



July 27, 2023

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: 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 Draft Proposed Decision and Proposed 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 August 17, 2023**. 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\DraftPD and Ps and Gs trans.docx

Mr. Deak and Ms. Sidarous
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http://www.csm.ca.gov/dropbox_procedures.php 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, October 27, 2023** at 10:00 a.m. The Proposed Decision will be issued on or about October 13, 2023.

Please notify Commission staff not later than the Wednesday 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 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.

Sincerely,



Heather Halsey
Executive Director

ITEM ____

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 that the copermitees² 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.³

On May 26, 2023, the Commission adopted the Amended Decision on Remand, pursuant to the court's judgment and writ.⁴ The Decision states that the test claim permit (Order No. R9-2007-0001, Permit CAS0108758) imposes a reimbursable state-mandated program on the local agency copermitees within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The

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

³ *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.

⁴ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023.*

Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

- 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 (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)).⁵

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 copermitees have fee authority sufficient (within the meaning of Gov. Code § 17556(d)) to pay for them.⁶

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

⁵ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 5-6, 139-151.

⁶ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 6, 151.

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.⁷

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, 2010.⁸ The Department of Finance (Finance) filed comments on the Proposed Parameters and Guidelines on September 3, 2010.⁹ 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, 2010.¹⁰ The claimants filed rebuttal comments and the Revised Proposed Parameters and Guidelines on November 16, 2010.¹¹

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.¹² 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 copermitttees' fee authority.¹³ On May 26, 2023, the Commission adopted the Amended

⁷ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 6, 151.

⁸ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010.

⁹ Exhibit C, Finance's Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

¹⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010.

¹¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010.

¹² *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.

¹³ *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.

Decision on Remand consistent with the Court of Appeal's decision pursuant to the judgment and writ.¹⁴

Pursuant to section 1183.13 of the Commission's regulations, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on July 21, 2023.

III. Positions of the Parties

A. County of San Diego and Cities, Claimants

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.¹⁵

The claimants state that three parts of the permit the Commission found are subject to reimbursement: (1) all copermittee collaboration (permit part L), (2) Regional Urban Runoff Management Program (RURMP) (permit part F.1.-F.3) and (3) the Long Term Effectiveness Assessment (part I.5.), are all carried out through the same regional structure as a defined set of working bodies. They propose costs and combined activities for these permit parts.¹⁶

In rebuttal comments filed November 16, 2010, the claimants disagree with Finance that purchasing equipment is not reimbursable under the test claim permit, and state that the State Controller's Office (Controller's) Mandated Cost Manual for Local Agencies (hereafter Mandated Cost Manual) allows a portion of the prior period equipment purchase to be reimbursable as depreciation or allowance costs. Regarding prorated costs, the claimants acknowledge that they are appropriate, and agree with including offsetting revenues in the Parameters and Guidelines.¹⁷ Regarding personnel costs that the claimants originally proposed to include as indirect (overhead and administrative costs), the claimants revised their definition of these costs in accordance with the Mandated Cost Manual. The claimants also removed their originally proposed

¹⁴ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023.

¹⁵ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, pages 16-22.

¹⁶ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, pages 22-25.

¹⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 2-3.

qualifying phrases such as ‘including but not limited to’ and ‘costs including personnel costs.’¹⁸

The claimants respond to the Water Boards’ specific comments, acknowledging some and rejecting others, as discussed in the Decision below.

B. Department of Finance

In comments filed on September 3, 2010, Finance commented that the Proposed Parameters and Guidelines lack adequate specificity related to the costs of the proposed activities.¹⁹ Finance first argues the Parameters and Guidelines should clearly indicate that the costs to implement the higher level of service or new program are specifically the costs imposed by the test claim permit and not the prior permit, such as, for example, for equipment.²⁰ Second, the Parameters and Guidelines should distinguish the cost of activities alleged to be reimbursable from the costs associated with programs not required by the test claim permit, and costs should be prorated if necessary. Third, the Parameters and Guidelines (in “Section VII. Offsetting Savings and Reimbursement”) should identify the categories of fees that are specified as offsetting revenue in the test claim decision.²¹

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

In comments filed September 16, 2010, the Water Boards state that the request for reimbursement in the Proposed Parameters and Guidelines is not clearly limited to the level of activities that exceed what was required under the prior (2001) permit and the higher level of service should be compared to the 2001 permit.²² Further, the Water Boards state that the claimants fail to adequately explain whether “loaded personnel costs” includes overhead and administrative costs or not, and whether they will pro rate their ‘loaded personnel costs’ to cover only the new activities. The Water Boards also criticize the lack of specificity, i.e., the proposed general activities qualified by phrases such as “including but not limited to” and “costs, including personnel costs” because

¹⁸ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 3-5.

¹⁹ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

²⁰ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

²¹ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

²² Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 4.

they are vague as to whether the claimants are identifying the most reasonable method of complying with the reimbursable permit provisions. According to the Water Boards,

[N]ot only have the Claimants had over three and one-half years of experience implementing the activities they believe are necessary to comply with the reimbursable provisions, they should by now be in a position to adequately describe anticipated changes to those activities over the remainder of the five year term.²³

The Water Boards also disagree that training for vendors should be reimbursable because vendors that bid and carry out contracted activities should be well-versed or expert in the services they provide. And to the extent that vendors charge for other costs, those costs should be prorated to only the reimbursable activities in the permit. The Water Boards point to the claimants' proposed 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 claim 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."²⁴

The Water Boards further assert that the claimants should identify offsetting revenues that were anticipated when the Commission adopted its Statement of Decision, as well as revenues from conveyance system cleaning, parking sign enforcement, and any general fund revenues available for reimbursable provisions to offset reimbursement. And the Water Boards reserve the right to comment on any reasonable reimbursement methodology if one is proposed.²⁵

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:

²³ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 5.

²⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 6.

