effectiveness Assessment of Jurisdictional Urban Runoff Management Program (Part I.1.)
1. Each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
- (i) Specifically assess the effectiveness of each of the following:
- Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;
 - Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge Detection and Elimination, and Education); and
 - Implementation of the Jurisdictional Urban Runoff Management Program as a whole.
- (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items listed above.
- (iii) Utilize outcome levels 1-6, as defined in Attachment C to Order No. R9-2007-0001, to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.⁷³⁸

⁷³⁸ Effectiveness assessment outcome levels are defined in Attachment C of the permit as follows: “Effectiveness assessment outcome level 1 – Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the

- (iv) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.
- (v) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, as defined in Attachment C of Order No. R9-2007-0001, where applicable and feasible.⁷³⁹

implementation of specific activities prescribed by this Order or established pursuant to it. Effectiveness assessment outcome level 2 – Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, business, and municipal employees. Effectiveness assessment outcome level 3 – Behavioral Changes and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation. Effectiveness assessment outcome level 4 – Load Reductions – Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed. Effectiveness assessment outcome level 5 – Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s. Effectiveness assessment outcome level 6 – Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity [i.e., ecosystem health], or beneficial use attainment.” (Exhibit X (14), Test Claim, pages 345-346 (Order No. R9-2007-0001, Attachment C).)

⁷³⁹ Implementation Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to determine the effectiveness of copermitttee programs and activities in achieving measurable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” (Exhibit X (14), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).)

Water Quality Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to evaluate the condition of non-storm water discharges, and the water bodies which receive these discharges.” (Exhibit X (14), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).)

Integrated Assessment is defined in Attachment C of the test claim permit as an “Assessment to be conducted to evaluate whether program implementation is properly targeted to and resulting in the protection and improvement of water quality.” (Exhibit X (14), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).)

2. Based on the results of the effectiveness assessment, each copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each copermittee shall *include* in the Jurisdictional Urban Runoff Management Program Annual Report, due September 30, 2008 and every September 30 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

b. Annual Effectiveness Assessment of the Watershed Urban Runoff Management Program Watershed (Part I.2.)

1. Each watershed group of Copermittees identified in Table 4 of the test claim permit shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:

(i) Specifically assess the effectiveness of each of the following:

- Each Watershed Water Quality Activity implemented;
- Each Watershed Education Activity implemented; and
- Implementation of the Watershed Urban Runoff Management Program as a whole.

(ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items that are part of the WURMP listed above.

(iii) Utilize outcome levels 1-6 to assess the effectiveness of each Watershed Water Quality Activity implemented and each

Watershed Education Activity implemented, where applicable and feasible.

- (iv) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
 - (v) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban Runoff Management Program implementation on the high priority water quality problem(s) within the watershed.
 - (vi) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items that are part of the WURMP listed above, where applicable and feasible.
 - (vii) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.
2. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each watershed group of Copermittees shall *include* in the WURMP Annual Report, due by January 31, 2009 and every January 31 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

*Reimbursement is **not** required to conduct the annual effectiveness assessment of the Regional Urban Runoff Management Program.*

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

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

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

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

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter⁷⁴⁰ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

⁷⁴⁰ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement. Such offsetting revenue includes the following:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning.
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

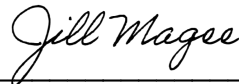
On March 20, 2025, I served the:

- **Current Mailing List dated March 12, 2025**
- **Revised Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued March 20, 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 20, 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.

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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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