²⁵ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 16

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.²⁶

As discussed in the Decision below, the San Diego Unified Port District and the San Diego County Regional Airport Authority are copermittees, but are not eligible to claim reimbursement under article XIII B, section 6 because they do not receive proceeds of taxes, and the expenditure of their funds are not subject to the appropriations limit. The Airport Authority cannot levy taxes,²⁷ and the Port District did not levy taxes in fiscal year 1977-1978, and has not levied any taxes since 1970.²⁸

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, 2008,²⁹ the potential period of reimbursement under Government Code section 17557 begins on July 1, 2006. However, since the permit has a later effective date, the period of reimbursement begins on the permit’s effective of January 24, 2007.³⁰

Beginning January 1, 2018,³¹ 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 because the claimants’ fee authority is subject only to a voter protest provisions of article XIII D and Government Code section 17556(d)

²⁶ Exhibit X, Test Claim, filed June 20, 2008, page 256 (Order No. R9-2007-0001).

²⁷ California Public Utilities Code, section 17000, et seq. (especially §170064 (a) – (c)). Statutes 2001, chapter 946.

²⁸ California Constitution article XIII B, section 9(c), Government Code section 7901(e). Exhibit X, Port of San Diego, California, Annual Comprehensive Financial Report, Fiscal Years Ended June 30, 2022 and 2021, page 8.

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

²⁹ Exhibit X, Test Claim, filed June 20, 2008, page 3.

³⁰ Exhibit X, Test Claim, filed June 20, 2008, page 331 (Order No. R9-2007-0001).

³¹ 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.

applies.³² Pursuant to Government Code section 17556(d) and the court's decision in *Paradise Irrigation Dist.*, there are no costs mandated by the state when a local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service and that are subject only to a voter protest.³³ The 2018 statute (SB 231, Stats. 2017, ch. 536) 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 subject only to the voter protest provisions of article XIII D.³⁴ Therefore, reimbursement for this state-mandated program ends on December 31, 2017.

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.³⁵

The claimants request reimbursement for numerous additional reasonably necessary activities to comply with the mandated program.³⁶ 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.³⁷ In addition, section 1187.5 of the Commission's regulations requires 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. The

³² *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

³³ *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195.

³⁴ 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.

³⁵ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023.

³⁶ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010. Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010.

³⁷ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

record lacks any evidence that the activities the claimants propose are reasonably necessary to comply with the state-mandated program.

D. 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 potential offsetting revenues identified in the Commission's Amended Test Claim Decision on Remand.

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

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

(Adopted October 27, 2023)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on October 27, 2023. [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	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	

Member	Vote
Sarah Olsen, Public Member	
Lynn Paquin, Representative of the State Controller, Vice Chairperson	
Spencer Walker, Representative of the State Treasurer	

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 that the copermitees 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.³⁸

On May 26, 2023, the Commission adopted the Amended Decision on Remand pursuant to the court’s judgment and writ.³⁹ The Decision states that the test claim permit (Order No. R9-2007-0001, Permit CAS0108758) imposes a reimbursable state-mandated program on the local agency copermitees within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. 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.);

³⁸ *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.

³⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, pages 4-6.

- Long-term effectiveness assessment (Part I.5.) and
- All permittee collaboration (Part L.1.a.(3)-(6)).⁴⁰

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.⁴¹

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.⁴²

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

⁴⁰ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, pages 5-6.

⁴¹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 6.

⁴² Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 6.

on June 28, 2010.⁴³ The Department of Finance (Finance) filed comments on the Proposed Parameters and Guidelines on September 3, 2010.⁴⁴ 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, 2010.⁴⁵ The claimants filed rebuttal comments and the Revised Proposed Parameters and Guidelines on November 16, 2010.⁴⁶

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.⁴⁷ 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).⁴⁸ On May 26, 2023, the Commission amended the Decision consistent with the Court of Appeal's decision pursuant to the judgment and writ.⁴⁹

Pursuant to section 1183.13(a) of the Commission's regulations, Commission staff issued the Proposed Decision and Parameters and Guidelines on July 21, 2023.

III. Positions of the Parties

A. County of San Diego and Cities, Claimants

⁴³ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010.

⁴⁴ Exhibit C, Finance's Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

⁴⁵ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010.

⁴⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010.

⁴⁷ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.

⁴⁸ *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.

⁴⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023.

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.”⁵⁰ Included in these are personnel costs “using claimants loaded hourly rates”⁵¹ (which they define in its rebuttal comments to include salary, benefit, and indirect or overhead costs).⁵² For conveyance system cleaning, the claimants propose “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,” “employee supervision and management,” and “contracted services.”⁵³ Under the educational component, the claimants propose costs for “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.”⁵⁴

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

⁵⁰ Exhibit B, Claimants’ Proposed Parameters and Guidelines, filed June 28, 2010, page 16, 18.

⁵¹ Exhibit B, Claimants’ Proposed Parameters and Guidelines, filed June 28, 2010, page 15, footnote 12.

⁵² Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 4.

⁵³ Exhibit B, Claimants’ Proposed Parameters and Guidelines, filed June 28, 2010, pages 17-18.

⁵⁴ Exhibit B, Claimants’ Proposed Parameters and Guidelines, filed June 28, 2010, pages 18-19.

vendor annual training, cost accounting and documentation, external coordination, employee supervision and management, and contracted services..⁵⁵

The claimants state that three parts of the permit the Commission found are subject to reimbursement: (1) all copermitee 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.), are all carried out through the same regional structure as a defined set of working bodies.⁵⁶ The claimants' proposed costs and combined activities for these parts include "regional coordination of copermitees 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 allege "regional implementation of programs and activities," "cost accounting and documentation," "external coordination," "employee supervision and management," and "contracted services."⁵⁷

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."⁵⁸

In rebuttal comments filed November 16, 2010, the claimants disagree with Finance that purchasing equipment is not reimbursable under the test claim permit, and state that the State Controller's Office Mandated Cost Manual for Local Agencies (hereafter Mandated Cost Manual) allows a portion of the prior period equipment purchase to be reimbursable as depreciation or allowance costs. Regarding prorated costs, the claimants acknowledge that they are appropriate, and agree with including offsetting revenues in the Parameters and Guidelines.⁵⁹

⁵⁵ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, pages 19-22.

⁵⁶ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, page 24.

⁵⁷ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, pages 22-25.

⁵⁸ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, pages 25-26.

⁵⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 2-3.

The claimants also acknowledge the Water Boards point that reimbursement should be limited to only the level of activities required to comply with the test claim permit that exceeds the prior permit. Thus, the claimants specified some activities found to be non-reimbursable by the Commission in their Revised Proposed Parameters and Guidelines to prevent claiming of costs that are not reimbursable.⁶⁰ Regarding personnel costs that the claimants originally proposed to include as indirect (overhead and administrative costs), the claimants revised their definition of personnel costs in accordance with the Mandated Cost Manual.⁶¹ As to the Water Boards' criticism regarding the lack of specificity in the Proposed Parameters and Guidelines, the claimants revised their proposed reimbursable activities in Section IV. to make the reasonably necessary activities more specific, rephrase reasonably necessary activities to utilize cost descriptions from the Mandated Cost Manual, and remove qualifying phrases such as 'including but not limited to' and 'costs including personnel costs.'⁶² Regarding training for vendors that the Water Boards argue is unnecessary, the claimants state:

While vendors' employees do not generally require additional training 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.⁶³

As to computer hardware and software, which the Water Boards argue is only reimbursable if purchased after January 24, 2007, and must be demonstrated necessary to comply with the reimbursable provisions but not the prior permit, the claimants point out that these are 'capital outlays' addressed in the Mandated Cost Manual. The claimants incorporated the Manual's requirements for computer hardware and software purchases acquired through a vendor contract. If not acquired through a vendor contract, the claimants state that only the pro-rata portion of the purchase price to implement the reimbursable activities may be claimed.⁶⁴

The claimants respond to the Water Boards' specific comments as discussed in the analysis below.

⁶⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 4.

⁶¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 4.

⁶² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 3-5.

⁶³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 6.

⁶⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 6.

B. Department of Finance

In comments filed on September 3, 2010, Finance commented that the Proposed Parameters and Guidelines lack adequate specificity related to the costs of the proposed activities. Finance first argues the Parameters and Guidelines should clearly indicate that the costs to implement the higher level of service or new program are specifically the costs imposed by the test claim permit and not the prior permit, such as, for example, for equipment.⁶⁵ Second, the Parameters and Guidelines should distinguish the cost of activities alleged to be reimbursable from the costs associated with programs not required by the test claim permit; and costs should be prorated if necessary.⁶⁶ Third, the Parameters and Guidelines, in “Section VII. Offsetting Savings and Reimbursement,” should identify the categories of fees that are identified as offsetting revenue in the test claim decision.⁶⁷

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

In comments filed September 16, 2010, the Water Boards express concern that the request for reimbursement in the Proposed Parameters and Guidelines is not clearly limited to only those costs that exceed the level of activities required under the prior (2001) permit, and they assert that the increased costs associated with the higher level of service should be compared to the costs under the 2001 permit.⁶⁸ Further, the Water Boards state that the claimants fail to adequately explain whether “loaded personnel costs” includes overhead and administrative costs or not, and whether they will pro rate their ‘loaded personnel costs’ to cover only the new activities.⁶⁹ The Water Boards also criticize the lack of specificity, i.e., identification of general activities qualified by phrases such as “including but not limited to” and “costs, including personnel costs” because they are vague as to whether the claimants are identifying the most reasonable method of complying with the reimbursable permit provisions.⁷⁰ According to the Water Boards,

⁶⁵ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

⁶⁶ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

⁶⁷ Exhibit C, Finance’s Comments on the Proposed Parameters and Guidelines, filed September 3, 2010, page 1.

⁶⁸ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 4.

⁶⁹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 4.

⁷⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 5.

[N]ot only have the Claimants had over three and one-half years of experience implementing the activities they believe are necessary to comply with the reimbursable provisions, they should by now be in a position to adequately describe anticipated changes to those activities over the remainder of the five year term.⁷¹

The Water Boards also disagree that training for vendors should be reimbursable because vendors that bid and carry out contracted activities should be well-versed or expert in the services they provide.⁷² And to the extent that vendors charge for other costs, those costs should be prorated to only the reimbursable activities in the permit.⁷³ The Water Boards 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 claim permit and are only for the pro-rata costs attributable to the test claim permit.⁷⁴ 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."⁷⁵

The Water Boards further assert that the claimants should identify offsetting revenues that were anticipated when the Commission adopted its Statement of Decision, as well as revenues from conveyance system cleaning, parking sign enforcement, and any general fund revenues available for reimbursable provisions to offset reimbursement.⁷⁶ And the Water Boards reserve the right to comment on any reasonable reimbursement methodology if one is proposed.⁷⁷

⁷¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 5.

⁷² Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 6.

⁷³ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 6.

⁷⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 6.

⁷⁵ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 6.

⁷⁶ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 16.

⁷⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 16.

The Water Boards also specifically comment on each of the proposed activities as discussed in the analysis below.

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.⁷⁸

The San Diego County Regional Airport Authority and the San Diego Unified Port District are also copermittees,⁷⁹ and both were on the claimants' proposed list of eligible claimants.⁸⁰ However, based on the following, neither are eligible to claim reimbursement under article XIII B, section 6.

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."⁸¹

⁷⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 4, footnote 6.

⁷⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 4, footnote 6.

⁸⁰ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, page 14.

⁸¹ *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.*

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.⁸² 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 6.⁸³

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 12½ 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 section 9(c) of article XIII B,⁸⁴ 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

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 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.”

⁸² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁸³ *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.

⁸⁴ 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.”

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.⁸⁵

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.⁸⁶

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.⁸⁷ 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.⁸⁸ Therefore 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

⁸⁵ 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.”

⁸⁶ Government Code section 7901(e), California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

⁸⁷ California Public Utilities Code, section 17000, et seq.. Statutes 2001, chapter 946.

⁸⁸ California Public Utilities Code, section 170064 (a) – (c).

2021 and 2022 that states it is not funded by tax revenues.⁸⁹ Therefore, the Airport Authority's revenues are not subject to the taxing and spending limitations of article 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.⁹⁰ 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 1970.⁹¹

As a special district that has not levied taxes since 1970, 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 12½ cents per \$100 of assessed value in fiscal year 1977-1978. Additionally, it is totally funded by revenues other than the proceeds of taxes.⁹² Therefore, the San Diego Unified Port District is not subject to the appropriations limit of article XIII B and is not an eligible claimant.

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim on June 20, 2008,⁹³ 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, 2007.⁹⁴

⁸⁹ Exhibit X, San Diego County Regional Airport Authority, Annual Comprehensive Financial Report, Fiscal Years Ended June 30, 2022 and 2021, page 14.
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.

⁹⁰ California Harbors and Navigation Code, Appendix 1, sections 43-45.

⁹¹ Exhibit X, Port of San Diego, California, Annual Comprehensive Financial Report, Fiscal Years Ended June 30, 2022 and 2021, page 8.
<https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf>
(accessed on June 15, 2023), page 8.

⁹² California Constitution, article XIII B, section 9(c). Government Code section 7901(e).

⁹³ Exhibit X, Test Claim, filed June 20, 2008, page 3.

⁹⁴ Exhibit X, Test Claim, filed June 20, 2008, page 331 (Order No. R9-2007-0001).

In their Proposed Parameters and Guidelines, the claimants state that the permit term is January 24, 2007 to January 23, 2012.⁹⁵ Under the Clean Water Act, the term of an NPDES permit is five years.⁹⁶ 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.⁹⁷ 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.⁹⁸ This comports with Attachment B of the test claim permit that states the permit expires five years after adoption, but is automatically continued pending issuance of a new permit.⁹⁹

Reimbursement under article XIII B, section 6, however, continues to be required for each fiscal year that local agencies incur actual increased costs to comply with the reimbursable state-mandated program.¹⁰⁰ On May 8, 2013, the San Diego Regional Water Quality Control Board adopted a new permit, which, by its terms, became effective on 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.¹⁰¹ However, any *new* activities required by R9-2013-0001 are not reimbursable under this mandate, 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 because the claimants' fee authority is subject only to a voter protest provisions of article XIII D and Government Code section 17556(d) applies.¹⁰² Pursuant to Government Code section 17556(d) and the court's decision in

⁹⁵ Exhibit B, Claimants' Proposed Parameters and Guidelines, filed June 28, 2010, page 14. Exhibit X, Test Claim, filed June 20, 2008, page 174 (Order No. R9-2007-0001).

⁹⁶ 33 United States Code section 1342(b).

⁹⁷ Code of Federal Regulations, title 40, section 122.6(d).

⁹⁸ California Code of Regulations, title 23, section 2235.4.

⁹⁹ Exhibit X, Test Claim, filed June 20, 2008, page 185 (Order No. R9-2007-0001).

¹⁰⁰ California Constitution, article XIII B, section 6; Government Code sections 17514, 17560, 17561.

¹⁰¹ 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.

¹⁰² *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 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.

Paradise Irrigation Dist., there are no costs mandated by the state when a local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service and that are subject only to a voter protest.¹⁰³ Statutes of 2017, chapter 536 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 subject only to the voter protest provisions of article XIII D.¹⁰⁴ Therefore, reimbursement for this state-mandated program ends on December 31, 2017.

Accordingly, the Parameters and Guidelines identify the period of reimbursement from January 24, 2007 through December 31, 2017.

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.¹⁰⁵

In accordance with the Government Code and the Commission's regulations, any proposed reasonably necessary activity must be supported by substantial evidence in

¹⁰³ *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195.

¹⁰⁴ 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.

¹⁰⁵ California Code of Regulations, title 2, section 1183.7(d).

the record explaining why the activity is necessary to perform the state-mandate.¹⁰⁶ In addition, section 1187.5 of the Commission's regulations requires 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.

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.-6.¹⁰⁷

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

¹⁰⁶ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

¹⁰⁷ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 109-112, 150.

(Best Management Practices) and plans).¹⁰⁸ The Commission found that 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.¹⁰⁹ Thus, collaboration required by the first 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.¹¹⁰

¹⁰⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 111-112, 118-126.

¹⁰⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, 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.”).

¹¹⁰ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 111.

In compliance with Part L.1.a.3.-6. of the permit, the copermitees entered into a new MOU dated November 16, 2007.¹¹¹ 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.¹¹² The MOU also includes the copermitees' fiscal and cost sharing responsibilities¹¹³ a management structure for regional activities;¹¹⁴ and a dispute resolution process for non-compliance.¹¹⁵

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 Copermitee 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.*¹¹⁶

¹¹¹ Exhibit X, Test Claim, filed June 20, 2008, pages 495 -579 (MOU).

¹¹² Exhibit X, Test Claim, filed June 20, 2008, 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.

¹¹³ Exhibit X, Test Claim, filed June 20, 2008, pages 501-507 (MOU).

¹¹⁴ Exhibit X, Test Claim, filed June 20, 2008, pages 507-521 (MOU).

¹¹⁵ Exhibit X, Test Claim, filed June 20, 2008, pages 529-531 (MOU).

¹¹⁶ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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,*

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 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.¹¹⁷

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

F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L, 07-TC-09-R, adopted May 26, 2023, page 111.

¹¹⁷ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023, pages 62-66.*

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.¹¹⁸

These activities are identified in Section IV.B.1.a. of the Parameters and Guidelines.

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;

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.

¹¹⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023 pages 66-73.*

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".)¹¹⁹

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.¹²⁰ 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.¹²¹ Regarding report writing, the Water Boards repeat their objection to computer equipment and upgrade purchases, and repeat their objection to unspecified personnel costs.¹²² 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.¹²³ 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

¹¹⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 36, 37, 40-41.

¹²⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 9.

¹²¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 9.

¹²² Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 9.

¹²³ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 9.

the contracted service, is the most cost effective and reasonable manner, through a cost-benefit analysis, of complying with the street sweeping reporting mandate.¹²⁴

The claimants respond to the Water Boards' concern regarding the lack of detail by stating that they removed 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.¹²⁵ Regarding computer systems and upgrades, the claimants state that they incorporated references to sections of the Mandated Cost Manual relating to 'capital outlays.'¹²⁶ Regarding report writing, the claimants respond that they 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.'¹²⁷ As to 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."¹²⁸

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

First, the claimants' request for "personnel," "contracted services" and "computer hardware and software" are direct costs addressed 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

¹²⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 8-9, 12, 21-22.

¹²⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 13.

¹²⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 14.

¹²⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 14.

¹²⁸ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 13.

the Controller's review and audit.¹²⁹ Section V.A. of the Parameters and Guidelines states in pertinent part the following:

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 the required information, including the amount of waste and material collected, for the annual report. Any proposed reasonably necessary activity must be supported by substantial evidence in

¹²⁹ 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.

the record explaining why the activity is necessary to perform the state mandate.¹³⁰ In addition, section 1187.5 of the Commission's regulations requires 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. The record lacks any evidence that the activities the claimants propose are reasonably necessary to comply with the state-mandated reporting.

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

- a. Include in the JURMP Annual Report the following information:
 - i. Street Sweeping Information (Part J.3.a.(3)(c)(x.-xv))
 - Identification of the total distance of curbs-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 curbs-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 curbs-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 curbs-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.
 - 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

¹³⁰ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

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.

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

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.¹³¹

¹³¹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, 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

Section IV.B.1.b. of the Parameters and Guidelines tracks the plain language of the test claim permit and identifies these state-mandated activities as:

b. Conveyance System Cleaning

- 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, 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. Open channels shall be cleaned of observed anthropogenic litter in a timely manner.

The claimants also propose the following costs and “reasonably necessary” activities, 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 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.

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.

- 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.¹³²

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.¹³³ The Water Boards also state that inspections were required under the 2001 permit, so they should not be reimbursable.¹³⁴ As to cleaning system operations, the Water Boards argue that phrases such as “including Personnel Costs” are not specific enough.¹³⁵ 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.¹³⁶

The Water Boards further argue to the extent that conveyance system cleaning is contracted, fuel should be included in the contract cost.¹³⁷ Regarding program development, the Water Boards state that it is unclear what “internal conveyance system cleaning program” means, and request specificity to allow meaningful evaluation.¹³⁸

¹³² Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 38-39.

¹³³ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 9-10.

¹³⁴ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 10.

¹³⁵ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 10.

¹³⁶ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 10.

¹³⁷ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 11.

¹³⁸ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 11.

As to vendor costs, the Water Boards refer to their general comments, i.e., disagreeing 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.¹³⁹ The Water Boards also 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.¹⁴⁰

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, is the most cost-effective and reasonable way to comply with the conveyance system cleaning mandate.¹⁴¹

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.¹⁴² The claimants also acknowledge that MS4 inspections are not reimbursable because they were required under the prior permit.¹⁴³ The claimants removed "including Personnel Costs" from its Revised Proposed Parameters and Guidelines.¹⁴⁴ The claimants disagree with the Water Boards regarding the most reasonable method to comply with the mandate, 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 SCO Manual. Claims for equipment is limited to the

¹³⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 6, 11.

¹⁴⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 11.

¹⁴¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 8-9.

¹⁴² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 15-16.

¹⁴³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 16.

¹⁴⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 5, 16, 38-39.

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.”¹⁴⁵ The claimants concur that disposal of materials is not reimbursable.¹⁴⁶ 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.¹⁴⁷ In response to the Water Boards’ comments on program development, the claimants state that they removed “internal” from the term “conveyance system cleaning program.”¹⁴⁸ 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”.¹⁴⁹ 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 bear 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.¹⁵⁰ 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 contracting out is the most cost effective method to comply with the mandate. Rather,

¹⁴⁵ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 17-18.

¹⁴⁶ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 18.

¹⁴⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 6, 18-19.

¹⁴⁸ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 19, 39.

¹⁴⁹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 6.

¹⁵⁰ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 11-12, 20.

the claimants rely on the Mandated Cost Manual, which authorizes contracting without a cost-benefit analysis.¹⁵¹

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 the state-mandated activities may be claimed under Section V.A. of the Parameters and Guidelines, and are subject to the review and audit by the Controller.¹⁵²

However, the Commission found that 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.¹⁵³ 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.¹⁵⁴ Thus, the Parameters and Guidelines clarify the activities that not eligible for reimbursement as follows:

The following conveyance system cleaning activities are *not* reimbursable:

1. Implementing a schedule of inspection activities under Part D.3.a.3.a. of the 2007 permit;
2. Annual inspection of MS4 facilities (D.3.a.3.b.i.);
3. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (D.3.a.3.b.iv.);
4. Proper disposal of waste removed pursuant to applicable laws (D.3.a.(3)(b)(v));

¹⁵¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 13.

¹⁵² Government Code section 17561.

¹⁵³ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 79.

¹⁵⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 15.

5. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (D.3.a.3.b.vi.).
6. Authorization to inspect some MS4 facilities every other year following two years of inspection under Part D.3.a.3.b.ii. of the 2007 Permit.¹⁵⁵

Moreover, there is no evidence in the record that the claimants' proposed activities are reasonably necessary to implement the mandate. These include 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. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state mandate.¹⁵⁶ In addition, section 1187.5 of the Commission's regulations requires 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. 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."¹⁵⁷ Thus, the Commission found that the following new education-related activities are eligible for reimbursement:

- D.5.a.(1): Each copermitttee 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,

¹⁵⁵ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 57-62.

¹⁵⁶ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

¹⁵⁷ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 79.

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;¹⁵⁸ 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.”¹⁵⁹
- 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:

¹⁵⁸ 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, Test Claim, filed June 20, 2008, page 345 (Order No. R9-2007-0001, Attachment C).

¹⁵⁹ The conclusion in the Amended Decision states that these educational topics in i. – iv.. are reimbursable for “Planning Boards and Elected Officials.” (Exhibit A, pp. 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, Commission on State Mandates, Amended Test Claim Decision on Remand on *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*, 07-TC-09-R, adopted May 26, 2023, page 80.

- 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]¹⁶⁰ 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.
 - D.5.(b)(1)(d): 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)(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 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.¹⁶¹

¹⁶⁰ 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, Test Claim, filed June 20, 2008, page 351 (Order No. 2007-0001, Attachment C).

¹⁶¹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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,*

These new state-mandated activities are identified in Section IV.B.1.c. of the Parameters and Guidelines.

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.¹⁶² 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.”¹⁶³ Thus, this portion of the Parameters and Guidelines references both Part D.5.b.3. and the first sentence in Part L.1..

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 measureable 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

F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L, 07-TC-09-R, adopted May 26, 2023, pages 74, 78-84, 141-143.

¹⁶² Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023, pages 112, 150.*

¹⁶³ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023, pages 82-83.*

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 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).¹⁶⁴

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.¹⁶⁵ 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.¹⁶⁶ 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

¹⁶⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 44-45.

¹⁶⁵ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 12.

¹⁶⁶ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 12-13.

claimants should be required to transparently demonstrate what percentage of computer equipment is reimbursable beyond the prior permit.¹⁶⁷

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 copermitttees must segregate those costs to avoid seeking improper reimbursement.¹⁶⁸ The Water Boards also disagree that vendor training should be reimbursable, and say that vendor costs should be prorated to only the reimbursable activities in the permit.¹⁶⁹ 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.¹⁷⁰

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.¹⁷¹

In response to the Water Boards, 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. 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.¹⁷² 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

¹⁶⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 12, 13.

¹⁶⁸ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 13.

¹⁶⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 6, 13.

¹⁷⁰ Exhibit D, Water Boards' Combined Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 6, 13.

¹⁷¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 8-9, 12.

¹⁷² Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 13

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. . . .”¹⁷³ 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.¹⁷⁴ The claimants disagree with the Water Boards regarding vendor training, stating “[w]hile vendors’ employees do not generally require additional training 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.”¹⁷⁵ The claimants revised their proposed activities for education of target audiences and report writing to increase specificity and agree that proration is appropriate.¹⁷⁶ 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.”¹⁷⁷

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.”¹⁷⁸

¹⁷³ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 12, 13, 22-23.

¹⁷⁴ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 3-5, 23.

¹⁷⁵ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 24.

¹⁷⁶ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 4-5, 24.

¹⁷⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 13, 22.

¹⁷⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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,*

However, the introductory paragraph in Part D.5. and language in Part D.5.b.1.-2. mandate that each copermitttee only *implement* an education program for the other target communities (municipal departments and personnel, new development and construction) and does not expressly require that the claimants develop those programs.¹⁷⁹ In construing regulations and statutes, it is a well-established rule that the use of different words indicates that different meanings are intended.¹⁸⁰ So the requirement in D.5.b.3., for “development and implementation” of the residential, general public and school 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. Education programs for municipal departments and personnel, as well as for developers and construction site owners were also required under the prior permit.¹⁸¹ Moreover, there is no evidence in the record that *developing* a program for these other target communities is reasonably necessary to comply with the mandate. Thus, only *implementing* the educational programs 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.¹⁸²

F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L, 07-TC-09-R, adopted May 26, 2023, pages 82-83., see also Exhibit X, Test Claim, filed June 20, 2008, page 300 (Order No. R9-2007-0001).

¹⁷⁹ Exhibit X, Test Claim, filed June 20, 2008, pages 297-300 (Order No. R9-2007-0001).

¹⁸⁰ *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.

¹⁸¹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023, pages 79-83.*

¹⁸² Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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,*

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.¹⁸³

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."¹⁸⁴

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 regulations.¹⁸⁵ In addition, section 1187.5 of the Commission's regulations requires 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.

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

F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L, 07-TC-09-R, adopted May 26, 2023, 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, Test Claim, filed June 20, 2008, page 589. (Declaration of Jon Van Rhyn, Water Quality Manager, County of San Diego.)

¹⁸³ Government Code section 17561.

¹⁸⁴ California Code of Regulations, title 2, section 1183.7(d).

¹⁸⁵ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

- 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.)
- i. Each copermitttee 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 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).¹⁸⁶*

¹⁸⁶ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 82.

- 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. (D.5.b.(3).)

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

The Commission partially approved reimbursement for the new 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), as follows:¹⁸⁷

Each Copermitttee shall collaborate with other Copermitttees 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 water quality standards. At a minimum, each Watershed Urban Runoff Management Program shall include the elements described below:

f. Watershed Activities

¹⁸⁷ 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, Test Claim, filed June 20, 2008, 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 Copermitttees 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, Test Claim, filed June 20, 2008, 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, Test Claim, filed June 20, 2008, pages 303-304 (Order No. R9-2007-0001, Table 4).)

(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.¹⁸⁸

These activities are identified in Section IV.B.2. of the Parameters and Guidelines.

In addition, the first sentence in Part L.1. of the test claim permit approved by the Commission 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..¹⁸⁹ 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.¹⁹⁰

¹⁸⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 72-77 (Emphasis added.)

¹⁸⁹ Exhibit X, Test Claim, filed June 20, 2008, page 329 (Order No. R9-2007-0001).

¹⁹⁰ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, 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

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.¹⁹¹ And the costs incurred 1) to perform the responsibilities of chairs,¹⁹² co-chairs, and secretaries,¹⁹³ 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.;

or higher level of service in the analysis above (i.e., not in the 2001 permit) including the Regional Urban Runoff Management Program.”

¹⁹¹ Permit Part E.2.g. requires the collaborative development and implementation of a WURMP for each of the following Watershed Management Areas (“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, Test Claim, filed June 20, 2008, pages 302-304 (Order No. R9-2007-0001, Table 4).

¹⁹² 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.”

¹⁹³ 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.”

- Watershed Activities Lists. Any Watershed Quality Activity¹⁹⁴ or Watershed Education Activity¹⁹⁵ 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;
- 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:

¹⁹⁴ Watershed quality activities are “activities other than education that address high priority water quality problems in the WMA.”

¹⁹⁵ Watershed education activities are “Outreach and training activities that address high priority water quality problems in the WMA.”

- 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).¹⁹⁶

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 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.¹⁹⁷

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.¹⁹⁸

First, as stated earlier, pro rata direct costs for employee supervision and management, materials and supplies, fixed assets, 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 required by Parts J.1.b. and J.3.b. of the test claim permit, which were not pled in the Test Claim. The Commission's regulations are clear that "[a]ctivities required by statutes, regulations and

¹⁹⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 49-52.

¹⁹⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 13-14.

¹⁹⁸ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 24-26.

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.”¹⁹⁹ Reporting and report writing do not define the state-mandated activities the Commission approved, so they are not eligible for reimbursement.²⁰⁰

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 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.²⁰¹ Section 1187.5 of the Commission’s regulations also requires 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.

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 ...”²⁰² 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.²⁰³ 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.²⁰⁴ The Test Claim Decision limited reimbursement for collaboration

¹⁹⁹ California Code of Regulations, title 23, section 1183.7(d).

²⁰⁰ California Code of Regulations, title 2, section 1183.7(d).

²⁰¹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

²⁰² Exhibit X, Test Claim, filed June 20, 2008, page 499 (MOU).

²⁰³ Exhibit X, Test Claim, filed June 20, 2008, page 527 (MOU).

²⁰⁴ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted*

to the new activities in Part E.2.f., which the Commission found mandated a new program or higher level of service.²⁰⁵ Thus, substantial evidence in the record is required to show that the costs incurred to “organize and administer the WURMP Working Bodies” is reasonably necessary to comply with the mandate to “develop and implement an **updated** Watershed Urban Runoff Management Program.” In addition, 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, the Parameters and Guidelines identify 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..)
 - 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

May 26, 2023, page 90. See also pages 111-112 for a discussion of the MOU under the prior permit.

²⁰⁵ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, 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..”

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.²⁰⁶ 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

²⁰⁶ Exhibit X, Test Claim, filed June 20, 2008, page 143 (Order No. R9-2007-0001, Part E.2.f.1.a. & b.).

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):²⁰⁷

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.

²⁰⁷ 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, Test Claim, filed June 20, 2008, page 350 (Order No. R9-2007-0001, Attachment C).

2. Develop the standardized fiscal analysis method required in section G of the permit,²⁰⁸ and,
3. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs.²⁰⁹

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 approved by the Commission. For example, collaboration is also required in Part L.1., and the Commission approved the requirement in Part L.1.. for the copermittees to collaborate with each other to address common issues, and to plan and coordinate activities found to mandate a new program or higher level of service.²¹⁰ Thus, the Parameters and Guidelines identify Part L.1. together with Parts F.1-F.3.

²⁰⁸ 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 Copermittees 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.
- 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, Test Claim, filed June 20, 2008, page 305 (Order No. R9-2007-0001, Part G.2.)

²⁰⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 91-92, 96, 144-145.

²¹⁰ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 109-112, 150.

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 means that the Legislature or state agency intended a different meaning.²¹¹ 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.²¹² Neither the test claim permit, nor the Fact Sheet, explain 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.

[¶] . . . [¶]

²¹¹ *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.

²¹² Exhibit X, Test Claim, filed June 20, 2008, pages 201, 209-212 (Order No. R9-2007-0001).

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;²¹³

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].²¹⁴ 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 [proposed reasonably necessary activities] therefore apply to parts L, F, and I.5.²¹⁵

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.²¹⁶ The dictionary defines "facilitate" as "to make easier" or to "help bring out."²¹⁷ 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

²¹³ Exhibit X, Test Claim, filed June 20, 2008, pages 513-514 (MOU). Emphasis added.

²¹⁴ 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, Test Claim, filed June 20, 2008, page 499 (MOU).

²¹⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 53.

²¹⁶ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 567.

²¹⁷ 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).

developing, annually reviewing, and updating as necessary subject-specific standards for the assessments.”

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.
- 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.²¹⁸
 - 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

²¹⁸ The standardized fiscal method must be submitted to the Regional Board by January 31, 2009. It is a one-time requirement.

- 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 Copermitttee 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.
- 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).²¹⁹

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.²²⁰ 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.”²²¹ Additionally, the Water Boards specifically object to the claimant’s proposed Report of Waste Discharge (ROWD) as a

²¹⁹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 53-56.

²²⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 6, 15.

²²¹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, pages 6, 14-15.

regional work product because a ROWD was not approved by the Commission and is required by federal law.²²²

In rebuttal comments, the claimants revised their proposed activities to reduce open ended and vague activities.²²³ The claimants disagree that they have not adequately described the tasks necessary to perform the Regional Collaboration requirements, as the tasks are described in the proposed activities listed above.²²⁴ The claimants also disagree that vendor training should not be recoverable.²²⁵ The claimants acknowledge that costs for computer equipment should be prorated to cover only the reimbursable activities.²²⁶ The claimants also agree that the costs of preparing and submitting a ROWD should not be reimbursable, and deleted it from their proposed activities.²²⁷

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 copermittees 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 copermittee 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.

²²² Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, filed September 16, 2010, page 15.

²²³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 5.

²²⁴ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 27.

²²⁵ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, pages 5-6, 27.

²²⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 27.

²²⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 28.

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 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.²²⁸

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.)

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).
- b. Develop the standardized fiscal analysis method required in section G of the permit. The standardized fiscal analysis method shall:

²²⁸ California Code of Regulations, title 2, section 1183.7(d).

- 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 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 1-6²²⁹ to assess the effectiveness of each of the items listed in section I.1.a.(1) above, where applicable and feasible.

(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.

²²⁹ 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 attainment.” Exhibit X, Test Claim, filed June 20, 2008, pages 345-346 (Order No. R9-2007-0001, Attachment C).

- (5) Utilize Implementation Assessment,²³⁰ Water Quality Assessment,²³¹ and Integrated Assessment,²³² where applicable and feasible.
- b. 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.²³³ 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.
- 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

²³⁰ Implementation Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to determine the effectiveness of copermittee programs and activities in achieving measureable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” Exhibit X, Test Claim, filed June 20, 2008, page 347 (Order No. R9-2007-0001, Attachment C).

²³¹ 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, Test Claim, filed June 20, 2008, page 352 (Order No. R9-2007-0001, Attachment C).

²³² 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, Test Claim, filed June 20, 2008, page 347 (Order No. R9-2007-0001, Attachment C).

²³³ Section A of the permit governs prohibitions and receiving water limitations. Exhibit X, Test Claim, filed June 20, 2008, pages 265-267 (Order R9-2007-0001.).

- 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.²³⁴ 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.²³⁵

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)²³⁶ of this Order, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle.

²³⁴ Section A of the permit governs prohibitions and receiving water limitations. Exhibit X, Test Claim, filed June 20, 2008, pages 265-267 (Order R9-2007-0001.)

²³⁵ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 145-149.

²³⁶ 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

- 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% 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.²³⁷

The Parameters and Guidelines identify these activities in sections IV.A.2. (LTEA) and IV.B.4. (annual program effectiveness assessments of the JURMP and WURMP).

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, Test Claim, filed June 20, 2008, page 309 (Order No. R9-2007-0001).

²³⁷ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 149-150.

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.²³⁸ 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].”²³⁹ Therefore, this is listed as a one-time activity in 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 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

²³⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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.(3), 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, 07-TC-09-R, adopted May 26, 2023, pages 112, 150.*

²³⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023, pages 105, 107, 149.*

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).²⁴⁰

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 Copermitttee *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.²⁴¹
- As part of its Watershed Urban Runoff Management Program Annual Reports, each watershed group of Copermitttees (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.²⁴²

²⁴⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, filed November 16, 2010, page 61.

²⁴¹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 101, 147.

²⁴² Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 103, 149.

The annual reports for the JURMP and WURMP are governed by Part J.3. of the test claim permit, which generally requires the copermitees to submit detailed reports containing a comprehensive description of all their activities to meet the JURMP and WURMP requirements, including a reporting of the assessment of the effectiveness of these programs.²⁴³ 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.

Moreover, 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.²⁴⁴ In addition, section 1187.5 of the Commission's regulations requires 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.

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.

²⁴³ Exhibit X, Test Claim, filed June 20, 2008, pages 324, 327 (Order No. R9-2007-0001, Part J.3.a.3.i., JURMP and J.3.b.2.m., WURMP).

²⁴⁴ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

- 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, 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 Copermitttee shall *include* in the Jurisdictional Urban Runoff Management Program Annual Report, a report on the effectiveness assessment 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 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, a report on the effectiveness assessment 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.

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 Copermitees within its Watershed Management Area, “with frequent regularly scheduled meetings.”²⁴⁵ And other parts require copermitee 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.

E. 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

²⁴⁵ Exhibit X, Test Claim, filed June 20, 2008, page 146. (Order No. R9-2007-0001, Part E.2.g..)

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.²⁴⁶

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.

V. Staff Recommendation

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

²⁴⁶ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 139, 151.

PARAMETERS AND GUIDELINES²⁴⁷

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.²⁴⁸ The Commission partially approved the Test Claim, finding that the test claim permit imposes a reimbursable state-mandated program upon local agency copermittees 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);

²⁴⁷ 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.

²⁴⁸ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R, adopted May 26, 2023.*

- 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)).²⁴⁹

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 copermittees, but 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

²⁴⁹ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 5-6.

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 activities pursuant to Government Code section 17556(d). 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 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 that (Part L.1.a.(3)-(6)):
 - 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.*²⁵⁰

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

²⁵⁰ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 111.

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 (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.
 - 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 1-6,²⁵¹ and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).

²⁵¹ 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

- 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. Include in the JURMP Annual Report the following information:
 - 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.

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, Test Claim, filed June 20, 2008, pages 188-189 (Order No. R9-2007-0001, Attachment C).)

- 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.
 - 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.
- 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.
- b. Conveyance System Cleaning (Part D.3.a.(3)(b)(iii))
- 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 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. Open channels shall be cleaned of observed anthropogenic litter in a timely manner.

The following conveyance system cleaning activities are not reimbursable:

- Implementing a schedule of inspection activities (Part D.3.a.(3)(a));
 - Annual inspection of MS4 facilities (Part D.3.a.(3)(b)(i));
 - 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)).
 - Authorization to inspect some MS4 facilities every other year following two years of inspection under Part D.3.a.(3)(b)(ii) of the test claim permit.²⁵²
- 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.)
- 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).)

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).)

²⁵² Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, pages 57-62.

- 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 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. (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).²⁵³*

- 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. (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.)
 - a. Each Copermittee identified in Table 4 of the test claim permit shall collaborate with other Copermittees within its Watershed Management Area, 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. (Part E.2.g. and the first sentence in Part L.1.)

²⁵³ Exhibit A, Commission on State Mandates, Amended Test Claim Decision on Remand on *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, 07-TC-09-R*, adopted May 26, 2023, page 82.

- 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.)
2. Regional Urban Runoff Management Program (Parts F.1-F.3, and the first sentence in Part L.1.)

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:
 - 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. 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. (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 Copermitttee 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.²⁵⁴

²⁵⁴ 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

- (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.²⁵⁵
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

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, Test Claim, filed June 20, 2008, pages 188-189 (Order No. R9-2007-0001, Attachment C).)

²⁵⁵ Implementation Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to determine the effectiveness of copermittee programs and activities in achieving measureable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” (Exhibit X, Test Claim, filed June 20, 2008, page 190 (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, Test Claim, filed June 20, 2008, page 195 (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, Test Claim, filed June 20, 2008, page 190 (Order No. R9-2007-0001, Attachment C).)

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, a report on the effectiveness assessment 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 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, a report on the effectiveness assessment 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 chapter²⁵⁶ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

²⁵⁶ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

- 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 July 27, 2023, I served the:

- **Current Mailing List dated July 24, 2023**
- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 27, 2023**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 27, 2023 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/24/23

Claim Number: 07-TC-09-R

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

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

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Adaoha Agu, *County of San Diego Auditor & Controller Department*

Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego,
CA 92123

Phone: (858) 694-2129

Adaoha.Agu@sdcounty.ca.gov

Tiffany Allen, *Treasury Manager, City of Chula Vista*

Claimant Contact

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